



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: August 18, 2020

Approved

Date

8/20/2020

SUBJECT: REPORT ON ECONOMIC INDICATORS TO EVALUATE NEED FOR CONTINUING THE EVICTION MORATORIUM AND EXTENSION OF COVID-19 EVICTION MORATORIUM TO SEPTEMBER 30, 2020

RECOMMENDATION

- (a) Accept the staff report on economic indicators to guide City Council's decision-making regarding the eviction moratorium.
- (b) Adopt a resolution extending the temporary moratorium through September 30, 2020 on evictions due to nonpayment of rent for residential tenants where the failure to pay rent results from income loss resulting from COVID-19.

EXECUTIVE SUMMARY

The City of San José is continuing to prioritize housing stability amidst the ongoing Shelter-in-Place Public Health Order from Santa Clara County. Staff continues to receive concerns from residents affected by the pandemic, from tenants who fear homelessness, to small business landlords faced with losing their livelihoods or fear bankruptcy.

Based on staff research, the key findings include:

- ***Unemployment remains at unprecedented levels in key sectors.*** The San José unemployment rate of 12.4% is higher than the County average and above the peak of the 2008 'Great Recession' in California.
- ***Unemployment insurance claims by residents of the City of San José are 12 times the volume of claims than was seen pre-COVID.*** The volume and scale of these unemployment insurance filings continues to break records, driven by a repetitive filing of claims as businesses open, close, and re-open.

- *While some job sectors are experiencing a positive return in employment numbers, other sectors – such as retail, hospitality and entertainment – lag far behind.* Recovery in unemployment is not keeping pace with the recovery in jobs, and there are wide discrepancies in unemployment insurance filings among industry sectors. The sectors of Food Services, Retail Services, and Arts, Entertainment, and Recreation have been hit hard. These industries generally employ low-wage workers.
- *The pandemic has disproportionately affected low-income communities and communities of color.* Since the pandemic began, low-income residents and residents from Latinx, Black and other communities of color have been overrepresented in jobs decimated by the volatility of the job market.

In this memorandum, staff responded to the City Council’s direction to research and provide economic indicators that can be used as a basis when considering an extension of the eviction moratorium. The memorandum also provides information on moratoria actions taken by government entities, impacts to landlords, and resources available to both landlords and tenants,

OUTCOME

This memorandum includes a recommendation to extend the eviction moratorium for an additional thirty days, and a staff report detailing the economic indicators that informed this recommendation. Extending the moratorium until September 30, 2020, provides eviction protections for renters still being financially impacted by COVID-19.

BACKGROUND

The COVID-19 pandemic crisis continues to spread across City of San José along with other jurisdictions throughout the United States. Following Governor Newsom’s March 4, 2020 State of Emergency declaration for California, a shelter-in-place Order for Santa Clara was enacted on March 16, 2020 and remains in place to help slow the spread of COVID-19. As of August 17, 2020, the City of San José reported 14,636 confirmed cases and 209 deaths related to COVID-19¹. As a result of ongoing spread of the disease and the shelter-in-place, the City is experiencing an unprecedented pandemic-related economic downturn.

From the onset of the shelter-in-place Order, City Council has taken swift and sweeping action to keep residents housed in the effort to slow the coronavirus spread. City Council actions factor the needs of and impact on the housing ecosystem for tenants and landlords and reflect a multifaceted approach to housing stability, including but not limited to establishing an eviction moratorium (**Table 1**).

¹ <https://www.sccgov.org/sites/covid19/Pages/dashboard.aspx>

Table 1: Summary of City Council Actions regarding Eviction Moratorium

Date	Summary of City Council Actions
<u>March 17, 2020</u>	<p>Creation of a Temporary Eviction Moratorium</p> <ul style="list-style-type: none"> ● City Council approved a moratorium on residential evictions for nonpayment of rent. ● The moratorium will be in place for 30 days, and it may be extended by the City Council. ● To stop an eviction under the moratorium, a tenant must document that their income has been reduced due to the COVID-19 pandemic.
<u>April 14, 2020</u>	<p>Extension of the Eviction Moratorium</p> <ul style="list-style-type: none"> ● City Council approved extending the residential eviction moratorium through May 31, 2020. <p>Repayment Period</p> <ul style="list-style-type: none"> ● City Council directed Housing Department staff to draft an amendment to the residential eviction moratorium that would include a repayment period to pay unpaid rent accrued during the Eviction Moratorium
<u>May 19, 2020</u>	<p>Extension and Amendments to the Eviction Moratorium</p> <ul style="list-style-type: none"> ● City Council extended the eviction moratorium through June 30, 2020. ● A repayment period was established for tenants to pay any unpaid rent that accrued during the eviction moratorium. Tenants must pay at least 50% of the unpaid rent in the six months following the end of the Eviction Moratorium. The remaining 50% must be paid one year after the Eviction Moratorium. ● Affected tenants and landlords may voluntarily negotiate their own repayment plans. Before a repayment plan is signed, the landlord must provide the tenant with a written notice of their rights under the eviction moratorium related to repayment of past due rent. ● During the repayment period, landlords may not charge late fees, interest or penalties for the unpaid rent that accrued during the eviction moratorium. ● Retaliation or harassment against tenants for invoking their rights under the moratorium is prohibited. ● If a landlord serves a tenant with a termination notice while the eviction moratorium is in effect, the tenant has seven days to notify the landlord that the tenant's income has been impacted by the COVID-19 pandemic.
<u>June 23, 2020</u>	<p>Extension of Eviction Moratorium</p> <ul style="list-style-type: none"> ● City Council Extended the eviction moratorium through August 31, 2020.

A. Federal, State, and County Actions

Federal, state, and county governments have also adopted temporary eviction moratoria as a component of their multifaceted housing stability strategies. Each moratoria vary in duration, eligibility criteria, repayment parameters and enforcement² (**Table 2**). Some moratoria end this month, including Santa Clara County and the City of San José. City of San José eviction moratorium is currently set to expire August 31, 2020.

Table 2: Temporary Eviction Moratorium Adoption and Expiration Dates

	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
San José	3/17			8/31			
Santa Clara County	3/24			8/31			
California	3/27			9/30			

- County of Santa Clara:** On August 11, 2020, the Santa Clara County Board of Supervisors directed County Counsel staff to return with proposals to extend the Eviction Moratorium for residential and commercial tenants beyond August 31, 2020. At the August 25, 2020 Board of Supervisors meeting, there will be discussion of a possible extension. For the moratorium on commercial evictions, there were concerns about including stronger protection compliance for tenants to protect against illegal evictions or threats for unpaid rent. For residential, the discussion included aligning the County’s deadline with the State Executive Order’s expiration date of September 30, 2020 and also other provisions including fees and penalties for violations.
- Judicial Council of California:** On [August 13, 2020 the Judicial Council voted to end two temporary emergency rules](#) governing evictions and judicial foreclosures, effective through midnight on September 1, 2020. This action enables the courts to accept new unlawful detainer cases.
- President’s Executive Order:** On [August 8, 2020, President Trump signed an Executive Order](#) recognizing the need for additional protections for renters. However, the Order did not explicitly continue the federal eviction moratorium protecting renters living in federally-funded housing as previously established under the CARES Act. Instead, the Order directed the Secretary of Health and Human Services and the Director of CDC to evaluate the need for an extension.

B. Potential Impact on Landlords

Nationwide, economists, housing and eviction researchers are studying moratoria and eviction risk. There is widespread consensus among these experts that a high number of evictions will occur without the moratoria. Further, experts anticipate evictions will be concentrated among

²UCLA Center for Neighborhood Knowledge/Ong & Associates. Paul Ong, Chhandara Pech, Elena Ong, Silvia R. Gonzalez, and Jonathan Ong (April 2020). Economic Impacts of the COVID-19 Crisis in Los Angeles: Identifying Renter Vulnerable Neighborhoods. Accessed June 2020.

those with lower incomes, communities of color, and undocumented workers.³ Researchers at the COVID-19 Eviction Defense Project (Aspen Institute/Bell Policy Center) further predict eviction waves extending to the end of 2020, impacting a wide range of those earning low to middle income.⁴

The [National Low Income Housing Coalition](#) and [The Eviction Lab](#)/Columbia University are among many experts who report a lack of rental income places rental property owners at risk of harm. Individual investors, who often lack access to additional capital, may be particularly vulnerable. Nationally, “mom and pop” landlords own 47% of rental units in the housing market (22.7 million out of 48.5 million units), and more than half (58%) of mom and pop landlords do not have access to any lines of credit that might help them in an emergency.⁵

Missed and late rent payments bring risk of economic instability to “mom and pop” landlords, according to data from the National Association of Hispanic Real Estate Professionals (NAHREP) - a group whose membership disproportionately owns or manages small, often more affordable, rental properties. A NAHREP/Terner Center [survey](#) NAHREP/Terner [Center survey](#) found the majority of respondents - more than 80% of who own or manage buildings with fewer than 20 units - reported a decline in their rental income compared to the first quarter of the year. One in four landlords reported having already borrowed funds to make ends meet and almost two in five lack confidence in their ability to make ends meet over the next 90 days.

Landlords who evict tenants face court costs, short or long term vacancy, related costs, and the loss of 90-95% of rental arrears via sale to a debt collector or other third party. Short term, the lack of rental income may result in unanticipated costs, and an inability to pay mortgages, pay property taxes, and maintain the property. Long term, it places small property owners at greater risk of foreclosure and bankruptcy⁶ threatening their financial security; two-thirds of the NAHREP/Terner survey respondents indicated that they expected their properties to contribute at least one-fourth of their retirement income.⁷

Staff will continue to monitor both national and local information for insights regarding the economic impact of the COVID-19 pandemic on property owners. Leading associations, such as the California Apartment Association, are expected to conduct a survey of its membership on rent collection impacts due to COVID-19.

³ Working Partnerships/Law Foundation of Silicon Valley. *The Eviction Time Bomb* (July 2020) Accessed July 2020.

⁴ COVID-19 Eviction Defense Project. [Colorado's Looming Eviction & Rental Crisis](#). (May 28, 2020). Accessed July 2020.

⁵ CNBC.com. [Small Landlords Struggle As Renters Can't Or Choose Not to Pay Amid Coronavirus Layoffs](#). (April 2, 2020) Accessed July 2020.

⁶Housing Matters on Urban Institute Initiative. Philip ME Garboden and Eva Rosen. [The High Cost of Eviction and the Low Cost of Filing](#) (March 25, 2020) Accessed July 2020.

⁷ National Association of Hispanic Real Estate Professionals & Terner Center for Housing Innovation (UC Berkeley). (July 2020) [How Are Smaller Landlords Weathering the COVID-19 Pandemic?](#) Accessed August 2020.

The California legislature is currently considering a number of bills intended to address the financial needs of renters and landlords, including Senate Bill 1410 and Assembly Bill 1436. More information about these and select housing related bills can be found in **Attachment A**.

C. Rental Assistance Provides Financial Support to Landlords and Relieves Rent Obligations for Tenants

A clear action item for the City to address landlords’ financial concerns and residents’ fear of eviction related to COVID-19 is to provide rental assistance to those in need, with a requirement that the funds go directly to the landlord. To date, the City has awarded \$17.5 million in rental assistance. The majority of the awards are being distributed based on evaluation of vulnerability and need during the intake process.

In addition, the Housing Department is finalizing funding for approximately \$7 million in tenant rental assistance from the City’s Coronavirus Relief Funds from CARES to be granted to Sacred Heart Community Services. These funds will also be used to provide relief for tenants impacted by COVID-19. In total, close to \$25 million will provide rental assistance directly to property owners to provide relief for tenants unable to pay their rent (**Table 3**).

Table 3: Summary of Funding Distributed by Agency

Agency	Amount
Sacred Heart	\$11,750,000
Catholic Charities	\$4,000,000
Bill Wilson Center	\$1,000,000
YWCA	\$121,161
Next Door	\$346,485
Destination: HOME	\$7,850,000
	\$25,067,646

This funding will provide financial support to property owners and will relieve tenants impacted by COVID-19 from mounting rent debts.

D. Notices of Terminations Submitted to the City during Eviction Moratorium

Staff continues to receive Notices of Termination served by landlords during the moratorium. From March 18, 2020 to June 30, 2020, approximately 1,689 notices were submitted. Of these, 1,600 notices were for Nonpayment of Rent. After analyzing the Nonpayment of Rent notices, staff made the following findings, comparing the data to the same time period in 2019, as seen in **Table 4**:

Table 4: Summary of Top 5 Property Complexes that Filed Notices of Terminations for Nonpayment of Rent and Unlawful Detainers

	2019		2020	
	March 18 – June 30		March 18 – June 30	
	Submitted	Total	Submitted	Total
Top 5 Property Complex Filers	604 (23%)	2,589	910 (54%)	1,689
Unlawful Detainers	266		8* due to court closure	

- **Nonpayment of Rent Notices:** 54% of all nonpayment of rent notices were submitted by five property complexes, each complex owning more than 150 units. During the same time period in 2019, the same five property complexes submitting the most Nonpayment of Rent notices comprised only 23% of notices. As such, a reasonable inference would be that smaller property owners have not been serving notices as frequently as complexes with more than 150 units.
- **Unlawful Detainers:** Submissions of Unlawful Detainers (UDs) has decreased during this time period, from 266 UD's in 2019, to 8 UD's in 2020. This low number is likely due to the Courts being closed since April.

Since the Eviction Moratorium took effect, the submission of Nonpayment of Rent notices has increased while submission of Unlawful Detainers has dramatically decreased. While local and State Eviction Moratoriums have suppressed the amount of unlawful detainer lawsuits, staff anticipate a sharp rise in submissions of unlawful detainer lawsuits after September 1, 2020, when the Courts are expected to begin accepting eviction filings.

ANALYSIS

As part of City Council direction, staff compiled data on the impacts of COVID-19. Staff undertook a data-driven analysis specific to the City of San José to help guide decisions made on the City’s Eviction Moratorium. The indicators and analysis are discussed below, with additional information regarding social factors in **Attachment A**.

I. SUMMARY OF INDICATORS

Staff undertook the following process to determine indicators for the analysis:

- Inventoried indicators used by economic, eviction and housing researchers;
- Catalogued a) the availability of relevant data for each proposed indicator and b) the frequency with which that data is refreshed, recognizing we intend to track and update the analysis monthly; and
- Engaged with stakeholders to gather their perspectives regarding which indicators to prioritize.

Several key indicator categories emerged, including but not limited to employment, job growth, consumer spending, missed/late rent payments, childcare access/availability, and the ability to afford other basic needs (food, healthcare). Staff narrowed the potential indicators to those that can reflect city-level data and can be updated monthly. Staff also met with stakeholder groups to gain their perspectives. More information on the key indicator categories can be found in **Attachment A** and **Attachment B**.

Subsequently, staff proceeded with an economic analysis to derive insights from employment, unemployment and unemployment insurance volumes and dollar value. Complementing this work, staff included in this report a Renter Neighborhood Vulnerability Index (RVI) conducted by researchers at the UCLA Center for Neighborhood Knowledge for the City of San José. Considered collectively, these economic analyses converge to create an equity-based framework to guide recommendations regarding the Eviction Moratorium.

A. Indicator #1: Employment

June figures show that since shelter-in-place took effect in mid-March 2020, the City of San José has lost over 52,000 jobs (**Table 5**). This represents a partial recovery of 16,200 jobs from the peak loss in April and May of over 78,000 jobs.

Table 5: Employment COVID-19 Pandemic in 2020

	Feb	Mar	Apr	May	Jun	Month on Month Improvement	Since Pre-COVID
	Pre-COVID	Shelter in Place	Peak Decline	Stable	Recovery Begins		
Santa Clara County	1,028,100	1,007,600	898,300	898,300	929,100	30,800	(99,000)
City of San José	541,300	530,000	472,900	472,900	489,100	16,200	(52,200)

The rate of recovery in jobs must be viewed alongside the overall rate of unemployment for the City and individual claims for unemployment insurance (**Table 6**). In part, this is because the San José labor force is larger than the number of jobs within the city and so relies upon a broader economic recovery in the Bay Area and beyond. The key issue in the monthly change from May to June is that the net reduction in unemployment lagged behind city wide job recovery.

Table 6: Unemployment COVID-19 Pandemic in 2020

	Feb	Mar	Apr	May	June	Month on Month Improvement	Since Pre-COVID
	Pre-COVID	Shelter in Place	Peak	Stable	Recovery Begins		
City of San José	15,100	19,600	75,400	71,600	69,100	-2,500	54,000
Santa Clara County	27,200	35,200	119,400	113,400	110,900	-2,500	83,700
Ratio	55.5	55.7	63.1	63.1	62.3		

In comparing the employment and unemployment figures for the City of San José, data reveal that the recovery in unemployment is not keeping pace with the recovery in jobs. The net changes from May to June reveal that while over 16,000 jobs recovered, resident unemployment fell by only 2,500. This indicates that residents living outside of San José have returned to work in the City, while San José residents remain unemployed.

The data also identifies specific industries that have been hit hard. The prevalence of additional claims varies dramatically between industries, with workers from Food Services, Retail Services, and Arts, Entertainment, and Recreation reporting the highest number of claims. With many of these businesses opening, closing, then re-opening, it is triggering multiple filings for employees impacted by this unpredictable working pattern. In many sectors, the share of additional claims has risen dramatically since the peak of the crisis, and is also higher than pre-crisis levels. The Retail Trade industry stands out especially: less than 30% of initial claims from the industry were additional before the crisis, yet nearly 70% of initial claims were additional in the week ending July 25, 2020.⁸

Jobs within the three industries hit the hardest generally employ low-wage workers (**Table 7**). Data published in August by EDD and UCLA identified that since shelter in place workers in low income sectors with variable working hours such as hotels, retail, personal care, and construction accounted for 55% of all initial claims for unemployment insurance in Santa Clara county. This creates a greater challenge for low-income households in our City as residents working in these sectors are more likely to be renters in San José than in other job classes.

⁸[TJ Hedin, Geoffrey Schnorr](#) and [Till von Wachter](#). *New Analysis: More Than Half of Recent Unemployment Claims are From Californians Who Are Re-Opening Their Claims* (August 6, 2020). Accessed August 2020.

Table 7: Job Trends by Sector by Order of Job Loss (By San José MSA)

	Feb	Apr	June	Feb- April Job Loss	April- June Job Gain	% Recovered	% Not Recovered	Feb- June Job Loss
Leisure & Hospitality	101,600	52,700	78,000	48,900	25,300	51.7	48.3	-23,600
Retail Trade	83,200	70,000	70,600	13,200	600	4.5	95.5	-12,600
Manufacturing	174,800	160,800	164,900	14,000	4,100	29.3	70.7	-9,900
Education & Health Services	179,700	164,900	169,800	14,800	4,900	33.1	66.9	-9,900
Business Services	243,100	233,000	233,800	10,100	800	7.9	92.1	-9,300
Information	103,700	94,200	94,800	9,500	600	6.3	93.7	-8,900
Government	98,600	97,100	91,700	1,500	-5,400			-6,900
Others	34,800	24,600	29,400	10,200	4,800	47.1	52.9	-5,400
Wholesale Trade	31,000	28,100	28,300	2,900	200	6.9	93.1	-2,700
Financial Act.	38,300	36,300	36,100	2,000	-200			-2,200
Transportation	16,500	14,400	15,600	2,100	1,200	57.1	42.9	-900
Construction	51,200	35,400	51,100	15,800	15,700	99.4	0.6	-100
Total	1,156,500	1,011,500	1,064,100	145,000	52,600	36.3	63.7	-92,400

The National League of Cities recently reported that occupational segregation has resulted in Black and Latinx people being overrepresented in low-wage jobs that cannot be transitioned to remote work and due to COVID-19 related layoffs, Black and Latinx people are more likely to experience housing instability.”⁹ In addition, the National League of Cities found that across the United States, “in May, Latinx unemployment reached 17.6% and Black unemployment reached 16.8% in comparison to white unemployment that reached 12.4%. As labor market volatility continues, the City of San José must continue to prioritize policies that promote public health and stabilize housing.

B. Indicator #2: Unemployment

The San José unemployment rate of 12.4% is higher than the County average and above the peak of the Great Recession in California. For context, in January 2010, the unemployment rate in San José reached 12.3%. The City’s percentage of total County unemployment has risen sharply since shelter-in-place Order from 55.5% to 62.3% of the County total. In terms of the impact this has for the City of San José, the most important issue to recognize is not just the percentage change but the volume change for the city when compared to the rest of the county as revealed in **Table 8** from EDD for June 2020:

⁹ National League of Cities. *Embedding Racial Inequity in Housing*. (July 9, 2020) Accessed August 2020.

Table 8: Unemployment rates between County of Santa Clara and City of San José

Jurisdiction	Labor Force	Employment	Unemployment	Rate
County of Santa Clara	1,040,000	929,100	110,900	10.7%
City of San José	558,300	489,100	69,100	12.4%

C. Indicator #3: Unemployment Insurance Claims

As the economy becomes more volatile, residents make claims for unemployment insurance. The volume and scale of claims being made by residents within the City of San José is unprecedented. **Table 9** provided by EDD on request from the City of San José sets out the changes since shelter in place took effect.

Table 9: Monthly Unemployment Insurance Claims in 2020

	Feb	Mar	Apr	May	June	Average	Scale Change
	Pre-COVID	Shelter in Place	Peak	Stable	Recovery		
City of San José	3,926	41,083	65,303	48,216	31,516	46,530	12
Cumulative # of Claims			106,386	154,602	186,118		

Between March and June, the City of San José experienced a record number of applications for unemployment insurance claims. This number may not reflect how many San José residents found gainful employment. However, the number illustrates that the City of San José is experiencing a repetitive filing of claims, resulting in 12 times the volume of claims than was seen pre-COVID. This underscores the continued volatility in the labor market.

D. Indicator #4: Monthly Benefits Paid Out

Income received from unemployment insurance is critical to residents’ ability to pay their bills including rent and other basic needs. EDD publishes monthly the total amount of benefits paid out by County. Staff estimates over the four months since shelter in place the claims made by residents to the City of San José are equivalent to 64% of the County total (**Table 10**). The average monthly amount paid out in benefits since the Order came into effect is \$128 million for the County and \$82 million for the City.

The uncertainty around unemployment benefits necessitates consideration of how much rental assistance an average renter in San José requires in order to pay rent and meet their daily needs. Resolutions to the COVID-19 housing crisis demand an additional infusion of financial assistance. The California Employment Development Department calculates weekly

Unemployment Insurance benefit amounts, which can range from \$40 to \$450 per week.¹⁰ According to the California Policy Lab, without the \$600 per week additional benefits from CARES Act stimulus fund, half of all individuals receiving unemployment insurance benefits would have received payments below the Federal Poverty Level. This demonstrates the disproportionate impact of the shelter-in-place for not just for low-income households and vulnerable populations, but for unemployed workers generally.

Table 10: Monthly Benefits Paid Out in Millions

	Feb	Mar	Apr	May	Jun	Average	Scale Change
	Pre COVID	Shelter in Place	Peak Decline	Stable	Recovery		
County of Santa Clara	\$14.548	\$21.641	\$139.494	\$188.266	\$165.470	\$128.717	9
City of San José	\$9.310	\$13.850	\$89.276	\$120.490	\$105.900	\$82.365	8.8

II. ADDITIONAL INDICATORS FOR COVID-19 RELATED EMPLOYMENT AND INCOME VOLATILITY

The City of San José Office of Economic Development also formulated an Income Volatility Ratio to help gain insights for this report. Separately, UCLA Center for Neighborhood Knowledge, researchers developed a Renter Vulnerability Index (RVI) for the County of Santa Clara and the City of San José

A. San José Office of Economic Development - Income Volatility Ratio

The City of San José Office of Economic Development analysis presented below provides the following: 1) documents the following measures for the City of San José from February-June 2020 for employment, unemployment, and unemployment insurance, and 3) Unemployment Insurance Volumes and Dollar Value presents an “Income Volatility Ratio” formulated to help identify the scale and impact of the COVID-19 pandemic on the City’s resident labor force at a city-wide and neighborhood level in the context of the changes that have taken place in Employment, Unemployment and Unemployment Insurance Volumes and Dollar Value. The Income Volatility Ratio is designed to provide insight on renters’ current ability to resume timely rent payments.

¹⁰ State of California Employment Development Department. Calculator - Unemployment Insurance. Accessed August 2020.

Data used in the analysis:

- EDD Monthly Unemployment Data
- EDD Unemployment Insurance Data
- EDD Employment Data

Methodology to derive Income Volatility Ratio

- City, county and MSA unemployment volume and rate.
- City and county volume of weekly initial claims for unemployment insurance.
- Total monthly unemployment insurance payments made by EDD at county level.
- Monthly employment data at MSA level

Low-income workers are most impacted by the volatility in the labor market and more likely to be renters. Latinx and other communities of color are disproportionately represented in those job sectors most affected by the pandemic. These residents are consequently at greatest risk of eviction without the Eviction Moratorium.

B. UCLA Center for Neighborhood - Renter Neighborhood Vulnerability Index

To assist public agencies and community organizations in implementing the temporary renter protection policies and identify neighborhoods most in need, the UCLA Center for Neighborhood Knowledge developed a Renter Vulnerability Index (RVI) for each neighborhood in Santa Clara County (**Table 11, Table 12**). This index identifies the neighborhoods with a disproportionate concentration of renters “one paycheck away from financial disaster.” The information can be used to better target scarce resources to inform the most vulnerable renters about the new protections and to assist them to avail themselves of the temporary relief.

The Renter Vulnerability Index utilizes three dimensions to identify eviction vulnerable neighborhoods:

- A disproportionate large number of renters on the edge of financial vulnerability due to high housing cost burden;
- A disproportionate large number of workers vulnerable to job displacement due to retail and service-sector closures; and
- A disproportionate number of people excluded from the federal Coronavirus Aid, Relief and Economic Security Act, known as the CARES Act.

Data used in this study include:

- American Community Survey, 2013-2017 and 2014-2018 5-year estimates
- Longitudinal Employer-Household Dynamics, 2013-2017
- Proprietary Data from the UCLA Center for Neighborhood Knowledge

Methodology of Renter Vulnerability Index 2.0 (by Census tract):

- Census tracts with at least 500 renter households
 - Santa Clara County has a total of 372 census tracts of which 215 (58%) have at least 500 renter households. About 85% of the total rental households in the county are located in these 215 tracts.

- Renters with high housing cost burdens
 - Proportion of renters who spend >50% of their household income on rent
 - Proportion of renters who have < \$12,000 annually after paying for housing costs
- Exposure to Job Displacement
 - Pre-COVID-19 unemployment rate
 - Workers in industrial-occupational sectors most at risk of job displacement due to sheltering-in-place order; includes sales workers in retail, service workers in hospitality, and workers in personal care and service occupations.
- Exclusion from economic relief programs
 - Exclusion from unemployment insurance benefits, thus enhanced UI benefits under CARES Act (\$600 weekly)
 - Undocumented population¹¹ [\[i\]](#)
- Many undocumented residents (or ‘families’) are excluded from receiving federal pandemic-relief packages such as the one-time cash payments of \$1,200 (to individuals earning less than \$75,000) and the Pandemic Unemployment Assistance program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Table 11: Neighborhood’s averages (mean) of the six variables used to generate the RVI

	Lowest Vulnerability	Low	Moderate	High	Highest Vulnerability
% Severe rent burdened HHs	17%	24%	25%	31%	36%
% Renter HHs with less than 12K	14%	20%	24%	31%	38%
% Unemployed	4%	5%	4%	6%	9%
% Workers at risk of job displacement	10%	12%	18%	18%	22%
% Workers without UI coverage	7%	14%	19%	21%	22%
% Undocumented population	4%	5%	5%	6%	6%
n (census tracts)	101	49	22	26	17

Note: The reported values in the table represents the average (mean) of all the census tracts in each neighborhood type.

¹¹ [\[i\]](#) Estimate is based on a regression model for Los Angeles County using Zip Code Tabulation Area (ZCTA) level data. The dependent variable is the number of undocumented persons divided by total persons. The former comes from an aggregated administrative file for a social-service program. The independent variables are non-citizens as percent of population, percent non-Hispanic Asian, percent Hispanic, and poverty rate. All are from the 2014-18 American Community Survey 5-year estimates. The model has an R-squared of .89, and is weighted by ZCTA population (due to large variance in the population across ZCTAs).

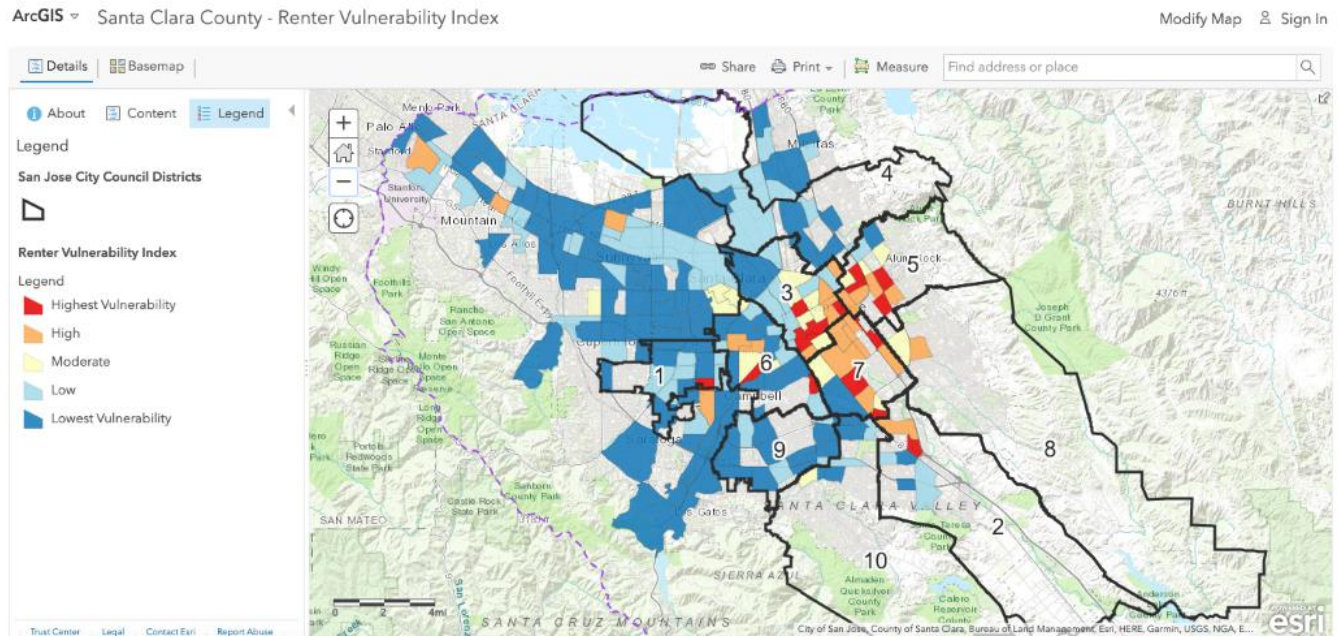
Table 12: Neighborhood’s averages (mean) characteristics (demographic, socio-economic, and housing) by RVI neighborhood type

	Lowest Vulnerability	Low	Moderate	High	Highest Vulnerability
% non-Hispanic white	41%	32%	26%	13%	15%
% Black	3%	3%	4%	3%	3%
% Hispanic	15%	28%	45%	55%	54%
% Asian	37%	33%	22%	28%	25%
% Immigrants	38%	40%	35%	44%	41%
% LEP HHs	9%	11%	14%	22%	22%
% Enrolled in College	8%	10%	17%	13%	17%
% Poor	6%	9%	14%	15%	19%
Med. HH Income	128,658	111,237	79,816	66,492	53,770
n (census tracts)	101	49	22	26	17

Note: The reported values in the table represents the average (mean) of all the census tracts in each neighborhood type. Neighborhood characteristics derived from the 2014-18 5-year ACS.

Below is a map (**Figure 1**) depicting neighborhoods in Santa Clara County, zoomed into the City of San José, by their renter vulnerability index. The orange areas represent neighborhoods in District 3, 5, and 7 that are vulnerable with darker shades denoting the greatest vulnerability. The blue areas represent neighborhoods that are less vulnerable, with the darker shade denoting the lowest vulnerability.

Figure 1: Map of the City of San José by Renter Vulnerability Index



It should be noted that the map displays some college areas, particularly around Stanford University and San José State University, as scoring high on the Renter Vulnerability Index. This is not surprising given that many college students fit the conditions of vulnerability under the Renter Vulnerability Index (e.g. college students are more likely to be renters, unemployed, have lower household income). The Renter Vulnerability Index does not exclude college areas, instead we included a separate layer in the web map to display areas with high concentrations of college students (this information is also included in the data spreadsheet). The map can be displayed side-by-side with the renter vulnerability map to identify vulnerable neighborhoods with a high concentration of college students.

CONCLUSION

The City of San José’s labor market and job prospects remain volatile and fragile for many residents. Unemployment remains at unprecedented levels in key sectors, the pace of unemployment insurance filings continues to break records, and while some job sectors are experiencing a positive return in employment numbers, other sectors – such as retail, hospitality and entertainment – lag far behind. This lag is notable as communities that were fragile pre-COVID, including low income, Latinx and other communities of color, are disproportionately represented in those job sectors most decimated by the pandemic. These residents are consequently at greatest risk of eviction without the Eviction Moratorium.

Based on the economic analysis detailed above, staff recommend City Council extend the eviction moratorium for thirty-days through September 30, 2020 and continue to support rent

assistance programs. The Housing Department will continue to track the impact of COVID-19 related housing programs, including tenant and landlord mediation and rent assistance and how they benefit the rental community.

EVALUATION AND FOLLOW-UP

The Housing Department will track and report back to City Council on economic indicators on a thirty-day basis and moving towards a thirty-day extension period.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more of Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

Staff conducted public outreach with rent stabilization jurisdictions with Eviction Moratoriums enacted and stakeholder groups (**Table 13**). In the discussion with jurisdictions of the cities of Mountain View, Santa Monica, and West Hollywood, the rent stabilization programs did not have indicators established to determine the extension of the Eviction Moratoriums. The stakeholders provided feedback that the economic indicators could be consolidated and concise metrics.

Table 13: Public Outreach Feedback Summary on Proposed Economic Indicators

Date	Outreach Group
August 6, 2020	Catholic Charities of Santa Clara County <ul style="list-style-type: none">● Proposed economic indicators categories were thorough● Ensure the undocumented community is reflected● Reference food support for vulnerable populations to preserve cash for rent
August 6, 2020	Rent Stabilization Programs from cities of Mountain View, Santa Monica, and West Hollywood <ul style="list-style-type: none">● Proposed economic indicators categories were thorough● Ensure that the City level of data was captured
August 7, 2020	Stakeholders with California Apartment Association and Santa Clara County Association of Realtors <ul style="list-style-type: none">● Review additional data from tenant based rental assistance programs● Include balanced metrics impacting tenants and landlords

COORDINATION

Preparation of this report was coordinated with the City Attorney's Office and the Office of Economic Development.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *Consolidated Plan 2015-2020*, adopted by City Council on May 5, 2015, to provide homes for very low- and extremely low-income households, and with Goal H-2 of the City's *Housing Element 2014-2023*, adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND

Director, Housing Department

For questions, please contact Rachel VanderVeen, Deputy Director, (408) 535-8231

ATTACHMENTS:

Attachment A: Summary of Principles, Social Factors Research, and State and Federal Housing Legislation

Attachment B: Research to Identify Potential Economic Indicators

SUMMARY OF PRINCIPLES, SOCIAL FACTORS RESEARCH, AND STATE AND FEDERAL HOUSING LEGISLATION

The COVID-19 pandemic continues to disrupt the lives of residents across the City and Country. July 30, 2020 marked six months since the World Health Organization declared the COVID-19 pandemic a health crisis. Since the shelter-in-place Order began in March, staff have analyzed the effects of the pandemic on the rental community. This summary intends to increase understanding on the social factors that influence the way residents are responding to the pandemic. The areas of this analysis include: 1) principles, 2) consideration of social factors, and 3) select State and Federal housing legislation.

I. Principles

Staff sought to understand various aspects of the impact of the Eviction Moratorium on San José's rental community:

- ***The multi-faceted makeup of the rental community:*** considering the City's diverse renter population and its ability to pay rent in a timely manner, as well as the diverse landlord community which ranges from 'mom and pop' property owners to large corporations.
- ***Factors that impact the ability of people to return to work so they can earn income to pay rent:*** Eviction studies reference access to childcare, equitable education access, and an ability to meet basic needs for food and healthcare as factors that can impact an individuals' ability to work (see **Attachment B**). Importantly, Staff's consideration of whether to include factors related to childcare is guided by language in the City of San José Eviction Moratorium, which includes a definition of an "Affected Tenant" as a renter who suffers from substantial financial loss as a result of job loss, reduction in hours, the need to miss work to care for a homebound, school-age child.
- ***Vulnerable populations:*** Analysis from a wide range of groups including the Turner Center for Housing Innovation, California Housing Partnership, and UCLA Center for Neighborhood Knowledge underscore findings that individuals with economic instability pre-COVID are at high eviction risk, as are communities of color.¹ [Working Partnerships/Law Foundation of Silicon Valley](#) published research concluding communities of color – notably, Latinx and Black – are at highest eviction risk, estimating more than 40,000 families may face evictions across Santa Clara County. A recent study from [Catholic Charities of Santa Clara County](#) examined communities at risk during COVID-19, concluding very low-income, rent-burdened families are teetering on the edge of homelessness. The report further highlights the large number of undocumented residents in San José (estimated at 140,000+²) who have limited to no access to COVID-19 emergency support.

¹ <https://turnercenter.berkeley.edu/blog>, <https://chpc.net/covid19/>, <https://knowledge.luskin.ucla.edu/2020/05/06/la-covid-19-economic-crisis-renter-vulnerability-index/>

² https://www.pewresearch.org/fact-tank/2019/03/11/us-metro-areas-unauthorized-immigrants/ft_19-03-11_unauthorizedmetroarea_fewmetroareas_4/

II. CONSIDERATION OF SOCIAL FACTORS

According to the World Health Organization, social determinants of health are the conditions in which people are born, grow, live, work and age, and these circumstances are influenced by the distribution of money, power and resources at a global, national and local level.³ The ongoing health crisis demands more long-term, localized and sustainable solutions that take special consideration of the social determinants that have resulted in increased vulnerability for some members of the San José community. Staff focused on the following social determinants of health to encourage a more robust discussion around the wide-reaching effects of the pandemic: 1) childcare access, 2) education, 3) food security, and 4) immigration status.

Research has increasingly shown that COVID-19 has influenced these social determinants, resulting in a disproportionate effect on low-income communities and communities of color.⁴ Many residents across San José were already at a disadvantage pre-COVID. The interplay between social determinants can have significant effects on COVID-19 outcomes, as illustrated by a Santa Clara County Public Health map highlighting the top five zip codes in San José with extraordinarily high rates of COVID-19 transmission: 95111, 95113, 95116, 95122, and 95127. The interactive map with this information can be found [here](#). Traditionally, residents in these zip codes live in overcrowded conditions, experience lower educational attainment, lower wage earnings and less access to medical care.

A. *Access to Child Care*

For many families and residents across San José, employment is necessary to pay for critical needs: rent, food, and other basic necessities. However, one barrier to returning to work is access to childcare. If a parent is unable to find access to childcare, they are challenged to return to work. As a result of the Santa Clara County Public Health Orders, available child care slots are limited and as such, not all residents may have access to child care. Consequently, this may restrict a resident's opportunity to go to work and pay rent.

There are 1,032 childcare licensed businesses/organizations in the City of San José. In a recent Bay Area wide study by UC Berkeley's Center for the Study of Child Care Employment, more than 50% childcare providers have had to temporarily close their programs during COVID-19 pandemic and a number have had to permanently closed.⁵ Further, due to social distancing requirements, the capacity for full service childcare diminished by at least 50% for most businesses. For the 241 Family Child Care Providers (FCCH) who exclusively conduct business out of their home in San José, they experience additional business pressures: paying rent, access to Personal Protective Equipment, payroll expenses, fear of eviction if their home is rented. These pressures may decrease the overall availability of childcare services. As a result, these challenges may limit the number of residents able to go to work, which directly influences their ability to pay rent.

In addition to the business pressures faced by childcare businesses, the child-care providers continue to put themselves at risk in order to provide service for workers who are still employed.

³ https://www.who.int/social_determinants/sdh_definition/en/

⁴ <https://www.cdc.gov/socialdeterminants/index.htm>

⁵ <https://csce.berkeley.edu/california-child-care-in-crisis-covid-19/>

Prior to the pandemic, access to adequate childcare, especially for infant and toddlers, was significantly low in the most vulnerable, densely populated areas of San José. For those in these areas, the pandemic has only amplified those needs. For example, prior to the COVID-19 pandemic, in zip code 95116, there were 60 infant/toddler slots, with an estimated 1,083 infant/toddler needs. This translates to a 94% of the infants/toddlers lacking available childcare in this zip code. Access to the interactive map with this information can be found [here](#).

Lack of quality childcare may influence a child's access to quality early childhood education, which has direct correlation to a child's success in elementary school, influencing educational attainment overall, which impacts future access to jobs.⁶

The County recently launched a Childcare Support for Families application portal wherein families requiring childcare may apply to enroll their child in an available slot for childcare.⁷ Families are to indicate how many children they have, the age group of the child, and the radius a family is willing to travel within the particular zip code.

Availability and affordability of childcare services is an essential factor in considering the additional barriers residents may be facing as they make decisions to survive the pandemic. The critical nature of this particular service is evident in the City's recent infusion of almost \$3.5 million dollars to support families in need of childcare services as well as funding for childcare providers.

B. K-12 Schools

Similar to the concerns about childcare, families and residents may be forced to stay at home with their school age child as nearly all schools in San José begin the academic year with Distance Learning. This new method of learning will affect over 129,000 students across San José and their families. This reality is reflected in the City's definition of an "Affected Tenant" in the Eviction Moratorium as one who misses work due to a minor child's school closure.

School closures increase food insecurity for children living in poverty who participate in school lunch programs, while malnutrition causes substantial risk to a student's physical health, lowering immune response, potentially increasing the risk of infectious disease transmission.⁸ Whether or not these families will be able to continue providing food for their children is an indicator of the likelihood a family has to pay rent.

C. Food Security

As unemployment skyrocketed during the early stages of the pandemic, pressure on food distribution organizations steadily increased. Food demand across the Santa Clara County increased by over 50% compared to pre-COVID demand. Access to food has become a critical consideration in how affected residents spend their money. As struggling residents continue to be

⁶

<https://static1.squarespace.com/static/5176dcd7e4b0e5c0dba41ee0/t/5cdaf913e5e5f0ad0d3405ed/1557854494596/Santa+Clara+SRA+2018-19+Report+FINAL.pdf>

⁷ <https://www.childcarescc.org/child-care-application>

⁸ [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30234-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30234-4/fulltext)

in demand for food, due to job loss or substantial loss of income, the demand for food becomes an indicator that residents may experience challenges to pay rent.

D. Immigration Status

The City of San José is home to a diverse population. The pandemic has highlighted the additional barriers to resources for some members of the San José community including immigrants and undocumented residents.

In April 2020, Catholic Charities conducted a survey of 555 people at three food distribution sites across Santa Clara County, including Our Lady of Refuge in East San José. The survey found that 29% of participants shared that they are seeking immigration assistance but have not been connected to resources. Fear of triggering “public charge” regulations has increased immigrant hesitation to apply for unemployment insurance and CalFresh. However, on July 29, 2020, a federal court ruling prohibited the application and enforcement of the public charge rule that went into effect on February 24, 2020.⁹ The ruling is in effect so long as there is a declared national emergency related to the COVID-19 pandemic. Outreach efforts to educate immigrant families about the new ruling must become a priority to connect immigrant families to critical resources.

Undocumented immigrants are typically unable to access public monies, and California’s Coronavirus (COVID-19) Disaster Relief Assistance for Immigrants has already completed the application intake phase. Undocumented residents may not have employment that permits working from home, and this community is particularly challenged by the downward trends in the labor market, increasing the potential for members of this community to miss rent payments.

III. SELECT STATE AND FEDERAL HOUSING LEGISLATION

The City of San José has demonstrated leadership in its response to the COVID-19 pandemic. The policies enacted and the relief dispersed to vulnerable communities has strengthened the City’s commitment to promote the public good and stabilize housing. However, additional assistance is required at the State and Federal levels in order to help increase the rental community’s resilience.

The following legislative summaries reflect general information that help inform staff on progress at the State and Federal level.

A. State Legislation

The California legislature has proposed several measures seeking to protect rental housing community members challenged by the consequences of COVID-19. Select bills have been highlighted in **Table 1**, below.

⁹ <https://covid19.ca.gov/guide-immigrant-californians/>

Table 1: Summary of Selected Relevant State Legislation

Bill	Summary	Effect	Latest Action
<u>SB 1410</u>	COVID-19 Eviction Relief	Prevents evictions for tenants who enter into an agreement with their landlord, defers a tenant’s unpaid rent to be paid in installments to the State of California between January 1, 2024, and before January 1, 2034. This bill allows tax credits for landlords in the amount of unpaid rent from a signed tenant-landlord agreement for taxable years between January 1, 2024 – January 1, 2034.	Next committee Hearing Date: 8/18/20, in Assembly Committee on Appropriations.
<u>AB 1436</u>	COVID-19 Eviction Protection and housing stability	Prevents residential evictions during the declared state of emergency and for 90 days after, for tenants who attest they experience financial distress due to COVID-19 and creates the Small Landlord and Homeowner Relief Act of 2020, authorizing forbearance for borrowers experiencing financial hardships, including mobilehome owners	Next hearing date: 8/18/20 in Senate Committee on Judiciary.
<u>SB 1431</u>	Property Taxation reassessment: disaster relief	The definition of a “disaster” that allows local property taxation reassessment includes COVID-19	On 6/18/20 placed on suspense file. Bill no longer moving.
<u>SB 915</u>	Prohibit evictions of mobilehome owners and mobilehome residents	Extends temporary protections against evictions for mobilehome owners and residents impacted by COVID-19	8/03/20: Read second time, ordered to third reading, in Assembly.
<u>AB 3300</u>	California Access to Housing and Services Act	Provides \$2 billion in grants to counties and Continuums of Care to address housing challenges	8/04/20: Hearing postponed by Senate Committee. Bill no longer moving.
<u>AB 2406</u>	Homeless Accountability and Prevention Act	Any landlord that accepts COVID-19 federal or state assistance must list their units in a statewide rental registry portal	6/3/2020: Held under submission. Bill no longer moving.
<u>AB 828</u>	Temporary moratorium on foreclosures and unlawful detainer actions	Statewide temporary moratorium on foreclosures and unlawful detainer actions	7/28/20: Referred to Senate Judiciary committee, bill not set for hearing.

If passed, these bills may alleviate some of the financial burdens on the rental communities as a result of the pandemic. These policies also present important opportunities in preventing homelessness. Additionally, these measures provide sweeping foreclosure protections to homeowners and housing service providers.

B. Federal Legislation

Both chambers of U.S. Congress have proposed several measures seeking enhancement of protections for residents struggling with the ramifications of the COVID-19 pandemic. While many bills have been proposed, including those aimed at generating sustainable funding streams for childcare, additional rent relief for tenants, and mortgage cancellation for affected landlords, most bills have not moved past their respective chamber. Further, there has not been any significant movement on the HEROES Act in the Senate, the bill meant to provide an additional \$1,200 per individual and rental assistance funding. However, on August 8, 2020, the President of the United States signed an Executive Order restoring an extra \$400 in unemployment benefits for Americans unemployed due to COVID-19.

Staff across the City are monitoring the progress of these Federal bills and action taken by the Federal Government. Nationwide assistance would bring relief to many of the City's residents who continue to bear the burdens of a volatile labor market.

RESEARCH TO IDENTIFY POTENTIAL ECONOMIC INDICATORS

A. Background

A recent Turner Center analysis noted evictions result in severe harm; when they become widespread, there are also significant consequences for entire communities and even the speed of economic recovery. Policymakers are actively seeking solutions, but it is difficult to prepare without knowing the size of the problem⁴. This challenge is well characterized in the recent *New York Times* article [*Millions of Evictions Are a Sharper Threat as Government Support Ends*](#).

Timely U.S. Bureau of Labor Statistics data on employment and earnings do not include household information. Subsequently there is no direct insight into whether workers rent or own, or how much of their household's income goes toward housing costs—key indicators needed to understand the scope of renter vulnerability stemming from the current downturn.

B. Methodology

Staff undertook online research to understand a) *categories* of data that experts use when conducting data-driven eviction-related analyses and b) the *data sets* that correlate with each category.

Staff reviewed reports from across the United States as well as work focused on Santa Clara County and/or City of San José. Partial list of report authors: Apartment List Monthly Housing Payment Survey, California Policy Institute, Catholic Charities of Santa Clara County, COVID-19 Eviction Defense Project (Aspen Institute/Bell Policy), The Eviction Lab, MIT/City Life-Vida Urbana, NYU Furman Center, Glassdoor Economic Research, International Journal of Housing Policy, Jane Place Neighborhood Sustainability Initiative, Joint Center for Housing Studies of Harvard University, National Low Income Housing Coalition, Liberty Street Economics, National Association of Hispanic Real Estate Professionals/Terner Center Survey, Opportunity Insights [*OI Economic Tracker*](#), Propublica, Renters and Rental Market Crisis Working Group (Urban Institute), The Terner Center for Housing Innovation (UC Berkeley), UCLA Center for Neighborhood Knowledge, UCLA Ziman Center for Real Estate [*economic letter*](#), Yelp Local Economic Impact Report and Working Partnerships/Law Foundation of Silicon Valley.

C. Findings

Staff could find no national, state or regional guidelines nor expert consensus for economic indicators to guide a policy-makers decision to extend or lift eviction moratoria. Given a lack of expert consensus or guidelines, we inventoried categories of data that experts are using in the rapidly growing body of evidence. A summary is below in **Table 1**:

Table 1: Categories of Data

Category
Financial
<ul style="list-style-type: none">• Unemployment Rate
<ul style="list-style-type: none">• Unemployment Insurance Filings
<ul style="list-style-type: none">• Business Sector
<ul style="list-style-type: none">• CARES Act funding
<ul style="list-style-type: none">• PPE Loans
<ul style="list-style-type: none">• Consumer Confidence Index
<ul style="list-style-type: none">• Jobs Reports (lost, recovered, new)
Housing
<ul style="list-style-type: none">• Existing Renter Burden (Pre-COVID-19)
<ul style="list-style-type: none">• Renter Debt (Eviction Moratorium-related)
<ul style="list-style-type: none">• Rent Payments (Missed/Late)
<ul style="list-style-type: none">• Eviction Filings (Court)
Childcare (licensed centers)
<ul style="list-style-type: none">• Access
<ul style="list-style-type: none">• Capacity
Food
<ul style="list-style-type: none">• Distribution volume (pounds of food distributed)
<ul style="list-style-type: none">• Meals served
<ul style="list-style-type: none">• School meals missed/served

Education
<ul style="list-style-type: none">• K-12 schools open/closed
<ul style="list-style-type: none">• Instruction (in-person, hybrid, remote)
<ul style="list-style-type: none">• Technology access (computer, wifi)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 20, 2020

Approved

Date

4/20/2020

SUBJECT: ACTIONS RELATED TO A TEMPORARY MORATORIUM ON RENT INCREASES FOR RENT STABILIZED APARTMENTS AND MOBILEHOMES, SUSPENSION OF LATE FEE CHARGES FOR APARTMENT RENT ORDINANCE PROGRAM FEES, ALLOW LANDLORDS AND TENANTS TO ENTER INTO AGREEMENTS TO REDUCE RENT, AND WAIVER OF BUILDING APPLICATION FEES FOR APARTMENT BUILDINGS WITH 20 OR FEWER UNITS

RECOMMENDATION

- A. Adopt an urgency ordinance that establishes a moratorium on rent increases for tenants residing in rent stabilized apartments and mobilehome owners and mobilehome residents residing in mobilehomes subject to rent control. Specifically, the ordinance would:
1. Invoke the urgency provisions in the City Charter, as an emergency measure for immediate preservation of the public peace, health or safety, to temporarily prohibit the eviction of a tenant for nonpayment of rent, if that tenant meets the criteria listed in the ordinance regarding COVID-19;
 2. Prohibit rent increases through December 31, 2020;
 3. Apply the moratorium to rent increases that went into effect on or after April 1, 2020;
 4. Provide that a landlord and tenant, mobilehome resident, or mobilehome owner can enter into a voluntary short-term agreement, without changing other terms of the rental contract, to temporarily reduce the rent through the term of the Ordinance, or shorter period as agreed-upon by the parties. Upon termination of such agreement, the rent will increase back to the amount in effect as of March 31, 2020.
 5. Deny tenant service reduction claims related to temporary closure or elimination of recreational common area amenities to comply with County or State public health orders related to COVID-19;
 6. Suspension of late fees for unpaid Apartment Rent Ordinance Program fees;
 7. Waive building/repair maintenance permit fees for rental properties with 20 or fewer units.

Please note: Approval of this urgency ordinance requires 8 or more affirmative votes (2/3)

- B. Approve an ordinance that establishes a moratorium on rent increases for tenants residing in rent stabilized apartments and mobilehome owners and mobilehome residents residing in mobilehomes subject to rent control. Specifically, the ordinance would:
1. Prohibit rent increases through December 31, 2020;
 2. Apply the moratorium to rent increases that went into effect on or after April 1, 2020;
 3. Provide that a landlord and tenant, mobilehome resident, or mobilehome owner can enter into a voluntary short-term agreement, without changing other terms of the rental contract, to temporarily reduce the rent through the term of the Ordinance, or shorter period as agreed-upon by the parties. Upon termination of such agreement, the rent will increase back to the amount in effect as of March 31, 2020.
 4. Deny tenant service reduction claims related to temporary closure or elimination of recreational common area amenities to comply with County or State public health orders related to COVID-19;
 5. Suspension of late fees for unpaid Apartment Rent Ordinance Program fees;
 6. Waive building/repair maintenance permit fees for rental properties with 20 or fewer units.

EXECUTIVE SUMMARY

The Moratorium on Rent Increases accomplishes several established City goals: (a) stabilizing housing, and (b) decreasing homelessness by helping mitigate a tenant's potentially insurmountable debt obligation after the eviction moratorium is lifted, maintaining the tenant's current rent obligation without a rent increase.

The economic devastation resulting from COVID-19 will continue long after the pandemic itself has ebbed. While federal and state authorities exercise their authority to provide financial aid packages and other short-term protections for those impacted by COVID-19, the City of San José has an ongoing commitment to those in our community who may be falling into the gaps of available aid. The Moratorium on Rent Increases is a measure intended to provide some stability for those individuals and families living in rent stabilized units and mobilehomes across the City, prohibiting rent increases on these units until December 31, 2020.

While several measures have been enacted already, including the City and County Eviction Moratoria, as well as State Executive Order N-37-20, this Moratorium on Rent Increases presents another critical opportunity to protect the most vulnerable in the San José community, easing the financial burden residents will experience at the conclusion of this pandemic. As the economy attempts to mitigate the effects of a high job loss rate, the City of San José must be prepared to enact provisions that protect its residents.

OUTCOME

Approval of the recommended actions will provide housing stability to San José tenants living in rent stabilized apartments and rent controlled mobilehomes experiencing financial hardship due to the COVID-19 virus. According to guidance released from the U.S. Department Housing and Urban Development, on March 9, 2020, housing instability and frequent mobility increase the risk of exposure to infectious disease. Limited access to health care services and poor living conditions further compound this risk. The approval of the Urgency and Companion Ordinance establishing a moratorium on rent increases will mitigate against mounting financial impacts that many residents in the rent stabilized community are facing due to work closures and job loss. This measure provides housing stability during this volatile period of time, reducing the risk of homelessness for residents in rent stabilized apartments and mobilehomes.

BACKGROUND

The World Health Organization, State of California, and Santa Clara County have recognized that COVID-19 virus is a life-threatening pandemic, and have issued public health declarations from January to March 2020. As a result of the public health declarations, including shelter in place and allowing only essential services, residents impacted by COVID-19 have faced financial challenges to afford rent, due to layoffs and unemployment. As a result, the City, County, and State have each enacted Eviction Moratoriums. In addition, the Santa Clara County Courts may not issue a summons on a complaint for unlawful detainer unless it is necessary for public health.

A. Public Health Declarations

In California, the Department of Public Health reports more than 28,963 positive cases and more than 1,072 deaths as of April 18, 2020.¹ Health officials expect these figures to rise dramatically unless the population adheres to shelter-in-place guidelines and appropriate social distancing. The following public health declarations have been issued:

- On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International concern.
- On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.
- On February 10, 2020, the Santa Clara County announced a local health emergency due to the spread of the novel coronavirus.
- On March 11, 2020, the World Health Organization declared the coronavirus outbreak a pandemic.

¹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

- On March 16, 2020, the County of Santa Clara issued a shelter in place order directing all individuals to shelter in their place of residence unless they must obtain or perform vital services. All businesses, except essential businesses, are required to cease all activities at facilities located within the County. The order is effective on March 17, 2020 and will remain in place until April 7, 2020.
- On March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all Californians to stay home, subject to certain limited exemptions.
- On March 31, 2020, the County of Santa Clara extended the shelter in place order through May 3, 2020 with stricter stay-at-home rules. The changes include prohibiting residential and commercial construction, closing dog parks and playgrounds, and requires essential businesses enact tighter social-distancing rules for workers and customers.

B. Eviction Moratoriums Enacted

On March 17, 2020, the City Council adopted an Urgency Ordinance and Resolution, setting in place a moratorium on evictions in the City of San José for renters on the basis of nonpayment of rent, when their income has been reduced due to novel coronavirus (COVID-19) pandemic. The Moratorium went into effect March 18, 2020 for a period of 30 days until April 17, 2020. The City Council may extend the Moratorium by Resolution. A copy of the City of San José Urgency Ordinance and Resolution can be viewed here.

On March 24, 2020, Santa Clara County Board of Supervisors passed an Urgency Ordinance establishing a temporary moratorium on “COVID-19 Evictions” countywide, including both incorporated and unincorporated areas. The countywide moratorium for residential and small business commercial rentals began on March 24th and is effective through May 31, 2020, unless extended. The Ordinance applies in cities who have passed their own moratoriums, with the condition that the more protective moratorium term will apply. A copy of the Santa Clara County Eviction Moratorium can be viewed here.

On March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, banning the enforcement of evictions by law enforcement or courts for tenants affected by COVID-19 through May 31, 2020. The Executive Order also extends the deadline for such tenants to file a response to an Unlawful Detainer summons in the event an eviction is filed against the tenant. The Executive Order went into effect on March 27th and is in place through May 31, 2020. Under the order, tenants must notify their landlords letting them know they are unable to pay their full rent payment due to COVID-19 before their rent is due or within seven days of the rent due date. The tenant is required to retain documentation, but is not required to submit to landlord in advance. The tenant is still obligated to repay the full amount of rent due once the Executive Order expires. A copy of the State Executive Order can be viewed here.

On March 30, 2020, Chief Justice Tani G. Cantil-Sakauye issued an order implementing temporary emergency measures that include suspension of the entry of defaults in unlawful detainer actions and suspension of judicial foreclosure actions. For unlawful detainers, the sunset period is for 90 days after the Governor's State of Emergency is lifted or if Judicial Council repeals its order. During this period, courts cannot issue an eviction summons unless it is necessary to protect public health and safety. Default judgments for failure of defendant to appear may not be entered unless necessary for public health and defendant has not filed a court response in the 5 day or 60-day deadline, per the Governor's Order. Trial dates cannot be scheduled after 60 days after request for trial, and dates set as of April 1st must be continued for at least 60 days. [The Chief Justice's Order can be viewed here.](#)

C. Upcoming State Legislation

The California Legislature has also introduced legislation aimed at eviction moratoriums for renters and mobilehome residents: Senate Bill (SB) 915 introduced by Senator Leyva on February 3, 2020 and Assembly Bill (AB) 828 introduced by Assembly Phil Ting on March 20, 2020.

- Assemblymember Phil Ting introduced [AB 828 Moratorium on Evictions and Foreclosures on Residents](#) to help those struggling to make ends meet, imposing a moratorium during local state of emergency and 15 days thereafter on evictions for nonpayment of rent and expiration of a lease and foreclosures on residents. AB 828 defines the moratorium period and provides a framework for repayment of past-due rent through a Court ordered Stipulation. Upon the tenant's request, Courts will convene a hearing to determine whether a tenant's inability to pay the rent resulted from reduced income or increased expenses due to COVID-19 can be demonstrated by the tenant, and the landlord cannot otherwise show good cause, the Court may enter an Order that reduces the rent by 25% for twelve months and provides a repayment plan to pay back the past due rent at a rate of 10% per month. The payment recovery period may go through March 2021. As of April 8, 2020, the Bill was read for a second time with author's amendments and re-referred to the Committee on Public Safety.
- Senator Leyva introduced [SB 915](#) on February 03, 2020 to protect mobilehome residents and mobilehome owners impacted by COVID-19, from evictions. Specifically, the bill would prohibit the management of a mobilehome park from terminating or attempting to terminate the tenancy of a resident impacted by COVID-19 during a declared state or local emergency and for a 120-days after the declared emergency order is lifted. Another protection includes a prohibition on management from issuing a 60-day notice of termination of tenancy during the 120-day timeframe. In addition, the impacted resident shall have 15 days before the resident's rent, utilities, and other park charges are due or seven days following receipt of a 7-day notice to notify the park management in writing of their need to have additional time to pay the rent, utilities and other park charges, or to comply with the 7-day notice due to hardship from the pandemic. The bill also prohibits

management from imposing rent increases or other charges in addition to what is included in the resident's base rent during the time the resident is making payments of the overdue rent or from seeking to enforce the requirements of a 7-day notice served upon the resident. As of April 15, 2020, the bill was read for a second time with the author's amendments and re-referred to the Committee on Housing.

D. Council Actions on Moratorium for Rent Increases

On [April 14, 2020](#), City Council approved the extension of the Eviction Moratorium until May 31, 2020 and directed the City Attorney to return to Council with a draft Urgency and Companion Ordinance implementing a temporary Moratorium on Rent Increases for rent stabilized apartments and rent controlled mobilehomes. The components of the Moratorium on Rent Increases approved included:

- Prohibiting rent increases through December 31, 2020,
- Applying the moratorium to rent increases that went into effect on April 1, 2020,
- Prohibiting tenant petitions based upon service reduction claims related to closure or elimination of common area amenities resulting from compliance with County or State public health orders related to COVID-19,
- Suspending registration late fees for owners of rent stabilized apartments and rent controlled mobilehome parks through December 31, 2020, and
- Suspending of building permit fees for rental properties with 20 or fewer units.

ANALYSIS

The COVID-19 virus pandemic has grown exponentially since the first case reported in Santa Clara County on January 31, 2020. The rapid transmission rate of COVID-19 has changed the very nature of how we work, live, and protect ourselves against the spread of this virus. With the increased number of layoffs from service industries across San José and County-wide school closures, the implications of the pandemic are debilitating, restricting many residents' ability to afford the basic and fundamental necessities of life including food, housing, and healthcare. Residents across San José require financial and food assistance at levels straining local, state and federal governments resources, with the rising demands unmet. The widespread nature of the crisis is straining health and food providers, and delays in securing funding for relief programs means residents are putting themselves at risk to gain access to these critical services. At the same time, landlords and mobilehome owners are facing financial insecurity as tenants have not been able to pay rent in April. Looking forward to the coming months, it is unclear how deep and widespread the economic impacts will be on the rental housing market.

The key areas of analysis are:

- Financial impacts on residents and loss of income,
- Mechanisms of a Moratorium on Rent Increases for rent stabilized apartments and mobilehomes, and
- Outstanding City Council action items.

Through phone calls and emails, staff heard the impact of COVID-19 on tenants and landlords from over 570 residents. Tenants have shared stories of their personal hardships as a result of COVID-19, including:

- A mobilhome elderly resident who, on April 1, 2020, received a 90-day notice of rent increase. The rent increase will go into effect July 1, 2020.
- Tenant is currently working through a petition under the Apartment Rent Ordinance, contacted the Program to let the staff know they had received a rent increase.
- Tenant is both a residential and commercial tenant. Her business is not considered an essential service and was required to close during the shelter-in-place order. As a result, she was unable to generate income and may be unable to afford rent and lose her rental. She is also at risk of being unable to pay her commercial space and may potentially lose her inventory.

Landlords and mobilehome owners also shared concerns of their hardship, including:

- Mobilehome park owner who inquired after the requirements of the Eviction Moratorium commented that they were still interested in implementing a rent increase. The park owner stated that not increasing rents on the anniversary of rent increase would push the anniversary date back for everyone in the park, and this would affect their small family business. The mobilehome park owner shared that it was a scary time for small businesses and increasing rents for households who are still employed may offset some of the lost revenue from those households that can no longer pay their rent.
- Landlord and spouse are a retired couple living on a fixed income in San José. The landlord received social security and purchased a duplex property as an investment for their retirement to offset living expenses and relies on the rental income to pay the mortgage of their duplex and home. Both tenants residing in the duplex property notified the landlord that they could not pay April's rent. One tenant was laid off and the other tenant was impacted by reduced hours from their employer. The landlord is in jeopardy of defaulting on their mortgage payment and does not have any means to repay a loan.
- The landlord and spouse are a retired couple who own a four-plex in San José. The landlord relies on the rental income of the property to pay living expenses, as well as property tax, insurance, utilities, and maintenance. The landlords household has an adult disabled daughter and grandchildren who are financially dependent on the landlord.

I. FINANCIAL IMPACTS ON RESIDENTS AND LOSS OF INCOME

The financial impact due to COVID-19 has impacted low-wage households, resulted in an increase of unemployment insurance claims statewide, and notices of termination continue to be submitted by landlords and property managers for non-payment of rent in San José due to COVID-19. Depending on the source of income and immigration status, there will still be a significant gap between when the relief funds will be dispersed to alleviate challenges.

- A. Impact on Low-Wage Households** – Depending on residents’ work status, they face different challenges in accessing financial assistance. The City of San José is home to essentially three different types of workers most significantly impacted by the COVID-19: 1) workers with W-2s; 2) Independent Contractors; and 3) undocumented workers. Financial assistance from the Federal Government often precludes those without a W-2 and the undocumented community from qualifying for assistance. For these workers and their families, the consequences of not working can be devastating. With resources unavailable to these workers, the challenge for local and state governments continues to be finding resolutions and funding streams available to provide for these vulnerable populations. The adoption of a rent increase moratorium will allow time for funding to be received by qualified residents and will provided time for other forms of assistance to be available to the most vulnerable populations.
- B. Impact on Undocumented Immigrants in San José** – The effects of the COVID-19 pandemic are not equitably distributed among the City’s work force. Among the three categories of workers in the City – those with W-2s, independent contractors and undocumented workers – it is undocumented workers who may face additional challenges in recovering from this pandemic. Undocumented workers are ineligible for the Federal CARES Act benefits. While Governor Newsom announced \$125 million relief fund for undocumented immigrants, with up to \$1,000 per family and \$500 per individual, the need for basic provisions may exceed the amount allocated to each household. Coupled with the reality that this community may not have traditional jobs to rejoin the job market after the pandemic ends, the Moratorium on Rent Increases will assist undocumented immigrants by keeping the rent in their units low, easing the pressure of needing to earn additional funds to pay for an increase in rent.
- C. Increase in Unemployment** – The California Employment Development Department (EDD) reports the unemployment rate jumped from 3.9% in February to 5.3% for the end of March, translating to the highest rate increase in almost four decades and nearly 100,000 jobs lost.² Preliminary figures project that Santa Clara County, which has a labor force of 1,042,500, experienced unemployment figures at 34,300 by the end of March.³ According to an April 8 forecast released by the Center for Business and Policy

² <https://www.edd.ca.gov/newsroom/unemployment-april-2020.htm>

³ <https://www.edd.ca.gov/newsroom/unemployment-april-2020.htm>

Research, the Bay Area could suffer a loss of 835,000 jobs over the next few months.⁴ Even after the state begins implementing Governor Newsom’s framework for reopening the economy, the process of economic recovery will be gradual and the City of San José must be prepared to protect its residents.

D. Notices of Terminations Submitted to Housing Department – Under the City Eviction Moratorium, the landlords and property managers must submit copies of the notices of terminations to the Housing Department. From March 18th to April 16th, there were 586 notices of terminations received. Of the 586 notices, there were 531 or 91% are based on nonpayment of rent. On average, the Housing Department receives over 700 notices a month.

E. Rent Burden of ARO Renters – According to the findings of the 2019 Economic Roundtable Study,⁵ nearly 53% of ARO renters are rent burdened and paying 30% or more of their income for housing. The findings also show that ARO renters have moderately lower incomes than a non-ARO renters, earning \$5,700 less in median household incomes based on the latest 2017 data available. The rent burdens are a precondition to the COVID-19 crisis.

II. MECHANISMS OF MORATORIUM ON RENT INCREASES FOR RENT STABILIZED APARTMENTS AND MOBILEHOMES

On [April 14, 2020](#), City Council directed the City Attorney to draft an Urgency Ordinance and Companion Ordinance (“Ordinance”) implementing a moratorium on rent increases for rent stabilized apartments and rent controlled mobilehomes.

The purpose of the moratorium on rent increases is to further stabilize housing for ARO tenants and mobilehomes residents in the San José community during the COVID-19 pandemic who are struggling to pay their rent, to prevent avoidable homelessness, and maintain the public health during a public health as well as a homelessness crisis. The temporary moratorium on rent increases will help protect the health, safety, and welfare of San José residents. A summary of the Ordinance provisions is included as **Attachment A**, and summarized below.

A. Purpose – The purpose of this Ordinance is to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This Ordinance is immediately necessary for the preservation of the public peace, health or safety. Increasing the rent during a time where many tenants are struggling to pay their rent due to loss of work, business closure, or reduced hours, has the potential for destabilizing the residential rental market by placing tenants who are out of work in greater financial uncertainty to pay their rent and thus risk eviction by their landlords from their residences

⁴ <https://www.mercurynews.com/2020/04/17/coronavirus-economy-unemployment-california-bay-area-jobs-layoff-tech-retail-restaurant-hotel-construction-real-estate-google-apple-facebook/>

⁵ <https://economicrt.org/wp-content/uploads/2019/11/ERT-San-Jose-ARO-Update-2019-FINAL.pdf>

once an eviction moratorium ends. It is intended to enable rent-stabilized tenants, mobilehome residents and mobilehome owners in the City to be temporarily exempt from rent increases to reduce the risk that these events will lead to potential homelessness for the rent stabilized housing community, thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on rent increases imposed by this Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

B. Scope – This Moratorium on Rent Increases applies to any tenant, mobilehome resident, or mobilehome owner subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San José Municipal Code. This would apply to all tenants living in the 38,000 rent stabilized apartments and residents living in over 10,000 rent controlled Mobilehomes throughout the City of San José.

- ***For Apartments*** – As per the authority granted under the ARO Chapter 17.23.167, the Moratorium on Rent Increases will apply to rent stabilized units. These units include a “rental unit in a Guesthouse or in any multiple dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979 or that was offered or available for rent on or before this date.” Thus, rental buildings consisting of three or more units and constructed prior to September 7, 1979 are covered by the Moratorium on Rent Increases.
- ***For Mobilehomes*** – The City’s Mobilehome Rent Ordinance Chapter 17.22.155 covers spaces for which plumbing, electrical and sewer permits were issued prior to September 7, 1979. Some mobilehome spaces may be exempt from the Ordinance. The Mobilehome Rent Ordinance specifies that a rental unit means a “mobilehome or mobilehome lot, located in a mobilehome park in the City of San José, which is offered or available for Rent.” A mobilehome is defined as “a structure transportable in one or more sections, designed and equipped to contain no more than one dwelling unit, to be used with or without a foundation system.” These mobilehomes and trailer owners and renters would be subject to the Moratorium on Rent Increases.

C. Length of Protection – The Moratorium on Rent Increases will be effective upon the Ordinance’s adoption through December 31, 2020. This deadline aligns with the National Emergency Concerning the Novel Coronavirus Disease Outbreak and the Federal government’s protection for individuals under the CARES Act. These protections include an extension of Unemployment Insurance benefits for workers for an additional 13 weeks through December 31, 2020 after state Unemployment Insurance benefits end;⁶ a waiver of early withdrawal penalties for qualified individuals affected by the

⁶ <https://taxfoundation.org/cares-act-senate-coronavirus-bill-economic-relief-plan/>

coronavirus who have retirement savings that would typically be inaccessible or subject to penalties, for coronavirus-related distributions made between January 1, 2020 and December 31, 2020;⁷ and relief for student borrowers wherein employers may reimburse employees up to \$5,250 in student loan repayment assistance or other education-assistance payments from March 27, 2020 through December 31, 2020.⁸ Additionally, the CARES act protections extend to employer-side Social Security payroll tax, delaying payments until January 1, 2021, with 50 percent owed on December 31, 2021 and the other half owed on December 31, 2022.⁹

D. Moratorium on Rent Increases – For the duration of this Urgency Ordinance, a Landlord may not increase the rent upon any Rental Unit that is subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San Jose Municipal Code. For tenancies existing on or before March 31, 2020, the monthly rent during the term of this Ordinance shall be the tenancy’s contract rent in effect as of March 31, 2020. Landlords may file a fair return petition with the Housing Department, as permitted under Chapter 17.22 or Part 8 of Chapter 17.23 of the San José Municipal Code. A rent increase resulting from a fair return determination will be allowable under the Moratorium on Rent Increases.

- ***For Apartments*** – Chapter 17.23.310 of the ARO includes a limitation on how much a landlord may be able to raise the rent in any given 12-month period, known as “Annual General Increase.” The Annual General Increase in 17.23.310(B) is limited to “the monthly Rent charged for the previous twelve months for the Rent Stabilized Unit multiplied by 5%.” The Moratorium on Rent Increases will prohibit any landlord of increasing the rent in a rent stabilized unit until after December 31, 2020.
- ***For Mobilehomes*** – The Moratorium on Rent Increases would prohibit mobilehome park owners from increasing rent in their mobilehome parks until after December 31, 2020. The Mobilehome Rent Ordinance Chapter 17.22.450 regulates the Rent Increases allowable without review, known as the “Maximum Annual Standard Percentage Increase” (MASPI) Mobilehome Owners are permitted to bank their rent increases from the previous year, allowing them to combine two years of MASPI allowed rent increases. The banking opportunity would grant the mobilehome residents a 24-month reprieve to recover and prepare for the banked increase of rent. As a result, mobilehome park owners can provide relief for mobilehome residents and owners struggling to pay their current rent. Mobilehome park owners, whose effective date of the last rent increase was more than 24 months prior to the effective date of the current rent increase, maintain the opportunity to increase rent in the amount equal to the cumulative total of the maximum annual percentage increase for the current year and the previous year, as applied to the then current base rent. This

⁷ <https://www.finra.org/investors/insights/cares-act-2020-retirement-fund-access-and-student-loan-relief>

⁸ <https://www.finra.org/investors/insights/cares-act-2020-retirement-fund-access-and-student-loan-relief>

⁹ <https://www.finra.org/investors/insights/cares-act-2020-retirement-fund-access-and-student-loan-relief>

Moratorium on Rent Increases also attempts to avoid the costs and disruptions from legal actions arising from non-payment of rent disputes, making residents more likely to pay the increased banked rent increase and decreasing potential unlawful detainers and vacancies.

- F. Voluntary Agreements to Temporary Reduce Rent** – A landlord and tenant, mobilehome resident, or mobilehome owner can enter into a voluntary short-term agreement, without changing other terms of the rental contract, to temporarily reduce the rent through the term of the Ordinance, or shorter period as agreed-upon by the parties. Upon termination of such agreement, the rent will increase back to the amount in effect as of March 31, 2020. Agreements are only enforceable and have effect through the term of the Ordinance.

Some landlords are actively working with their tenants to reduce rents to provide relief during the COVID-19 crisis. In rent stabilized properties, rent increases are limited to the annual general increase and may not be increased beyond this amount. The temporary rent reduction provision will allow landlords to temporarily reduce rent through the term of the Ordinance, and afterwards they can return rents to the amounts charged under their underlying rental contract. There may be cases when returning the rent to the prior rate will exceed a 5% increase; this will be allowable during the term of the Moratorium on Rent Increases in order to encourage landlords to reduce the rent during the period of the moratorium. The restoration to pre-COVID-19 rents may result in destabilization to tenants; however, this provision will encourage landlords to reduce rents to keep residents housed during the most difficult months of the COVID-19 crisis.

- G. Prohibit Filings of ARO Tenant Petitions based on Service Reduction** – This Ordinance also includes a provision that precludes service reduction claims for based upon closure or elimination of recreational common area amenities resulting from County or State public health orders related to COVID-19 pandemic. Petitions for service reductions related to health and safety concerns, and those impacting the rental unit specifically, will continue to be accepted during the Moratorium on Rent Increases.
- H. Suspension of Late Fees for Rent Stabilization Program Fees** – Any outstanding late fees for owners of rent stabilized apartments under the Apartment Rent Ordinance are suspended through December 31, 2020. As of April 16, there is currently a minor portion of rent stabilized owners with outstanding late fees. Late fees will not accrue during the term of this Ordinance for failure to pay program fees due in fiscal year 2019-2020, as required under Chapter 17.22 of the San José Municipal Code. Any late fees accruing up to this point are still owed by the Landlord, but they will not accrue any additional late fees during the term of the Ordinance. The Housing Department will work with the Finance Department to notify the landlords and park owners that charging any additional late fees is suspended until December 31, 2020.

- I. Waiver of Building Permit Application Fees for Rental Properties with 20 or Fewer units** – The waiver for building permit application fees will apply to repairs or maintenance of apartments that would require a permit. The waiver will be applied to the application fees for building permits including plumbing, electrical and mechanical permits. For example, if a water heater needed to be replaced, a building permit would be required – and the application fee for that building permit = would be waived. However, it would not include waivers on construction taxes, nor waivers of any State or school fees (which are outside of the City’s authority to waive). There are approximately 27,000 rent stabilized apartments with 20 units or less throughout the City. Without knowing what types or the scale of repairs or maintenance is needed for these units, it is difficult to project the number of waivers that will be issued under this provision.
- J. Affirmative Defense for Eviction if Rents Are Increased** – Non-compliance with any applicable component of this Ordinance may be an affirmative defense for a tenant against any unlawful detainer action for nonpayment of rent filed under California Code of Civil Procedure section 1161(2) or California Civil Code Section 798.56(e), as amended.

Therefore, a tenant may use this Ordinance as a defense if a landlord increases rent during this Moratorium a tenant does not pay it, and a landlord tries to evict them for not paying the increased amount.an unlawful detainer action to challenge.

III. OUTSTANDING COUNCIL ACTION ITEMS

On April 14, 2020, the Council approved extending the Moratorium to May 31, 2020 on evictions for those financially-impacted by COVID-19 and directed the City Attorney to make additional amendments to the Eviction Moratorium Ordinance. The following amendments will be included in the Ordinance brought on May 5, 2020, subject to the City Attorney’s review:

- Extending the time for the tenant to notify their landlord of their status as an affected tenant to seven days after the notice of termination is served;
- Prohibiting landlord retaliation and harassment of tenants;
- Prohibiting eviction of tenants who have been infected or are suffering from COVID-19 under the pretext of a good cause reason to terminate the tenancy;
- Prohibiting serving notices upon tenants that a landlord knows or has reason to know is currently impacted by COVID-19.
- Allowing Affected Tenants to repay the past due rent accruing during the moratorium by December 31, 2020.

Additionally, the City Council directed Staff to craft a template affidavit that tenants can submit in cases where tenants are unable to provide any other verifiable evidence of their COVID-19-related impacts, as is often the case with undocumented individuals working in the informal economy.

Finally, the City Council directed staff to “consider a Council led task force to initiate a convening of stakeholders representing landlords and tenants to explore alternative solutions to address the needs of our rental community impacted by COVID-19.” Following the City Council discussion, staff is moving forward with the actions below:

- **Stakeholder Workshop** – Housing Department staff is partnering with the City Manager’s Office of Innovation to host an online facilitated brainstorming session the week of May 20 with tenant and landlord representatives. The goal of the workshop will be to develop a list of actions that may be taken to address both the needs of landlords and tenants in the wake of COVID-19 crisis.
- **Silicon Valley at Home Facilitated Discussion** – Silicon Valley at Home will host two workshops facilitating a discussion with thought leaders in the housing industry to brainstorm about the challenges facing landlords, homeowners, and tenants. The goal of these sessions will be to identify additional local, State, and federal responses to the COVID-19 crisis.

After further evaluation, staff determined that meaningful brainstorming input can be secured from the two methods above; results will be shared with the City Council and public. Providing support to a City Council led task force would require significant additional staff resources that are not available at this time because staff is assigned to Emergency Operation Center duties. If City Councilmembers wish to hold a task force in addition to current brainstorming efforts, supplemental staffing resources will need to be identified and Brown Act procedures and administrative support for a Council-lead task force would need to be considered.

CONCLUSION

Approving an Ordinance implementing a moratorium on rent increases will continue to provide stabilized housing and create security for those who may face financial hardship as the spread of the pandemic slows and stay at home orders and work closure measures are relaxed so that the economy can begin to recover and individuals can get back to work and in many cases that means finding new employment. Taking proactive measures now will ensure that those most vulnerable in our community, who will be facing the challenges inherent with a recovering job market, can focus on providing for themselves and their families, and not be shouldered with a rent increase when they are already challenged to pay their rent in a rent-burdened rental market. Prohibiting a rent increase prevents exacerbating an already tenuous financial situation for those living in rent stabilized units and mobilehomes, sustaining the rent at a level that the tenants had been able to pay prior to the spread of the virus. This measure also strengthens the City’s commitment to prioritize the health and welfare of its residents.

The uncertainty of where and how long it will take to secure assistance has left many residents at much greater risk of not being able to catch up to pay their bills, thereby increasing their risk of eventual eviction, destabilizing their families, and potentially leading to homelessness. Approving the moratorium on rent increases is a temporary measure to help stabilize housing for tenants living in rent stabilized apartments and mobilehome residents in rent controlled mobilehomes impacted by COVID-19 in the San José community. By enacting measures to help stabilize housing for residents, the City upholds the purpose of the Apartment Rent Ordinance and Mobilehome Rent Ordinance, and also strengthens its commitment to decrease homelessness. Further, this measure will be in step with other protections at both the state and local level in response to this health and housing crisis to protect the health, safety, and welfare of its citizens.

EVALUATION AND FOLLOW-UP

The City Manager will track the effectiveness of the Moratorium on the Rent Increase, and the continued impact of COVID-19 on the San José community over the coming weeks.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more of Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

Stakeholder meetings were held on April 17, 2020 with landlord and tenant representatives. The following is a summary of perspectives shared at the stakeholder meetings in **Table 1** below:

Table 1 – Summary of Perspectives from Stakeholder Meetings with Landlord and Tenant Representatives

April 20, 2020

Subject: Actions Related to a Temporary Moratorium on Rent Increases for Rent Stabilized Apartments and Mobilehomes

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	Landlord Representatives	Tenant Representatives
Scope	Limit rent increase freeze to tenants impacted by COVID-19, similar to the Eviction Moratorium	Clarify differences between “Eviction Moratorium” and “Moratorium on Rent Increases” for tenants during public information and education outreach
Moratorium on Rent Increases	Replace “suspended” instead of “void”, as the “the rent increase may not be collected during the term of the rent freeze”	Clarify “void” is of rent increases and mechanism of how rent increases paid in April would be affected
Prohibit Filings of ARO Tenant Petitions based on Service Reduction	Prohibit a tenant from filing a service reduction if tenant refuses entry for maintenance or landlord to enter to make repairs	Request for the City of San José to develop a list of essential amenities (e.g. laundry room) versus non-essential (e.g. pool) to comply with public health orders. In addition, the one service reduction that cannot be allowed is the laundry room.
Suspension of Late Fees for Rent Stabilization Program Fees	Include late fees for 2020-2021, which will be billed later this year. The fees for 2019-2020 have already been paid for most landlords.	Comments were not provided on this provision
Suspension of Building Permit Fees for Rental Properties with 20 or Fewer units	Apply to all units. Just as how the Moratorium on Rent Increases applies to all ARO units, the suspension of permit fees should apply to all units. All tenants will have the same need for repairs regardless of what building they live in. Also, gives incentive to landlords in larger buildings to give rent concessions.	Maintain suspension for 20 or less to protect mom and pops owners

Affirmative Defense for Eviction if Rents are Increased	Clarify that tenants can use this as a defense only if they refuse to pay the rent increase that a landlord illegally gave. There will likely be some landlord who mistakenly gives a rent increase because they are confused about the timeline of eviction moratorium versus. rent freeze, or they are just uninformed.	Include a requirement for landlords and mobilehome owners to inform tenants and residents of their rights using a Housing Department approved notice regarding protections under Moratorium on Rent Freeze
Other Alternative Solutions	Allow landlords and tenant to come to a mutual agreement on rent concessions or other means of rent reductions, including banking	Make an amendment where rents may return to original rate after one year of Eviction Moratorium expires on May 31, 2020 or on the latest Shelter In Place Order issued by the County of Santa Clara, whichever is longer

COORDINATION

Preparation of this report has been coordinated with the City Attorney's Office, City Manager's Budget Office, and Planning, Building, and Code Enforcement.

COMMISSION RECOMMENDATION

This Housing and Community Development Commission meetings have been cancelled due to the COVID-19 pandemic.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's Consolidated Plan 2015-2020, adopted by City Council on May 5, 2015, to provide homes for very low- and extremely low-income households, and with Goal H-2 of the City's Housing Element 2014-2023, adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

HONORABLE MAYOR AND CITY COUNCIL

April 20, 2020

Subject: Actions Related to a Temporary Moratorium on Rent Increases for Rent Stabilized Apartments and Mobilehomes

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COST IMPLICATION

The Building Development Fee Program is a full cost-recovery program. As a result, the review and inspection work associated with the waived building permit and inspection fees for apartment buildings with 20 or fewer units will be charged to the COVID-19 Emergency Response appropriation within the Emergency Reserve Fund. As the level of activity related to this waiver is currently unknown, the Administration will continue to monitor the number and cost of waived permits and recommend future adjustments as necessary.

The suspension of late fees through December 31, 2020 is expected to have a modest impact and will be absorbed within the Rental Stabilization Program Fund.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND
Director, Housing Department

For questions, please contact Deputy Director, Rachel VanderVeen at (408) 535-8231.

ATTACHMENT:

Attachment A – Summary of the Provisions in the Moratorium on Rent Increases



Moratorium on Rent Increases for Rent Stabilized Apartments & Rent Controlled Mobilehomes

Summary of Provisions

On [April 14, 2020](#), directed staff to return to Council to discuss enacting an Urgency and Companion Ordinance for a Moratorium on Rent Increases for rent stabilized apartments and rent controlled mobilehomes, including:

Components	Summary of Provisions
A) Purpose	<ul style="list-style-type: none"> Promote housing stability during COVID-19 pandemic & prevent homelessness
B) Scope	<ul style="list-style-type: none"> Applies to any ARO tenant, mobilehome resident, or mobilehome owner
C) Length of Protection	<ul style="list-style-type: none"> Effective date is 4/21/20 through 12/31/2020
D) Moratorium on Rent Increases	<ul style="list-style-type: none"> Prohibits ARO landlord or mobilehome park owner from increasing rent for rent stabilized apartments or rent controlled mobilehomes Allows ARO landlord or mobilehome park owner to file a fair return petition. A rent increase resulting from a fair return determination will be allowable under the Moratorium on Rent Increases.
E) Allowable Rents	<ul style="list-style-type: none"> For tenancies existing on or before 3/31/2020, the monthly rent during the term of this Ordinance will be the tenancy's contract rent in effect as of 5/31/2020 For any rents that were increased on 4/1/2020, future rents will return to the rent charged on March 31, 2020
F) Allowance of Temporary Rent Reductions	<ul style="list-style-type: none"> Landlords and tenants may enter into an agreement to temporarily reduce rent When ordinance expires, rent may be returned to the prior rental rate without limitation to the annual general increase
G) Prohibit Filings of ARO Tenant Petitions based on Service Reduction	<ul style="list-style-type: none"> Precludes service reduction claims for based upon closure or elimination of recreational common area amenities resulting from County or State public health orders related to COVID-19 pandemic Allows petitions for service reductions related to health and safety concerns and reductions in a tenant's apartment.
H) Suspension of Late Fees for Rent Stabilization Program Fees	<ul style="list-style-type: none"> Late fees on outstanding Rent Stabilization Program fees will not accrue during the term of this Moratorium for failure to pay registration fees due in fiscal year 2019-2020
I) Waiver of Building Permit Application Fees for Rental Properties with 20 or Fewer units	<ul style="list-style-type: none"> Waiver of building permit application fees for repairs on buildings covered by the Apartment Rent Ordinance with 20 units or less Applies to building permit application fees for repairs such as plumbing, mechanical or electrical
J) Affirmative Defense for Eviction if Rents are Increased	<ul style="list-style-type: none"> If a landlord increases rent during the Moratorium, a tenant may use the moratorium as a defense to an eviction for nonpayment of rent