

Episode 15: How the Apartment Rent Ordinance Impacts Rental Housing in San José

Welcome to Dwellings, a podcast from the City of San José Housing Department, where we talk with experts about ending homelessness, building affordable housing, and exploring housing policies at the city and state level. I'm your host Jeff Scott. On today's episode, I'm joined by Noel Padilla, Senior Analyst with the Housing Department's Rent Stabilization Program, to talk about the City's Apartment Rent Ordinance.

00;00;01;05 - 00;00;41;19

Jeff Scott: Were happy to be joined today by Noel Padilla he works for the City of San José Housing Department, and Noel can you tell us what role you have and what team you're on in the Housing Department?

00;00;42;18 - 00;01;07;12

Noel Padilla: Yeah, so I'm the Senior Analyst for the Rent Stabilization Program, I oversee the compliance team of the Rent Stabilization Program. So we're very in the weeds for the Ellis Act Ordinance the Tenant Protection Ordinance the Rent Registry, Administrative Citation Program. So that's really where our bread and butter is.

00;01;07;19 - 00;01;14;08

Jeff: Can you explain a little bit about why the Rent Stabilization Program exists kind of what your purpose is what your mission is?

00;01;14;15 - 00;02;27;25

Noel: Yeah, so it you know, it goes back to when the Apartment Rent Ordinance came into effect back in 1979. The name for the program has changed over the years. So right now we are the Rent Stabilization Program. We were the Rental Rights Program previously, and so what we're here the whole program is here is to essentially ensure the compliance of the ordinances the housing ordinances here in the City. We also handle the, you know, the petition process. We also received the mobile home rent ordinance. So we were very much involved in these types of petitions and compliance issues. And we're just really here to, but our main services that we provide education and information to the community have of what their rights are or what are what requirements does a property owner have to follow within the City of San José in regards to their apartment, and giving that knowledge because these ordinances can be a bit complex at times and, you know, we're really here to help educate. I'd say that's our number one duty here.

00;02;28;05 - 00;02;33;11

Jeff: Do you work with do you and your team work with both landlords and tenants?

00;02;34;00 - 00;03;13;14

Noel: Yeah, so we work with both the property owner and the tenants. There's no one specific group that we work with more than the other. Are, everything that we, our approached everything is, is the community at large really, is it something that's going to be how do we explain something make it easily digestible to the community at large. We don't think about it in terms of a property owner or a tenant aspect because at the end of the day, everyone should have an understanding of the city's ordinances. Everyone should be able to fight for their own rights and be able to have those conversations, whether it's a property owner or tenant, that property owners do have rights and so do tenants.

00;03;13;29 - 00;03;22;13

Jeff: And you mentioned something called the Apartment Rent Ordinance or ARO Can you tell us a little bit about the ARO and high level?

00;03;23;06 - 00;05;20;23

Noel: Yeah, so the Apartment Rent Ordinance, otherwise, we'll be calling it the ARO, just because it's a really long name. It's what people refer to as the rent control ordinance, which isn't necessarily true. It's not necessarily rent control, it's rent stabilization. We don't set the rent levels. We what we do is we set what's considered an allowable rent increase. So the apartment rent ordinance, the ordinance is a very robust ordinance, and it allows property owners to increase the rents 5% once to a maximum of 5% once every 12 months, and only applies to buildings that were built before or by September 7th, 1979, and that consist of three units or more. And, you know, if that's the case, those the property is covered and there's certain exemptions, such as if the property's an affordable property or tax credit, though, you know, those are exemptions. Duplexes currently aren't covered under it. Single-family homes aren't covered under it. Condos are not covered under it. So it is a very specific type of property and group of properties that are covered under the apartment rent ordinance. And and so it really just you know it how it provides the 5% allowable rent increase once every 12 months. It's also the ordinance that covers the rent registry. It is the ordinance that allows for petitions to be submitted either from the property owner or the tenant or both parties together. So it it's a very robust ordinance that has that has a lot of moving parts to it.

00;05;21;27 - 00;05;48;14

Jeff: Now, I want to dive into some of those elements that you just mentioned a little bit more deeply. I want to start with rent stabilization. You mentioned that the ordinance allows property owners to raise

the rents one time of year up to 5%. So can a can a landlord split that up? Can they raise the rent 2% and then a few months later raise the rent 3%?

00;05;49;03 - 00;06;40;17

Noel: No. And it doesn't come up very often, but it does come up and it's once. So you, a property owner, has essentially that one opportunity a year or 12 months from whenever the lease was signed. So whatever that and that tenant anniversary date is, they have 12 months from that point to increase the rent. And then once that rent is increased, that becomes what's known as the anniversary date. And then so then they can't increase it again until that anniversary date. You can't split the 5% up 3% at this time. Then 2% six months later, it has to be 5% at one time. So and that's and that's the main key to the language is that it's 5% once every 12 months.

00;06;41;14 - 00;06;53;12

Jeff: And can landlords bank, and I put that in quotation marks, can they bank their rent, or their raise and not increase in one year and then the following year rate raises, perhaps up to you know, 7, 8, 10%?

00;06;54;06 - 00;07;35;29

Noel: No, that's not something that is allowed in the City of San José currently, and so, property owners cant bank that is another question that we do receive for property owners in the City, you know, in terms of trying to really understand the apartment rent ordinance and how it's changed because we have we do have mom and pops that have been working and managing the their properties for 30-40 years and they've seen how the apartment rent ordinance has changed over the decades. And so you know, they're really trying to make sure they have a current understanding of it and banking is not allowed in the Apartment Rent Ordinance currently,

00;07;36;05 - 00;07;52;02

Jeff: If a tenant moves out, if they voluntarily move out, they and their lease and they move on somewhere else and the landlord gets a new tenant in there. Is there any limitation or any rules around the initial rent that the landlord can charge to the new tenant?

00;07;52;25 - 00;09;00;21

Noel: No. So and that's and that's what's called decontrol. And that's kind of the main aspect of the separation between what rent control is and what rent stabilization is. Rent control is that amount set where the unit will always you can only charge this amount even if it vacant and even if it becomes vacant, a new person comes in. So in the city of San Jose were rent stabilized when the tenant when a tenant vacates a unit willfully or they've gone through an eviction, the property owner then can increase

the rent to market rate. So if, say, the previous tenant were, you know, their rent was 1500 and it's a two bedroom, the current market rate for a two bedroom is 2400. Once that tenant vacates, the property owner can then increase it to, you know, to what would be market rate at that 2400. And that's just an example. I, I don't know what the number is on the top of my head. So it's these are just made up figures but that limit of the initial rent it just it resets.

00;09;01;03 - 00;09;16;20

Jeff: I see okay, so the landlord can reset the rent when they get a new tenant. And then once they reset the rent for the new tenant, then the limit of 5% increase once a year kicks in after they've after they have set the initial rate for the new tenant.

00;09;17;10 - 00;09;36;08

Noel: Correct. So then in that and then and that 5% starts over with the new tenant. And so, you know, again, going back to the example I had where you have the new tenant where their rent at 2400 well, once they hit that year mark, you can increase it that 5% to 5% on the 2400.

00;09;36;12 - 00;09;46;28

Jeff: Of course if the landlord wants to increase the rent, but they don't want to increase it 5% For whatever reason, they can raise they can raise it by some amount less than 5% Correct.

00;09;47;16 - 00;10;08;15

Noel: You know, some property owners havent increased their rents in a couple of years, some have. But you know, there property, there are plenty of property owners that don't do the full 5% and they just do the increase of three or four. It you know, that's we aren't involved in making that determination for them. That's you know what whatever their business decision is at the end of the day.

00;10;08;27 - 00;10;31;21

Jeff: And so when we're talking about apartment building excuse me, apartment buildings with three or more units that were built before 1979 or by 1979, there's a wide range in San Jose. Right. That that would include some smaller buildings that might have, you know, five or ten units and some very large buildings that might be owned by, you know, by a large corporation. Is that correct?

00;10;32;05 - 00;11;45;20

Noel: Yeah. So it it's a very wide gamut of the number of property types. Honestly, because you also have to take into account these old Victorian guest homes that you see in downtown San Jose and those are covered. There's specific type of building that you know, has several rooms in it and those properties are covered under the apartment rent ordinance. There's a lot of Triplexes and Fourplex's that have been here for years. And so those properties are covered. There are certain buildings and I won't get too much into those because it's very specific and it's very there's just a lot to it. But it's possible for a new building to come under the apartment rent ordinance through the Ellis Act, and it's with the whole demolishing of a building of one of the apartment property covered under the apartment rent ordinance. And then a new building comes up that replaces it. But that's a very specific thing under the Ellis Act. So we are able to increase those amounts through that process. But it's a very there's there's a lot of other moving parts to that. And it's I think it's probably too much to get into for the podcast.

00;11;46;26 - 00;11;57;00

Jeff: So do you know off the top of your head or having do you have an estimate of approximately how many apartment units in San José fall under the Apartment Rent Ordinance?

00;11;57;11 - 00;12;17;08

Noel: Yeah, currently it's about 40,000. It's somewhere around that. It's somewhere between 38 to 40000 units in terms of the number of properties I that I'm not too specific on, we usually just focus on the number of units overall. In terms of units, it's somewhere between 38 to 40000.

00;12;17;08 - 00;12;26;06

Jeff: There's a lot of people in San José that are touched by this ordinance. And if we're talking about 40,000 units, there could be upwards of 100,000 people living in these rents stabilized units.

00;12;26;06 - 00;13;07;12

Noel: Oh, yeah, No, most definitely. And I think going back to kind of a census kind of situation where, you know, it's not uncommon within disenfranchised communities for multiple families to live in a house together. And I would not doubt it if they're some of these larger units or if these two bedrooms, if there is, you know, two families residing in one unit. It's very common across the Bay Area in general. But for us there, you know, there are limitations in the type of information that we can get with respect to that. And so this ordinance does touch a lot of lives. It does impact a lot of individuals.

00;13;08;02 - 00;13;26;24

Jeff: Now , moving to a different aspect of the Apartment Rent Ordinance. You mentioned briefly at the top of the conversation, this concept of a petition. And you said sometimes a landlord can submit them

sometimes tenants submit them sometimes, it can be jointly submitted. Can you explain for us what a petition is? First of all?

00;13;27;11 - 00;15;43;18

Noel: Yeah. So a petition is kind of like a claim or a request made to the program that to resolve an issue or something that occurred on the property. So a petition for a tenant could be that I have gone without water due to a plumbing issue that I brought up to my property owner that they haven't resolved and it's been months. And so they can submit a petition for what's called a service reduction, then the tenant can be credited, you know, X amount for the months that they've been with the or for the amount of time that they've been without running water. So that's the most common reason for a petition. Property owners can submit a capital improvement petition, and that's a very specific type of situation where there's work that's done to the property and they're trying to increase that's above the 5% in order to recoup the losses for the money that they spent on the work that was done to the property. And then there's joint petition where the tenant wants to add someone that's not a family member to their lease and the property owners are fine with it. It allows for the you know, for the tenant adding this person, there's an additional 5% for this new tenant to the lease. And so they file this petition in order to get that fine for the property owner to get that 5% bump for the extra person and for the tenant to be able to have that extra, that new tenant. There's a few other reasons for that, but it's really, you know, when if there's an issue or some type of occurrence that occurs at the property that that needs to be resolved or, you know, needs to get kind of the okay for words that above 5% from the program, that's really what they're for. And in the petition process, it goes through a mediation. We have mediation officers, we have hearing officers. And so if we can't if something's not can't be resolved in mediation, it goes to a hearing with one of our hearing officers. And they they're given the facts. They review them, they hear both sides and they make a decision.

00;15;43;18 - 00;16;15;10

Jeff: So so in that process is if the parties can't resolve it themselves and it goes to mediation, if I'm understanding you correctly, the mediation phase is voluntary or it's non-binding and the mediator trying to help the parties come to resolution and then if that doesn't work and it has to be escalated to a hearing officer, then at that point the hearing officer's decision is binding and that is kind of bring some sort of finality to the process. Is that correct?

00;16;15;22 - 00;17;28;14

Noel: That's correct. And so, you know, the petitions of one. So the you know, whichever side submitted petition, they always have to be available. They have to be willing to go through the mediation process. And so then our staff will go and see about getting that scheduled. If the other if the other party doesn't want to if the one that didn't file the petition doesn't want to, then it is escalated automatically to the hearing. And so then it it'll be on the hearing officer to decide. But you know, we try to get both sides to meet at the mediation just because a lot of times it can be something that doesn't need to be escalated

to a hearing and may be able to be resolved or even partially resolved in some conversation between both parties. And that's that's what we're here for. We don't we're not trying to have people go to hearings because it's you know, it's a lot of time and, you know, it can cause a lot of stress. And so it we can get it handled in mediation. Both sides tend to be a lot more pleased with the outcome. It's the best avenue to go through. And it doesn't require a lot more than just to sit down and talk.

00;17;28;25 - 00;17;40;21

Jeff: Can you give us an idea, just a ballpark about how many petitions are filed in a given year and I understand that when it comes to the pandemic those numbers might have been a little bit skewed, but just in a typical year about how many petitions are filed.

00;17;40;26 - 00;18;36;27

Noel: So the pandemic really did kind of honestly, it did affect our numbers. And off the top of my head, I can't remember, but the pandemic did really impact the petition numbers. And what they I know that they weren't what we previously had going on, which you know to certain extent it was was a little frustrating for the program and we conducted a lot of outreach and trying to get information from, you know, the community. It's just we weren't really there. So in terms of petition, so we get somewhere around 100. But previously, you know, we've, we've been in the 200, 300 range before. If you look at our numbers in terms of the pandemic, there was there was a very big drop. And so we're slowly seeing these come back up. And even from property owners perspective, it's happening okay now.

00;18;36;28 - 00;18;50;22

Jeff: So I understand that a few years ago, the apartment rent ordinance was amended to include something called the rent registry. Can you tell us what the rent registry is and then explain what its purpose is?

00;18;51;18 - 00;21;37;17

Noel: Yeah. So what the rent registry is, it's essentially a requirement for property owners to register each of their rent stabilized units so they provide us information on rents, security deposits, unit types, such as a one bedroom, a studio, a two bedroom, three bedroom, four bedroom tenant move in day when a tenant vacates what the just cause or the reason for the tenant vacating. So if it's a voluntary if they vacated voluntarily or if they were terminated for some reason under the tenant protection ordinance. So all this information really does provide the city an understanding of what exactly is occurring within the rent stabilized community and what these units are. What's the turnover rate of a rent stabilized unit? How long are tenants remaining in these units? How often are their rents going up? How often does what's exactly going on in property? Owners are only required currently to register their units once during the registration period. So when we send E-blast an mailer out to property owners informing them of when it will occur. And so then they have to enter the system during these 60 days to

register their units and then that's it. And so they only have to update it once a year. But some property owners do it throughout the year and that's fine. They they keep it updated constantly. And that way during that one time a year point, they don't have to go back through their files to apply that update. But that's really what it is. It it really it serves several functions for if a tenant receives an over 5% rent increase, we're able to see that and conduct compliance in regards to that and inform the tenant and send a letter to the property owner regarding that. So that way tenant knows that they are covered and they can file a petition for an over 5% rent increase. And so it, it really serves a lot of functions. It lets us have a better idea of what tenants vacating a unit. Is it for a just cause under the tenant protection ordinance or is it that they're voluntarily vacating the unit because, you know, maybe they ended up moving somewhere, but that's really what it's for. It serves a lot of different purposes and it's there's just a lot of data that can be gathered and extrapolated from it.

00;21;38;05 - 00;21;46;13

Jeff: And the concept of a rent registry is it unique to San José? Or are there a number of other cities throughout California that do something similar?

00;21;47;15 - 00;22;14;10

Noel: Well, yeah, it's not unique to San José at all. There are several cities in California that do it there are cities nationwide that actually have a Rent Registry, or are working on policy to develop a rent registry, the state of California has worked on trying to pass a statewide rent registry. There's rent registries at different levels of government, all over the nation. It's not something specific to us.

00;22;14;17 - 00;22;52;01

Jeff: With the information that you gather that the city gathers in the rent registry. How exactly is that used? For example, you mentioned that by analyzing the data, we can get a sense of what the average rent is for a rent stabilized unit. We can get a sense of how long the typical person remains in their rent stabilized unit before moving out. There's a lot of data that we can get through the analysis of the rent registry. And so my question is, what do we do with it? What does the staff or the elected officials, what do they do with that information?

00;22;52;01 - 00;23;50;21

Noel: We're going to be going into a rent registry period soon. And at this point, you know, we will have finished up or barely our fourth, third registration cycle. And it really serves a lot of purposes. And it can, you know, if there's something that's that if there's something that happens where it's like, oh, there's this huge shift that occurs, it may require some type of stakeholder conversations and it may require some a council member may be reviewing the data and the results. And in our annual report and questioning, well, if this is happening, maybe something needs to be done with it or maybe the program needs to do more investigation into this or it it really steers the conversation in housing and what's

really available and how effective the ordinances are. It really just affects the conversations around housing with within the city of San Jose.

00;23;50;22 - 00;24;07;21

Jeff: So then is it safe to say that that the data and the data analysis from the rent registry can help guide policy decisions and legislation decisions, can it, using using data rather than perhaps gut instinct that may have been used many years ago?

00;24;07;29 - 00;24;44;05

Noel: Oh yeah, no, most definitely. If because, you know, now we have technology to be able to gather a large pool of data we can rely on and has validity to it as opposed to I've been talking to some people at the barbershop and they're telling me that this is happening, so we should probably pass it. It allows for a lot a large number or large numbers of data to be pulled and examined as opposed to trying to go door to door to get it. It makes life significantly easier to develop better and new policies or changes.

00;24;37;28 - 00;24;44;05

Jeff: When property owners enter information in the rent registry. So they have to do it at least once a year. They may choose to do it more than once a year when they when they enter information about their units into the registry. Is there a way for their tenants to look at that information and verify? For example, if the property owner says they're charging \$2,000 a month for a unit, is there a way for the tenant to go in there and verify that Yes, that's the correct amount that I'm actually paying.

00;25;11;07 - 00;26;01;12

Noel: It is on our website, but we are in the process of developing what's referred to as the tenant portal. And so tenants can go on there and see what what it is that their unit is at. And if there's an issue, they're able to file a petition with us. We also take calls for tenants curious too, and wants to know, Hey, is my property owner registered or This is my current rent. When was the last time they updated the rent registry? Because maybe they just haven't. You know, they haven't updated it because the registration period hasn't occurred yet and that's fine. But we're able to verify that information over the phone. You know, tenants do have that ability to kind of double check that and make sure that a property owner is complying and that their right, the rights are being violated.

00;26;01;12 - 00;26;10;13

Jeff: And are there other aspects of the Apartment Rent Ordinance other important aspects of the ordinance that I haven't asked you about that you might want to share with our audience?

00;26;10;19 - 00;27;32;07

Noel: In terms of the apartment or in ordinance? ARO properties can't be used as an Airbnb. The only unit in an Airbnb that can be used is the owner occupied unit and that that unit has to actually be the permanent. The property owners permanent address. So but otherwise a tenant, you know, a property owner can't purchase an entire, you know, rent stabilized property and then decide that they're going to use it for Airbnb. That's not that's not allowable. And it's not just and it's not specifically outlined in our apartment rent ordinance. It's through the Airbnb ordinance that covers their Airbnb and short term rentals is under planning, building and code enforcement. And that's where the reference occurs to the apartment rent ordinance that if a property is covered under this ordinance, it cannot be used for this purpose. So it's something that people we do get calls about. Airbnb's a lot in terms of rent stabilized units. I've spoken to several property managers or owners where this occurred and then they go and they remedy the situation. But it does happen. And we do get calls about Airbnb a lot and it is a situation that does exist.

00;27;32;09 - 00;27;53;19

Jeff: I do want to just go back to this idea that you serve both tenants and landlords and you really serve the entire community. Can you give us a sense of the balance of calls? Like do you get way more calls coming in from tenants or from landlords, or is it roughly equal in the same ballpark?

00;27;53;19 - 00;28;30;05

Noel: I would say in terms of a tenant or an owner, it's very down the middle and it sometimes feels like it's seasonal, where this month we received a lot more calls from a tenant, but then the next month we will receive a large number of calls from owners. And so there's this very large kind of back and forth and seasonal kind of aspect to it. But I would say that we do receive inquiries from tenants and property owners or property managers very pretty equally. And it's it's really just wanting to further understand rights and requirements under our ordinances.

00;28;30;05 - 00;28;40;01

Jeff: And if someone wants to get a hold of you, if someone has a question or they want clarification on any point regarding their specific situation, is their phone number, they can call to reach your office.

00;28;40;17 - 00;28;54;10

Noel: They can always contact the Rent Stabilization Program at 408-975-4480. That's our direct line, they can contact us and one of our staff members will be able to help them

00;28;54;11 - 00;29;03;28

Jeff: Well Noel thank you very much for sharing your information your knowledge about the apartment rental ordinance and the rent stabilization program. I think this has been a great conversation, and we appreciate your time.

00;29;04;02 - 00;29;05;27

Noel: No problem. It's been great

00;29;06;24 - 00;30;04;05

Jeff: Thanks so much, Noel, for joining me on today's episode To learn more about the city's apartment rent ordinance and other housing ordinances, visit our website at SJHousing.org. Thanks for listening to *Dwellings*, the City of San José Housing Department podcast. Our theme music is "Speed City," composed and performed by Ettaine Charles. Thanks to San José Jazz for letting us use your music. If you like the show, please subscribe and share with your friends and family. If you're looking for more ways to get involved with housing and homelessness response, please check out the show notes. You can follow the Housing Department on social media. We're on Twitter and Facebook at S J city housing. If you have questions or comments about today's episode, please send them to housingcomms@sanJoseca.gov. Our artwork is by Chelsea Palacio. *Dwellings* is produced by me, Jeff Scott and Jose Chavez and the Housing Department.