



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: June 4, 2023

Approved

Date: 6/4/2023

**SUBJECT: RENT STABILIZATION PROGRAM – NON-RENT-CONTROLLED
APARTMENT UNITS FEE**

RECOMMENDATION

- A) Approve an amendment to the 2023-2024 Proposed Fees and Charges Report to revise the Non-Rent-Controlled Apartment Units fee from \$34 per unit annually to \$23 per unit annually.
- B) Approve the following adjustments to the 2023-2024 Proposed Operating Budget in the Rental Stabilization Program Fee Fund:
 - a. Decrease the revenue estimate for Fees, Rates, and Charges by \$523,292;
 - b. Decrease the Housing Department's Personal Services budget by \$116,000; and
 - c. Decrease the Unrestricted Ending Fund Balance by \$407,292.

BACKGROUND

This Manager's Budget Addendum responds to the direction given at the May 15, 2023, City Council Budget Study Session for 2023-2024 concerning the proposed Annual Apartment Non-Rent Controlled Fee.

The Annual Apartment Non-Rent Controlled Fee is also referred to as the Tenant Protection Ordinance Fee (TPO Fee). The TPO Fee is charged to owners of residential properties covered only by the Tenant Protection Ordinance (TPO). This fee applies to residential buildings with three or more rental units built after September 7, 1979. These properties charge rents that are not regulated by the City, as they are not subject to the City's Apartment Rent Ordinance.

The TPO Fee is not charged to any properties subject to the Apartment Rent Ordinance. The Apartment Rent Ordinance is applied to properties with three or more rental units built before September 7, 1979. Properties subject to the Apartment Rent Ordinance are charged a different fee, called the Annual Apartment Rent Control Fee.

The TPO's purpose is to promote housing stability and reduce displacement throughout San José's rental market. The TPO requires owners to have a just cause to evict tenants, and it prohibits retaliation against tenants. The Rent Stabilization Program's (Program) role on the TPO is to educate residents and property owners about the TPO and ensure compliance with the Ordinance.

Fees across all categories in the Program were reduced significantly at the beginning of the COVID-19 pandemic and remained at the reduced rate for two years to provide relief to property and mobile home owners. In April 2022, the Housing and Community Development Commission (Commission) requested an analysis of staff time and costs for each program. The Commission voted to approve a plan to gradually increase fees to return to full cost recovery over a three-year recovery period.¹ The intent of the gradual phase-in was to allow owners more time to recover from COVID-19 financial impacts while ensuring the Program would not be significantly underfunded. Fiscal Year 2023-2024 is the second year of this three-year cost-recovery period.

In the development of the Proposed 2023-2024 Fees and Charges, the Housing Department staff performed an updated analysis of staff time, costs and revenues related to the TPO Fee and TPO units. To sufficiently recover costs, staff calculated the proposed TPO Fee to be \$34 per unit annually. At its meeting on April 13, 2023, the Housing and Community Development Commission voted to recommend that City Council approve the proposed TPO Fee of \$34 per unit annually for 2023-2024.²

ANALYSIS

In the three-year cost recovery phase-in plan of fee increases that the Housing and Community Development Commission approved in April 2022, the TPO Fee for 2023-2024 was projected to be \$23 per unit annually.³ Early in 2023, as part of this year's budget development process, staff conducted further analysis of actual staff time, costs, and revenues related to administering the TPO program. This analysis better captured the amount of actual staff time spent on TPO-related tasks and a more accurate count of TPO units. Among the various TPO tasks staff performs, a considerable amount of staff time is spent logging received termination notices and unlawful detainers and responding to individual inquiries about the TPO from tenants and landlords of TPO only properties. Original estimates for TPO unit counts were derived from a number of sources including Planning, Building, and Code Enforcement Department's systems and RealQuest, a subscription housing data source based on county assessor records. The data from these sources provided limited information about the character and use of the properties. Over the past year, the Program had sufficient staff capacity⁴ to determine a more accurate count of

¹ Staff Report dated April 14, 2022

<https://www.sanjoseca.gov/home/showpublisheddocument/84566/637856220492670000>

² <https://www.sanjoseca.gov/home/showpublisheddocument/97772/638197592652270000>

³ April 14, 2022 staff report to the Housing and Community Development Commission
<https://www.sanjoseca.gov/home/showpublisheddocument/84566/637856220492670000>

⁴ During the COVID-19 pandemic, vacant positions in the Program helped mitigate the impact of reduced fees. In addition, during this time staff was tasked with duties related to responding to the COVID-19 emergency and shutdowns.

units covered by the TPO. Staff utilized data derived from the City’s recent annual billing cycles and further verified the use of certain properties using other internal data sources.

The analysis of staff time, costs and revenues indicated that an increase of \$19, from \$15 to \$34 per unit annually, would be necessary to bring the Program to full cost recovery in 2023-2024. Based on input received from the City Council during the 2023-2024 Proposed Budget Study Sessions, staff is revising its initial recommendation to instead increase the fee by \$8, from \$15 to \$23, in 2023-2024 as part of the phased-in approach of achieving full cost recovery. This increase would bring the Program to a 66% cost recovery. **Table 1** provides a breakdown of the TPO Fee, actual and proposed, for a three-year cost recovery period.

Table 1: TPO Fees charged in 2022-2023, Proposed and Amended 2023-2024 Fees, and Projected Fee for 2024-2025

	Adopted 2022-2023 Fee	Original Proposed FY 2023-2024 Fee ⁵	Amended Proposed 2023-2024 Fee	Projected 2024-2025 Fee
Annual TPO Fee per Unit	\$15.00	\$34.00	\$23.00	\$35.00
Cost per Unit per Month	\$1.25	\$2.83	\$1.92	\$2.92

Three-Year Phase In

Staff understands the importance of a gradual increase of the TPO Fee from year to year to give property owners time to respond and make adjustments to address the added cost. Therefore, staff supports an amended proposed TPO Fee for 2023-2024 of \$23 per unit annually. This level matches the amount that the Housing and Community Development Commission in April 2022 proposed and approved as the second year of a three-year phased-in of the fees.

To provide some predictability to property owners, the TPO Fee in the third year of the phased-in period is projected to increase to \$35 per unit annually in 2024-2025 to fully cover staff costs. However, this increase may change as a result of updated staff time and salary and benefit costs of the positions that are supporting the Program.

⁵ 2023-2024 Proposed Fees and Charges <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/budget/budget-documents/2023-2024-budget-documents/2023-2024-proposed-fees-and-charges>

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Cost Recovery

Assuming a lower TPO Fee of \$23 per unit for 2023-2024, the Program is expected to achieve a cost recovery rate of 66%. To offset the reduced revenue and ensure there are sufficient resources to cover TPO Program operations and ensure that the Rental Stabilization Program Fee Fund remains solvent, budget adjustments are recommended to decrease the Ending Fund Balance in the Rental Stabilization Program Fee Fund by \$407,000 and to decrease the Housing Department's Personal Services budget by \$116,000 to reflect savings related to the anticipated timing as to when vacant positions are expected to be filled.

Conclusion

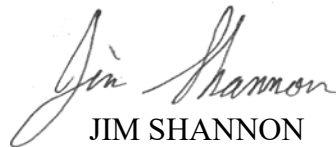
It is recommended that the TPO Fee (Annual Apartment Non-Rent Controlled Fee) rate be set at \$23 per unit for 2023-2024. This rate will result in a 66% cost recovery and is projected to increase to \$35 per unit annually in 2024-2025 to achieve 100% cost recovery.

COORDINATION

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

/s/

JACKY MORALES-FERRAND
Director, Housing Department



JIM SHANNON
Budget Director