

ADVISORY COMMITTEE: APARTMENT RENT ORDINANCE
REGULAR MEETING ACTION MINUTES
OCTOBER 21, 2015

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

MEMBERS ABSENT:

STAFF:	Jacky Morales-Ferrand	Housing Department
	Wayne Chen	Housing Department
	Maria Haase	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 6:16 pm.

(b) Introductions— Mr. Spano introduced himself, committee members introduced themselves, and members of the Housing Department introduced themselves.

(c) Approval of the October 7, 2015 Action Minutes

No action taken – review only

(c) Unfinished business from October 14th meeting, if any (Housing Staff, Facilitator)

There was no unfinished business.

(d) Discussion and possible action on potential modifications to the cost pass-through provisions of the ARO (Housing Staff, Facilitator)

Mr. Chen began the presentation on the cost pass-through provisions of the ARO.

Ms. Morris asked if a landlord wants to increase the rent above 8%, does the landlord have to file a petition with the City. Both the regulations and the Ordinance say “may” instead of “must”. Law Foundation experience is that the onus is on the tenant to file a petition.

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Ms. Rosenblatt asked if the reason that the pass through petitions haven't been done is because the real estate market has been flat. Most improvements are done at the time of sale.

Ms. Moore responded that she did her improvements as tenants vacated units to bring them up to standard.

Mr. Scott responded that utilizing the pass through involves a lot of paperwork and may require hiring an accountant and an attorney. Some owners may be making the decision to use the 8% or the 21% because those are easier to do and require less maintenance. Instead of Ms. Rosenblatt's example, Mr. Scott said that

Mr. Pierce said that the market constrains owners because people may not be willing to live in units if the rents are increased too high. Also the restriction of one increase per 12 months means that owners have to be strategic on when to increase rents. This is the biggest concern to owners because the market cycles. Lastly, the hearing officer has the final discretion to lower the increase.

Ms. Neely asked about the pass through process and if professional services are really warranted.

Mr. Chen responded that attorneys are not regular attendees of hearings.

Ms. Neely responded that she doesn't quite understand why an owner would choose not to follow the process if the amount of money is available.

Mr. Gonzalez responded that cost pass through provisions do not meet the standards of certainty, predictability and fairness.

Ms. St. Laurent said that she lived in her unit for five or six years during the economic downturn, but her landlord did not reduce her rent. Asked how many cases have been resolved voluntarily. Ms. St. Laurent wondered how owners can say that the process is long and difficult if they've never been through it.

Mr. Pinjic responded that not many people have used the process.

Ms. Inglis asked if all pass throughs increase the base rent in perpetuity. Even through vacancy decontrol. Asked how Santa Monica's pre-authorization work happens. From her experience other cities see more cost pass-throughs because their annual allowable increase is lower. Believes that one reason the pass through isn't being used is because the annual allowable is less effective.

Ms. Morris asked if a petition has ever been denied based on tenant hardship. Believes that San Jose isn't seeing petitions because the 8% is generous. Many business costs like mortgages and insurance are tax deductible. Because the City doesn't have a mechanism to track annual rents, it's really hard to understand what's happening in the market. Believes that cost pass-through provisions do create some fairness to both groups, as long as there are limits. Don't want to create a disincentive to properly maintain buildings. Owner hardship is also part of the petition process.

Ms. Moore said that the 8% and 21% helps a new owner improve properties that haven't been kept up or improved. What percentage of owners are English as a Second Language or small business owners? Predicted that if annual allowable is lowered, businesses will start up to help landlords use pass throughs.

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Mr. Scott agreed that if the annual allowable increase is lowered it's likely to push owners to use pass throughs. May reach a point where there becomes an incentive for an owner

Mr. Howard wondered why discussion is being had outside of the scope as directed by the City Council. Believes that there are two ways to push a rent increase: they can go through the pass through process or they can issue a rent increase over and above the 8% and be prepared to be challenged as an excessive rent increase.

Ms. Morales-Ferrand responded that the City's interpretation of the Ordinance is that the landlord must file a petition.

Mr. Howard continued that the annual allowable increase provides certainty and predictability to the owners. Ratcheting down the annual allowable increase could place a significant burden on staff and owners.

Ms. Rosenblatt asked about the demographic of owners, as many who have participated in the process are mom and pop owners and first time investors. Is there any provision in the ARO as it currently exists to determine the extent of the owner's real estate holdings?

Mr. Chen responded that it does not.

Mr. Pierce responded that cost pass-through provisions do not meet the goals of predictability, fairness or certainty.

Ms. St. Laurent said that ownership brings with it a responsibility to research the investment prior to investing. Believes the cost pass-through provisions provides predictability and fairness.

Ms. Morris said that when buyers consider buying a rental property, rents are part of the financing and purchase. Owning a rental property is a longer term investment and with that come with fluctuations in the market. Stated that there are ways to recapture costs outside of pass throughs or rent increases because many costs are tax deductible.

Ms. Inglis said that just cause evictions are related to the issue. Believes that the mediation/arbitration process is a bit long and could be reduced to just arbitration. If the annual allowable increase is reduced, it's important to have a cap on the timeframe for pass through provisions.

Mr. Scott focused on the fair return provision and said that there is no current standard for what a fair return is. The 8% provides enough income to maintain properties

Ms. Moore said it's important to remember the cycles in the market. Her business has been dependent on high-tech since 1983. When layoffs happen, the market drops. Believes that it's important to make it fair based on market cycles.

Mr. Gonzalez said that at 8% the ARO is working because Owners have enough income to take care of properties outside of the cost-pass through process and the City isn't seeing enough petitions to signify that there is a problem. Why are we focused on this?

Mr. Chen continued the presentation to review debt service petitions.

Mr. Howard asked if each of the properties are unique and also if there have been

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Ms. Moore asked how many bedrooms exist in each unit.

Mr. Scott asked if debt service occurs in the same year as other pass throughs. He also asked if the Operation & Maintenance Pass-through offered the use of variable rate interest as opposed to fixed rate interest.

Mr. Gonzalez asked about the 30 year mortgage terms. Are these 30 year fixed terms or 30 year amortization periods.

Ms. St. Laurent asked the public be respectful of during public comment.

Ms. Moore said that eliminating the debt service petitions will reduce the sale price of building which will impact the City's tax rolls.

Ms. Inglis said that she doesn't see the purpose of the debt service pass through. For tenants the rent increases tied to debt service leads to displacement.

Ms. Morris said that she agreed with Ms. Inglis. She has worked with tenants impacted by debt service cases. Specifically one case was of an owner who took out a very expensive loan and passed costs along to the tenant. Displacement happens.

Ms. Rosenblatt is sympathetic to the investment process. There are many ways to disguise costs as debt.

Mr. Pierce said that the purpose of the debt service pass through is for owners to be able to recoup their costs and spread them over time (tenants). Removing the debt service provision will have an impact on sales and probably will reduce property maintenance.

Mr. Howard said that without this provision the property owner may go into foreclosure. Having a mechanism in place to pass on costs provides a financial benefit to the City and the County in property tax increment.

Ms. Morales-Ferrand asked for Mr. Howard to clarify the argument that foreclosure scenario is likely without debt-service.

Ms. Morris stated that she doesn't understand why the existence or non-improvement pass through would determine whether or not a property could be managed. If capital improvements are necessary, there is a cost-pass through provision for that.

Mr. Pierce said that without the pass through the land value would decrease as would assessed values and sales would also drop. If deals were done recently changes to the Ordinance could negatively impact them.

Mr. Carney said that 8% is only working on the part of the owners because it provides them enough profit. This discussion is happening because displacement is happening. Many people don't know that they live in an ARO apartment, which may be artificially reducing petitions.

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Ms. Neely said that if the rent increase is within 8% a tenant can't petition regardless of a person's ability to pay.

Mr. Gonzalez said that he isn't seeing displacement because he actively works to keep his tenants. Because only .4% of tenants have complained, there can't be a problem. Believes that displacement is happening in market rate units. Believes that education is necessary and the City should directly contact tenants to let them know.

Mr. Carney said that many people aren't able to file petitions because the current rate is allowable but is too high. Displacement is happening.

Mr. Scott said that it's hard to discuss these topics separately because all topics are interrelated. Is concerned that the outcomes of other cities haven't been provided. No rent control is the best outcome. San Jose is less bad than other cities. Does not agree that San Jose should gravitate toward the positions of other cities. Rent control provides a disincentive to investment.

Mr. Howard said that we should be considering how to make the debt service provision work for both owners and tenants. Perhaps the pass through should be amended to take into account the lending market's economic restrictions. 65% rent increases is high. The debt service provision can work for all parties.

Mr. Gonzalez said that number of total inquiries still doesn't constitute an issue.

Ms. Moore said that many people don't know that they're buying an ARO property.

Ms. Inglis said that debt service should be eliminated. It's improper to pass the risk of ownership on to tenants for uninformed business decisions. Other provisions of the ordinance provide a fair and reasonable return but the debt service provision is not an appropriate avenue. Many corporate landlords who purchased properties during the foreclosure crisis are offering subprime "landlord loans".

Ms. Morris said that the provision does not prohibit excessive rent increases. The debt service pass through should be eliminated.

Ms. Rosenblatt said that when people feel powerless they don't speak up. The number of client interactions or petitions with RRRP is not indicative of there not being a problem.

PUBLIC COMMENT:

Owner: Costs for capital improvements are often borrowed over ten years. It's important to be able to pass along those costs. Provided an example.

Owner: Not all costs are covered by pass through. Small landlords can't handle the pass through. Especially because English is a second language for many.

Owner: The cost incurred by a landlord due to tenant neglect or damage is huge. This isn't normal maintenance. Owners have to hold those costs for a year before it can pass on costs.

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Owner: Remodeled a unit and found water damage. Repairs cost 30,000 but he can only pass along a certain percentage of the cost. Many costs can't be anticipated.

Owner: Didn't know about pass throughs before tonight. Believes she would need a lawyer to follow the process. Uses the annual allowable increase to operate – not pass throughs.

Owner: Price controls and wage controls were implemented during WWII because of an emergency.

Tenant Advocate: 8% is too high. Landlords aren't using the pass through process. 8% was set at inflation – not to avoid the pass through provisions. Questions: Data on market cycle – how low do the rents go? Who are the landlords? [Portfolio]

Tenant: Curious that landlords are making an investment and then transferring the risk. Landlords should understand that their need to carry the risk. Debt service increases speculation.

Owner: Opposed to including duplexes. Close to retirement; bulk of retirement invested in property. Needs to be able to sell.

Tenant: Debt service allows one to transfer the risk to tenants. Price gouging is bad. People in San Jose

Tenant: San Jose is the only city in the area with this sort of ordinance. It's unfair to tenants to pass on risks to tenants. Has been displaced. Many friends have been displaced or have moved out of the area or the state. Not fair to renters.

Owner: Over the last 5 years interest rates have been very low. The change in debt service pass through is impacted by the interest rates. Debt service allows for properties to be maintained.

Tenants: Debt service provision is a luxury to owners. Debt service displaces renters. Maybe one solution is to increase the minimum wage. Need to find a middle ground.

Owner: Costs go up for all things. Asks tenant committee members to understand that business costs go up. He is a flexible owner and City should make the policy comprehensive.

Tenant: Believes that the City should continue to look at amending the debt service pass through. More education is necessary.

Owner: 8% is essential because cost pass throughs are very difficult. Tenants don't pay rent and then are evicted. Vacancy is expensive and so is damage incurred by tenant. The process is too complicated. It's drafted by attorneys – too difficult.

Mr. Howard asked if the committee should be offering specific recommendations and when that would take place.

Mr. Chen responded that the committee will have an opportunity to

Ms. Morales-Ferrand noted that this topic will be referred to the next meeting for specific changes to the debt service pass through. Other questions and data requests will be provided as well.

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Ms. Moore said that she would like to know how many bedrooms were in each other unit.

Temperature check question – deferred to 10/28/15 meeting

(e) Open Forum

Tenant: Renters in San Jose need just cause eviction protections and a 2% cap. Overcrowding is a symptom of high rents. People living in poverty are struggling to pay for basic needs.

Owner: Understands that many people can't afford rents. City needs to handle this problem – not owners. New units are driving up rents.

Property Manager: Rent control reduces the availability of units. Tenants' mobility decreases in rent control units. It only benefits current tenants.

Owner: Ability to raise rent should not be restricted because costs change across the economy, which is counterproductive to a fair and reasonable return. Owners don't want to deal with pass-through.

Owner: Median rent should be provided instead of average rent. 2% of economy supports rent control. San Jose is the birthplace of innovation. Policy suggestions should be outside the box. Tech is starting to lay people off and the next cycle is coming.

Owner: The costs of maintenance are at least fronted, and often amortized over 30 years, which doesn't produce much as a tax write-off. Tech layoffs are happening and next cycle is coming.

Tenant: Always lived in San Jose and doesn't want to move. Has been homeless – that's survival and far beyond buying a building. As speaker has advanced himself his standard of living has gotten worse. Rent went up 21% and had to move – even with two people working 50 hours a week.

Owner: Sent out 4,300 postcards about rent control. One of three questions asked today was from a WWII veteran owner. Should treat him more fairly.

Resident: Rent control doesn't work because it creates two tiers of housing and people stay in the units that are below market. Taxpayers want the government to solve the affordable housing issue by providing supply.

Owner: In CA only five jurisdictions have just cause eviction ordinances. Each of those cities has high crime which is a strong correlation.

Tenant Advocate: Increasing rents causes great hardship for tenants. Vacancies are created to bring in people who can afford higher rents. Pass throughs increases this type of displacement.

Owner: Landlord 30 years. Never evicted tenants but many don't take care of properties. Has a lot of empathy for tenants who are struggling but the City should not get involved in regulating the rental market.

Owner: Can't predict all costs like gas prices, utility costs, etc. Asked that presentations be provided prior to the meeting.

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Tenant: The middle class cannot keep up with an 8% increase. Minimum wage isn't going up. Family has moved out of state even though they settled here. Why are these cycles continuing to happen?

Owner: Don't fix what is not broken. Pass throughs were created for a reason. Repairs are expensive. Process for pass throughs is not easy so it's only utilized when it's really necessary. If there isn't enough money, there will be more deferred maintenance, which will lead to less supply.

Tenant: Has had a very hard time finding housing and has moved many times this year. Being a full time student and worker is very difficult, especially when the housing market is so expensive. Being a rental housing owner is a privilege. Privileges shouldn't be considered over rights.

Owner: Cost pass through doesn't increase profits for the landlord because it's based on true costs. No business can stay in business if it can't break even. Rent control doesn't bring more supply. Rent control shouldn't be changed.

Owner: Tenants and City go after Owners when rents are unaffordable. Small owners don't make much money and work a lot. Tenants are in a better position than the owners.

Tenant Advocate: Property owners are not an oppressed group and they aren't a poor group. Rent control is broken. Working on an "all solutions" approach - not just about rent control but pursuing many changes.

Tenant: People are about the homeless. The middle class cannot live here. His passion is really a transmission of pain of those who are scared and impacted and being displaced.

Owner: All the tenants seem to feel that every landlord is charging 8% every year. Suggests that the City host a questionnaire to determine the actual rents and rate of increases over the last two years.

Owner: Over the last 20 years the Valley has been cycling through boom and bust but keeps improving. This is because people are working very hard. Those who work hard and save money to purchase properties. This is good for everyone.

(f) Adjourn Facilitator Shawn Spano adjourned the meeting at 8:52 pm.



Public Discussion: Updating the ARO Apartment Rent Ordinance

Discusión Pública: Actualización de la ARO Apartamento Ordenanza de Arrendamiento

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Item # E Número de artículo

Handwritten list: 1 cost, 2 predictability, 3 fairness. Large bracketed note: disclosure to LL re: ARO?

Handwritten note: w/in 5 days of filing notify tenant notice of rent increase

Handwritten note: - address tax issue - ~~prop~~ landlords - write off

over continuado

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Item # e
Número de artículo

* Costs increase periodically - yearly etc.
o.s

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Item # _____ Número de artículo

Slide 19 % increase effect of higher real estate costs rather than interest rates. % increase is higher on low rents.

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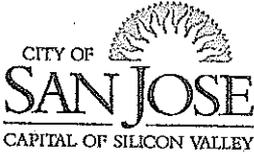
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Item # E
Número de artículo

I am a small investor
I am unable to go
through the process of
Cost Pass Through Provision
=> 8% allowable Increase is
necessary

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Item # _____
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Cost is cost! Cost past through is not going to increase a penny of profit for the owner. The owner applies for cost pass through is only to bring losses situation back to break-even. This is not about greedy property owner trying make a windfall. Just to cover the cost.

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San Jose rent control is not going to increase any affordable housing or help any more low income families. It is designed to make landlord to provide subsidy to the tenant.

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Item # _____ Número de artículo

Small investors. There are always expenses related to damages / repairs.

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Lined writing area with 25 horizontal lines.

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Item # _____
Número de artículo

- Owners don't participate in pass-through program due to lack of knowledge & complication of program. Plus we can work with Bldg incentive to cover capital ~~improvement~~ improvement
- Expense can be unpredictable due to things like recession, drought, & gas prices
- We have reduced rents during economic down turns

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Talk about Rent profitability.

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Discusión Pública: Actualización de la ARO Apartamento Ordenanza de Arrendamiento

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Item # open
Número de artículo

Middle class can't keep up

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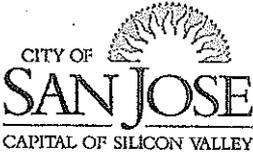
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Item # (f)
Número de artículo

Re: price though is too complicated
there really a few home providers
(1) are using this, most of them
don't understand the requirements
and application process too complex
(2) got a few suggestions to solve
problem. think outside of box

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Item # open Forum
Número de artículo

tenants

① Reduced ~~costs~~ mobility by reluctance to move on because the low price and only benefit the current one that are in the unit.

② Consumer Energy Cost
In many rent controlled communities they have to pay a finder fee to obtain a unit, a gray market are developed in which units are pass among friends or family member.

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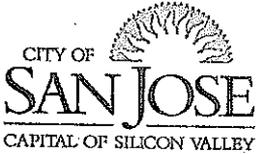
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Public Discussion: Updating the ARO Apartment Rent Ordinance

Discusión Pública: Actualización de la ARO Apartamento Ordenanza de Arrendamiento

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Item # F
Número de artículo

It is unfair that rent control only applies to building built before a certain year.

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IMPRIMIR CLARAMENTE

Name Nombre : Phuong Malkin

Email Email : _____

check all that apply marque todo lo que corresponda

I live at an ARO apartment
Vivo en un apartamento alquiler ordenanza.

I own or operate an ARO apartment
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I am a member of the public. Soy un miembro del publico.



Public Discussion: Updating the ARO Apartment Rent Ordinance

Discusión Pública: Actualización de la ARO Apartamento Ordenanza de Arrendamiento

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Item # 2
Número de artículo

THIS CONTROL WAS A TEMPORARY
EMERGENCY WWII LAW.

WHICH LAWS WERE MADE TO
INCLUDE RENTAGES - FOOD RATIONING -
CLOTHS APPLIANCES, et al.

THIS IS THE ONLY LAW THAT SHOULD HAVE
BEEN A SCURRIE LAW WITH A TERMINATION
WHEN WWII WAS DECLARED ENDED

THIS NOW IS AN UNFAIR LAW AS IT
PUNISHES THE POOR AND GIVES
SPECIAL PRIVILEGES TO THE WEALTHY.

OR send your comments to o envíe sus comentarios a
Wayne.Chen@sanjoseca.gov OR Ann.Grabowski@sanjoseca.gov

About You Acerca de usted

PLEASE PRINT CLEARLY IMPRIMIR CLARAMENTE

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Email Email: BARDER JACK@EARTHLINK.NET

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IT ALSO ADD THE BUDGONS
TO THE SMALL LANDLORDS?

IT ALSO SEGREGATES THE
POOR FROM THE RICH

EQUAL OPPORTUNITIES ARE
NOT DISTRIBUTED EQUALLY

THE HISTORY OF
OPC OFFICE OF
PRICE CONTROL WAS TO
HAVE ENDED

THIS IS PAST THE TIME AS
ORIGINALLY INITIATED
OLDER RENTALS HOLD THE POOR

NEW RENTALS ARE OCCUPIED
THE RICH

Jack L. Lawrence
A LIFE TIME RESIDENT

thank you

gracias



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Debt service pay through allows landlord to get all of their new debt covered by their customers (renters) What other business can do this (except maybe P.D.E). Added to already extremely high rent just isn't moral or fair. Some anticipation of future debts must be considered by property investors before purchase, rather than a guarantee of being able to pass these expenses on to renters.

over continuado

OR send your comments to o envíe sus comentarios a
Wayne.Chen@sanjoseca.gov OR Ann.Grabowski@sanjoseca.gov

About You Acerca de usted

PLEASE PRINT CLEARLY IMPRIMIR CLARAMENTE

Name Nombre: Muel Krant

Email Email: MILTURA@YAHOO.COM

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- SENIOR



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Item #
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It seems more like a luxury for the owners to even own a building. Because as a renter I know I can not even fathom owning a house let alone a building. I dont see how Debt relief is going to help the people of San Jose living in an ARO home. If you raise it even more how is that going over continuado

OR send your comments to o envíe sus comentarios a Wayne.Chen@sanjoseca.gov OR Ann.Grabowski@sanjoseca.gov

About You Acerca de usted

PLEASE PRINT CLEARLY IMPRIMIR CLARAMENTE

Name Nombre: Katie Martin
Email Email:

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AHO

to help anyone. Its just going to push people out even more to be on the streets or more to a different state. how is this helpful to anyone? Most people if not all are already struggling to pay the rent. Now I understand that the need to pay these mortgage but raising rent doesnt seem like a good cause for anyone but the owners how does this help the tenants? I dont think we are looking at the actual cause. Basically people cant afford rent. How does this change? maybe look at minimum wage and lowering it ~~to~~ 2% instead of 8%. Until the middle class can actually make it. My parents lived here 16 years ago and they stated that its only gotten worse in CA than in before. How is this happening?

If you dont want homelessness or displacement. Maybe dont have your rent so high. Because you will never be able to fill it bc rent is so high. There needs to

thank you **gracias**

Be a ~~to~~ happy medium for everyone



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I couldn't deliver this as Public Comment

General Comment for Committee

Share Your Comments

Item # _____

Número de artículo

Comparta sus comentarios

- 1) I purchased a 6 unit Apartment building in horrible condition -
- 2) There were two tenants paying no rent -
- 3) Two evictions - renovation of those units -
- 4) Attempted a Pass Through - one tenant challenged it -
- 5) Got to Mediation - Mediator took ^{over} 20% of ^{continued} because a tree branch covered the

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About You Acerca de usted Address on

PLEASE PRINT CLEARLY IMPRIMIR CLARAMENTE

Name Nombre: The Building - I settled.

Email Email: David Eisbach

check all that apply marque todo lo que corresponda

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- I am a member of the public. Soy un miembro del publico.

deisbach@sbcglobal.net

thank you

gracias