



CITY OF SAN JOSÉ
APARTMENT RENT ORDINANCE (ARO)
ADVISORY COMMITTEE

SPECIAL MEETING - October 21, 2015, **6:15 PM**
 San Jose City Hall – Wing Rooms 118-120
 200 East Santa Clara Street, San Jose 95113
This meeting will end promptly at 8:30pm



Members of the public who wish to make comments on any item on the Agenda, or any other item related to the City’s Apartment Rent Ordinance may be given up to two (2) minutes, however overall time limits on public comment will apply. Please note that: (1) the Stakeholder Group will only be able to discuss comments to items listed on the Agenda; and (2) the time schedule shown below is approximate and intended only to notify the Committee of the approximate amount of time staff expects each item might take, and items may be heard before or after the times shown.

TIME*	AGENDA ITEM
6:15	(a) Call to Order/Orders of the Day
6:18	(b) Introductions
6:20	(c) Approval of Action Minutes for the October 7, 2015 Regular Meeting ACTION: Recommend approval of the October 7, 2015 action minutes
6:25	(d) Discussion and possible action of unfinished business from October 17th meeting (Housing Staff, Facilitator) Presentation and discussion on alternative standards and potential modifications to the annual rent increase of the ARO, and analytic methodology (Housing Staff, Facilitator)
6:35	(e) Presentation and discussion on potential modifications to the cost pass-through provisions of the ARO (Housing Staff, Facilitator) ACTION: Conduct a straw poll on potential modifications to the debt service pass through provision of the ARO <u>Background materials:</u> Cost Pass-through Worksheet
8:15	(f) Open Forum
8:30	(g) Adjourn Next Meeting: Wednesday, October 28, 2015, 6:00pm San Jose City Hall, Council Chambers 200 E. Santa Clara Street, San Jose



All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City of San Jose Housing Department, 200 E. Santa Clara St., 12th Floor, San Jose, CA 95113 at the same time that the public records are distributed or made available to the legislative body.

To request an accommodation for this meeting or an alternative format for any related printed materials, please contact Ann Grabowski at 408-794-7472 or Ann.Grabowski@sanjoseca.gov or 408-294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

Para residentes que hablan español: Si desea mas información, favor de llamar a Theresa Ramos al 408-975-4475.

Riêng đối với quý vị nói tiếng Việt : Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Therese Tran, Đ.T. 408-793-5349.

對於說華語的居民: 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

Para sa mga residente na ang wika ay tagalog: Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Arlene Silverio sa 408-793-5542. Salamat Po.

***You can access the agenda and all attachments electronically at the 2015 Apartment Rent Ordinance Update website at: <http://www.sanjoseca.gov/index.aspx?nid=4744>

ADVISORY COMMITTEE: APARTMENT RENT ORDINANCE
REGULAR MEETING ACTION MINUTES
OCTOBER 7, 2015

MEMBERS PRESENT: Matthew Carney
Gustavo Gonzalez
Joshua Howard
John Hyjer
Amiee Inglis
Roberta Moore
Melissa Morris
Elizabeth Neely
Michael Pierce
Eloise Rosenblatt
Tom Scott

MEMBERS ABSENT: Elisha St. Laurent

STAFF:	Jacky Morales-Ferrand	Housing Department
	Wayne Chen	Housing Department
	Paul Lippert	Housing Department
	Ramo Pinjic	Housing Department
	Ann Grabowski	Housing Department
	Shawn Spano	Contracted Facilitator

- (a) **Call to Order/Orders of the Day**—Shawn Spano opened the meeting at 6:11 pm.
- (b) **Introductions**— Mr. Spano introduced himself and Committee Members introduced themselves, including Mr. Matthew Carney, the final tenant representative.
- (c) **Unfinished business from September 30th meeting, if any (Housing Staff, Facilitator)**

Mr. Spano reviewed the ground rules provided at the 9/30 meeting.

Ms. Neely asked how the Committee’s question will be answered? Web or in person?

Mr. Gonzalez stated that he was pleasantly surprised that only .4% of the total properties were engaged in the petition process. Average price per 1-unit bedroom as stated in the 9/30 powerpoint seems unrealistic and outside of his experience as a real estate broker. Would like to see the actual data as to where that information came from.

Mr. Chen responded that we have procured a new data source through CoStar. Also investigating rate of change in addition to the delta between ARO and non-ARO rents.

Ms. Morales-Ferrand also responded that it’s very difficult to monitor ARO rents because we’ve never recorded rents

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Ms. Moore asked when the answers and the data that was requested at the 9/30 meeting would be provided.

Mr. Chen responded that the consultant team will be retrieving as much historical data and information from as possible.

Mr. Pierce asked if the Committee be able to see the reporting data before the report goes to the City Council? And, should we wait for the consultant's report?

Ms. Inglis stated that data is important and that additional data is available through the Census. Committee should patiently trust the process. The City Council asked the group to address the problem so the Committee should take the issue seriously rather than question whether or not there is a problem to address.

(d) Presentation and discussion on the inclusion of a requirement for income qualification of tenants in the ARO (Housing Staff, Facilitator)

Ms. Morales-Ferrand presented information on the Council referral to explore creating an income restriction for ARO units.

Mr. Pierce: landlords are already providing a public subsidy – its just not funded by a public entity. If looking at marginal price – the lower you allow the price, the longer the tenants stay which reduces the units available. If someone's income jumps, what if they're no longer protected under rent control. Then no need for City staff. Over time it would allow more units to rise faster.

Ms. Moore: The income qualification was intended to prevent abuse and keep units available for those who need it.

Ms. Rosenblatt: Sympathetic to concerns of owners. Has experience with income qualification as a lawyer. People lie in their court documents under penalty of perjury and she's sure they'll lie or underreport income to owners.

Ms. Morris: Rent control is good to prevent displacement of long-term and in-place tenants. Because tenants have stability in their housing they may be able to build wealth for education, savings, etc. Looking at income qualification, it doesn't reach the goal or purpose of the ARO.

Mr. Scott: City has 17,000 affordable units. BRM has many formulas. We aren't serving enough of the very low income people. Most affordable units go to people with higher income. Wonders how many people means test out of affordable housing. Lowering the allowable rent increase isn't going to solve the main problem of someone not being able to afford rent.

Ms. Inglis: Means testing associated with ARO programs is a solution looking for a problem. Median household income for low income tenants – won't statistically have a lot of tenants. Non-issue. Reiterate point previously: ARO is best at anti-displacement for in-place tenants. Can't have vacancy control so we can't really look at rent control as an affordable housing policy.

Mr. Hyjer: Income restriction is for existing tenants because when the unit becomes vacant, the unit goes to market. Mr. Pierce's suggestion allows landlords of units with tenants whose income grows, to recoup more in rent because the tenant no longer needs the assistance that they once did. Means testing helps in that way.

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Ms. Rosenblatt: Lives in a 40-unit complex. Some units set aside for seniors on fixed incomes. When building was purchased by new owner, those units were eliminated. Wonders if that requirement exists to set 10% of units aside.

Mr. Hyjer: Depends on the type of program that the building owner was participating in. Possibly a bond restriction or a program that was part of the deed.

Mr. Gonzalez: His tenants are low income families. The real answer is added supply of below market rate units. We should incentivize Mr. Hyjer's company to build more below market rate units.

Mr. Howard: Rent control is an affordable housing program but the subsidy comes from a private owner, not the government and the subsidy is tax free to the recipient. People who need the help are those with less than \$100k. We need to have a better understanding of who lives in these units to ensure that people are receiving the help they need. Maybe means testing is done with an incentive to landlords to rent to tenants who are earning a certain percentage of median income.

Ms. Neely: How are incomes tied to rent increases under income restriction? Can income fluctuate in an income restricted program?

Ms. Inglis: Helpful if we could scale back rhetoric. Rental subsidy programs exist. Rent control is not a subsidy program.

Mr. Pierce: Important to note that income qualification could remove the incentive for a higher income person who is receiving a subsidy for their rent that they don't need. If the rent restriction is removed, the tenants rent can grow and they can move out and have the unit available to the lower income tenant.

Ms. Rosenblatt: Doesn't have a problem with a means test, but wonders if there is a means test and monitoring that owners would even like.

Temperature Check: Should the City continue to explore developing an income qualification model for the ARO?

Yes: Howard, Pierce, Scott, Moore, Gonzales

Unsure: Carney, Neely, Rosenblatt

No: Morris, Hyjer, Inglis

Mr. Howard: Recommendation: Should the City explore an incentive based income qualification program?

Yes: Gonzalez, Rosenblatt, Moore, Scott, Pierce, Howard, Carney, Hyjer

Unsure: Morris

No: Inglis

(e) Presentation and discussion on the inclusion of duplexes in the ARO (Housing Staff, Facilitator)

Mr. Howard: Asked if there been a legal review as to whether this was legal under Costa-Hawkins.

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Ms. Inglis: Questions on Costa-Hawkins. SF could only apply it up to 1979.

Mr. Hyjer: When scrubbing the data, pull out the number of owner occupied units.

Ms. Moore: Including duet homes and duplexes would discourage single family homeowners from building units over their garages or from adding density to property. Creating a rental regulation for those units would discourage those additions which is a city goal.

Mr. Scott: Against adding small properties under rent control. Recent immigrants often look at these properties to move their families in.

Mr. Pierce: Liberalizing planning process to include granny units is a way to expand the housing stock. Should not hurt that building type by regulating duplexes.

Mr. Howard: Concerns about data available. The Committee has very meaty issues to take up. Not sure this is an issue that merits addressing. Recommended doing a temp. check now about whether to take the issue up at all.

Mr. Morris: In favor of including duplexes. Issue is significant and shouldn't be treated lightly.

Agenda item will move forward under unfinished business.

(f) Adjourn

Facilitator Shawn Spano adjourned the meeting at 8:55pm.

APARTMENT COST WORKSHEET

The Rental Dispute Mediation and Arbitration Ordinance provides for rent increases to be justified by one or more of three methods:

- 1) An increase in operating and maintenance, capital improvement and rehabilitation costs, plus 5% of the tenant's current rent (pp. 2 - 5).
- 2) A portion of an increase in debt service (mortgage) costs (pp. 6- 9).
- 3) Any other economic or value information which the parties believe relevant (p. 10).

You can submit a claim that your rent increase is justified under any one or any combination of these three methods. These worksheets provide formats for claiming and calculating rent increases.

When you use the first two methods you are claiming that your business had increases in certain expenses. You will need to document these claims at the hearing.

For operating and maintenance, capital improvement and rehabilitation claims you will need to submit two years worth of bills and receipts. Hearing officers will not accept estimates and usually accept summaries (such as financial reports or tax forms) only after those summaries have been proven to be accurate.

For debt service claims you will need to document the cost of the previous loans, the principal amount and cost of the current loans and will need to submit a lenders appraisal dated as of the most recent loan. The hearing officer can accept the purchase price as the appraised value only if you, the hearing officer and two thirds of the tenants agree. If your lender does not release their appraisal you may need to secure an appraisal. In that case, obtain a copy of the appraisal requirements from Rental Rights & Referrals for use by the appraiser. All loans need to be secured by the rental property and you should have proof of this, such as copies of the current loan documents, available as well.

All evidence submitted for review by the hearing officer becomes part of the public record and is retained by Rental Rights & Referrals for several years. The tenants in the case have a right to review, copy and comment upon the evidence in the hearing. The public also has a right under the California Public Records Act to review or copy any public record. It is recommended that you submit three (3) photocopies of your evidence but have the originals available in case there is a question as to the accuracy or legibility of the copy.

The decisions of the hearing officer are based upon the Program Regulations and the Rental Dispute Ordinance. You can obtain a copy of these documents from the Rental Rights & Referrals.

Finally, the program staff can help explain the rules but cannot assist you in preparing your claim. If you need such assistance you may wish to consult with a financial, property management or legal professional.

PART ONE OPERATION AND MAINTENANCE

In order to use this method you **must document two years** operation and maintenance costs plus any capital improvement and rehabilitation costs.

- To start, fill out the address of the property and the effective date of the rent increase at the top of the page.
- Next, enter the costs for the two years in Section A.

Operating and maintenance costs are expenses (including increases in variable rate mortgage costs) incurred in operating and maintaining the rental complex. Calculate the increase or decrease for each category and enter the result in the right hand column. Total the increase (or decrease) and divide by 12 to calculate the monthly increase. The category headings are examples and you can use different ones or substitute your own financial report if you wish.

- If you are claiming capital improvement costs you need to fill out Section B. Capital improvement costs improve the value of the property, convert it to a new use or extend its useful life. Fill out this section by entering the name or description of the improvement, the date of the improvement and it's cost. Total the cost for all capital improvements at the bottom of the section then divide by 60 to calculate the monthly increase.

**COST WORKSHEET
PART ONE
OPERATION AND MAINTENANCE**

EFF. DATE: _____

PROPERTY ADDRESS: _____

**A. OPERATION/
MAINTENANCE**

FIRST YEAR SECOND YEAR INCREASE/DECREASE

1	Advertising			
2	Rental & travel			
3	Cleaning			
4	Commissions			
5	Gardening			
6	Insurance			
7	Maintenance			
8	Legal & account.			
9	Utilities			
10	Refuse & garbage			
11	Security			
12	Taxes, permits			
13	Prop management			
14				
15				
16				
17				
18				
SUBTOTAL				

÷12

MONTHLY
INCREASE:

B. CAPITAL IMPROVEMENTS

	ITEM	DATE	COST
1			
2			
3			
4			
5			

SUBTOTAL:

÷60

MONTHLY
INCREASE:

- If you are claiming rehabilitation costs you need to fill out Section C. **These are costs for repairs ordered by Code Enforcement, the Building Division or the Fire Department, or for repairs damage resulting from fire, earthquake or other natural disaster.** Fill out this section by entering the name or description of the improvement, the date of the improvement and it's cost. Total the cost for all capital improvements at the bottom of the section then divide by 36 to calculate the monthly increase.
- Next, complete Section D by entering the monthly increases from Sections A, B and C. Add these together to calculate the monthly increase.
- You can allocate the increased costs by either an equal amount per unit or per square foot.

If you choose an equal amount per unit you should complete Section E1. Enter the monthly increase from Section D and number of units for the complex. Divide as shown on the form and enter the resulting pass through per unit.

Next, list each of the units included in this hearing and the pass through amount. Calculate 5% of each unit's current rent and enter that figure. Add the pass through amount and 5% of each unit's rent to calculate the cost justified rent increase.

- OR -

If you choose the square foot method you should complete Section E2. Enter the monthly increase from Section D and the total square footage for the complex. Complete the calculation as shown on the form and enter the result as the pass through per square foot.

Next, list the unit numbers involved in the hearing and the square feet for those units. Enter the pass through amount and multiply by the square feet for each unit to calculate the pass through for each unit. Calculate what 5% of each unit's current rent is and enter that figure. Add the pass through amount and 5% of each unit's rent to calculate the cost justified rent increase.

Sign and date the form. Please enter a daytime telephone number in case the staff needs to contact you.

C. REHABILITATION

	Item	Date	Cost
1			
2			

Subtotal:

÷36

Monthly Increase:

D. TOTAL INCREASE

O & M:	
Capital Improvement:	
Rehabilitation:	
Monthly Increase:	

E. ALLOCATION TO UNITS

1. By Unit _____ ÷ _____ = _____

Monthly Increase Number of units Pass through Per unit

Unit #	Pass through per unit	Plus 5% of current rent	=	Cost justified rent increase
		+	=	
		+	=	
		+	=	
		+	=	
		+	=	

2. By Cost Per Square Foot

_____ ÷ _____ = _____

Monthly Increase Total square footage Pass through Per square foot

Unit #	Square feet per unit	Pass through per square foot	=	Pass through	Plus 5% of current rent	=	Cost justified rent increase
		x	=		+	=	
		x	=		+	=	
		x	=		+	=	

_____ SIGNATURE
_____ DATE
_____ Phone

**PART TWO
DEBT SERVICE**

You can claim an increase in debt service costs to justify rent increases effective within twelve (12) months of the debt service increase. The loans must be secured by the rental property.

You will need the following documents:

1. A copy of the lenders appraisal. If you cannot obtain a copy you may need to hire an appraiser to complete a new appraisal. Contact the Rental Rights & Referrals Program for further information if you are going secure a new appraisal.
 2. Documentation of the previous loan cost.
 3. A copy of your mortgage documentation showing the cost and amount of the loan(s).
 4. A copy of your preliminary title report.
 5. If you are claiming points or loan brokers fees, documentation of these costs.
- In Section A enter the monthly cost of the previous debt service. If payments on these loans were not on a monthly basis determine the monthly cost by calculating the total payments required under the loan and dividing by the term of the loan.
 - In Section B enter the principal amount (amount borrowed), date of the loan, term and cost for each of the current loans. If any of the previous loans are still in effect include them again in this section.

Points, loan brokers fees and balloon interest payments can also be included in Section B. Calculate the monthly cost by dividing the total cost for these items by the term of the loan:

	Total cost	Term	Monthly
Points	÷	=	
Loan Broker's Fee	÷	=	
Balloon Interest	÷	=	
Total Monthly Cost			

- Enter the total principal (from Section B) and the lenders appraised value in Section C. Divide the total principal by the lenders appraised value and enter the result (the “loan to value ratio, or “LV”).
- Section D applies only if the LV is .7 (70%) or less. (If you’re LV is more than .7 go to Section E). If your LV is .7 or less, enter the total monthly costs from Section B and Section A. Subtract A from B and enter the result as the increase in cost. Multiply that figure by .8 to determine the pass through. Go to Section F to allocate the pass through to your rental units.

**COST WORKSHEET
PART TWO
DEBT SERVICE**

A. PREVIOUS DEBT SERVICE

	Monthly cost
1	
2	
3	
Total monthly cost	

B. CURRENT DEBT SERVICE

Principal amount	Date	Term	Monthly cost
1			
2			
3			

Total principal

Total monthly cost

C. LOAN TO VALUE RATIO

$$\frac{\div}{\text{Total principal}} = \frac{\text{Lenders value}}{\text{appraised LV}}$$

D. IF LOAN TO VALUE RATIO (LV) IS 70% OR LESS

$$\frac{-}{\text{Total monthly cost (current)}} = \frac{\text{Total monthly cost (previous)}}{\text{Increase in cost}} \quad \mathbf{X .8} = \frac{\text{Pass through}}$$

- Section E applies if your LV is over 70% (.7). Enter the total monthly cost for the current loans and divide by the LV. Next, multiply the result by .7 to determine the prorated cost. On the next line the total monthly cost for the previous loans is subtracted by the prorated cost to determine the allowable increase in debt service cost. Multiply by the factor obtained from the table to determine the pass through:

LV	FACTOR	LV	FACTOR	LV	FACTOR
71%	79.5%	81%	71.5%	91%	61.5%
72%	79.0%	82%	70.5%	92%	60.5%
73%	78.5%	83%	69.5%	93%	59.5%
74%	78.0%	84%	68.5%	94%	58.5%
75%	77.5%	85%	67.5%	95%	57.5%
76%	76.5%	86%	66.5%	96%	56.0%
77%	75.5%	87%	65.5%	97%	54.5%
78%	74.5%	88%	64.5%	98%	53.0%
79%	73.5%	89%	63.5%	99%	51.5%
80%	72.5%	90%	62.5%	100%	0.0%

- You can allocate the increased costs in Section F by either an equal amount per unit or per square foot.

If you choose an equal amount per unit you should complete Section F1. Enter the pass through from Section D or E and number of units for the complex. Divide as the monthly increase by the number of units and enter the resulting cost justified rent increase.

- OR -

If you choose the square foot method you should complete Section F2. Enter the pass through from Section D or E and the total square footage for the complex. Complete the calculation as shown on the form and enter the result as the pass through per square foot.

Next, enter the unit numbers involved in the hearing and the square feet for those units. Enter the pass through per square foot amount and multiply by the square feet for each unit to calculate the cost justified rent increase.

Sign and date the form. Please enter a daytime telephone number in case the staff needs to contact you.

E. IF LOAN VALUE IS OVER 70%

$$\frac{\text{Total monthly cost (current)}}{\text{LV}} = \text{Prorated cost} \times .7$$

$$\frac{\text{Prorated cost}}{\text{Total monthly cost (previous)}} = \text{Factor (See table)} \times \text{Increase in debt service cost} = \text{Pass through D.S. cost}$$

F. ALLOCATION TO UNITS

1. By Unit

$$\frac{\text{Monthly increase}}{\text{Number of units}} = \text{Cost justified rent increase}$$

2. By Cost Per Square Foot

$$\frac{\text{Monthly Increase}}{\text{total sq footage}} = \text{Pass through per square foot}$$

Unit #	Square feet for unit	Pass through per sq	Cost justified Rent Increase
		X =	
		X =	
		X =	

Signature

Date

Telephone

PART THREE OTHER FACTORS

You can also claim that the rent increase is justified by other factors you consider relevant. These factors can be claimed either by themselves or in combination with an operation and maintenance and/or debt service increase claim. Your claim of other relevant factors would only apply to the portion of the rent increase, which is not justified by increases in operation and maintenance and/or debt service. For example, if you proposed a \$70 rent increase and showed that operation and maintenance cost increases justified a \$50 rent increase, your claim of other relevant factors would apply to the remaining \$20.

The Rental Dispute Ordinance lists a variety of examples. Included in these are the physical condition of the unit, the quantity and quality of maintenance in the past year, any increases or decreases in services, and the frequency and amount of past rent increases.

The Ordinance also considers the “existing market value of rents for units similarly situated” to be one of these factors. Rent surveys should compare similar units. A rent survey, which compares rents for new tenants to the rent for an existing tenant, can be challenged as not being similar. It has also been held to be improper to base a rent control decision solely on the rents of units, which are not subject to rent control.

When you make a claim under this section the tenant(s) can also make claims. For example, the property owner might provide information on past rent increases while the tenant provides information on the quality and quantity of maintenance.

When a claim is made under this section the tenant may also make a claim that the rent increase would pose a financial and economic hardship. (This type of claim can not be considered under claims of increased operation and maintenance and/or debt service costs).