



City of San Jose

Advisory Committee for the Apartment Rent Ordinance

Summary of Advisory Committee & Public Input

Monday, December 7, 2015

San Jose City Hall – Council Chambers



Expectations

- Be committed to the process.
- Focus on interests over positions.
- Learn from differences.
- Seek areas of agreement.
- Help the committee achieve its goal.

Ground Rules

- Speak candidly and listen openly.
- Question ideas, respect Committee members.
- One person speaks at a time.

Item C – Summary of Committee and Public Input To-Date

Purpose of this Item

- Review what we heard through the process
 - Summarize key themes and recurring comments
 - Minutes and public comment cards in summary report
 - Committee and public input have not been fact-checked
 - Does not include staff analysis
 - Committee one of four key inputs to inform recommendations
- Opportunity for clarifications

Advisory Committee Process To-Date

- September 30, 2015: ARO provisions
- October 7, 2015: Income qualification, Duplexes
- October 14, 2015: Consultant scope of work
- October 17, 2015: Annual allowable rent increase
- October 21, 2015: Debt-service, Cost pass-throughs
- October 28, 2015: Petition and administrative hearing process; Data collection, monitoring, and enforcement
- October 31, 2015: Just/good cause ordinance

Income Qualification of Tenants

Income Qualification – Owner Input

- Too cumbersome for owners to implement and manage.
 - Verifying income, ongoing monitoring, etc.
- Owners lack authority to ensure that tenant income information is correct.
- Turnover of units based on income growth of a tenant produces vacancy, which is undesirable.

Income Qualification – Tenant Input

- Penalizes ARO residents for earning higher salaries.
- Not all income is verifiable.
- May harm vulnerable workers without registered income.

Income Qualification – Public Comment

- Will be costly and complicated to administer and enforce.
- Creates disincentive for tenants to earn a higher income.
- Difficult to verify tenant income.
- Would force landlords to take less qualified or lower quality tenants.

Income Qualification – Temperature Check Result

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

 Green: 5 Committee members

 Yellow: 3 Committee members

 Red: 3 Committee members

Absent: 1 Committee member

Did we capture your comments sufficiently?

Income Qualification – Variation

Variation of Council-directed income qualification provision from Landlord Committee member:

- Rather than remove ARO tenants in the event that their incomes exceed the maximum income limit, instead remove the ARO apartment from coverage under the Ordinance.

Income Qualification v2 – Owner Input

- Management of income restriction model is too cumbersome for owners/landlords.
- Owners lack authority to ensure tenant income information is correct.
- Landlords should be able to increase rental income when tenant's income grows.

Income Qualification – Tenant Input

- Tenants should have protection regardless of income.
- Removing the apartment from the ARO undermines a tenant's ability to save for homeownership.

Income Qualification v2 – Temperature Check Result

Should the City continue to explore developing a modified income qualification model for the ARO?

 Green: 9 Committee members

 Yellow: 1 Committee member

 Red: 1 Committee member

Absent: 1 Committee member

Inclusion of Duplexes

Duplexes – Owner Input

- Duplexes should not be included.
- Concerns about impacts of rent restrictions to recent purchasers with debt on their units.
- Many duplexes will be taken off the market through owner move-in exemption, providing a lower yield/benefit than expected.
- Even if the City yielded all 10,400 units as rentals, it would still represent a small fraction of total housing stock.
- Duplexes typically run by “mom and pops,” who would be disproportionately impacted financially and administratively.

Duplexes – Tenant Input

- Necessary to expand the supply of ARO housing.
- False dichotomy to say that the main issue is to only increase overall housing supply.
- Preventing households from being displaced and increasing housing supply are both needed.

Duplexes – Public Comment

- Duplex owners are mom and pop businesses.
 - Inclusion would impact their financial viability. Already challenging to make a profit.
- High housing costs due to housing supply. Rent control will not help.
- Duplexes should be included.
- Inclusion may cause owners to keep units off market.
- Duplex owners do not increase rents much annually.

Duplexes – Temperature Check Result

Should the City continue to explore the inclusion of duplexes in the ARO?

- Green: 6 Committee members
- Yellow: 0 Committee members
- Red: 5 Committee members

Absent: 1 Committee member

Did we capture your comments sufficiently?

Alternative Standards for Annual Allowable Increase

Annual Allowable Increase – Owner Input

- Existing 8% provision covers operations and maintenance, including costs that ARO currently allows to be passed through.
- Lowering annual allowable increase would impair owners' ability to keep up with costs of running business.
- Many owners do not increase rents up to the allowable 8% or may go years without increasing rents.
- “Fair rate or return” is subjective.

Annual Allowable Increase – Owner Input

- Flexibility is important to owners.
- Allows rents to “catch up” in the future is important.
- Markets are cyclical and people can move but buildings are in fixed locations.
- Rent ordinances cap annual allowable increases for tenants in a strong markets but no downside protection for owners in a weak market.
- Owners will respond to lower annual allowable increase by increasing rents to the maximum allowable every year to maximize profits.

Annual Allowable Increase – Owner Input

- Will result in decrease of the housing stock.
- An index does not include utility costs or allow for enough savings to cover costs for major repairs, maintenance, economic downturn.
- Do not pursue operating costs study, too difficult, costly, complex, and cumbersome.
- Low volume of tenant petition data for excessive increases shows that there is no problem.

Annual Allowable Increase – Tenant Input

- Lower annual allowable increase sufficient for owners to recover operations and maintenance costs.
- Existing pass-through provisions allow owners to cover costs for operations & maintenance, capital improvement and rehab.
- Apartment owners aren't using pass-through provisions.
- 8% annual allowable increase not intended to stay in perpetuity. Was based on inflation when ARO was implemented. Other cities have lowered initial rate.

Annual Allowable Increase – Tenant Input

- Increasing housing supply and preserving the supply of affordable housing are two strategies that go together. Not mutually exclusive.
- Recognize that this is a business but need to have provisions fair to both owners and tenants
- Constitutional standards exist for fair returns and case studies in other cities of alternatives standards for the annual allowable increase.
- Current annual allowable increase is much higher than the annual wage increases for the typical worker. This creates an unsustainable affordability gap.

Annual Allowable Increase – Tenant Input

- Unpredictable rental costs makes it impossible to save for homeownership.
- Homeowners have fixed-rate mortgages, which facilitates the predictability of their housing costs.
- High rents causing displacement for many people.
- Owners indicate that annual allowable increase provides ability to maintain their properties, but many properties are not being maintained or improved in a manner that reflects the rent increases that tenants receive.

Annual Allowable Increase – Tenant Input

- Rent ordinances in other cities did not cause their housing shortages or high housing costs.
 - Costs were already out of control and rent regulation helped mitigate displacement.
- Have not seen rents decrease for in-place tenants.
- Rent regulations do not cap rents.
 - Vacancy decontrol allows owners to increase rents to market when tenants voluntarily vacate, even if more than 8% increase.
- Operating cost standard is too complex.

Annual Allowable Increase – Public Comment

- Just because the ARO allows 8% annual increases does not mean owners actually raise rent that much.
- Rent control does not solve the affordable housing issue. Root cause is not enough supply of housing.
- Owners work hard, many are immigrants and apartments are an investment and a way to pay for college.
- ARO apartments are older and need to be maintained.
 - Costs are rising and ARO owners need to be able to pay for operations and maintenance costs.
- Landlords profit off of tenants. Rents are out of control and wages do not increase as much as rents.

Did we capture your comments sufficiently?

Debt Service Pass-Through

Debt Service Pass-Through – Owner Input

- Keep the provision as is.
 - Investors need the regulation to support the financial viability of their investment.
- Elimination may harm recent purchasers, who may be considering petitioning for a pass-through as part of their financing plan.
- Elimination may lead to foreclosure for units purchased within the year the provision is eliminated.
- Elimination will reduce property value at time of sale.

Debt Service Pass-Through – Owner Input

- Elimination will impair ability to make necessary improvements and investments to maintain apartment.
- Tri-County Apartment Association: Interested in discussing potential changes to the debt-service provision to reduce impact to tenants.
- Ordinance requires that the seller of an ARO building inform potential buyers of the ARO status.
 - Not all sellers comply, which can harm buyer.
 - Need education/enforcement.
- Cost pass-through worksheet is complicated.
- Pass-through amount subject to Hearing Officer discretion.

Debt Service Pass-Through – Tenant Input

- Debt service based rent increases are significant.
 - Results in immediate displacement.
 - Owners can raise to market rent due to “voluntary” vacancy.
- Transfers investment risk from owner to tenants.
 - Artificially inflates property values because investors, knowing they can pass costs, may bid more than they otherwise would.
- Renters finance a significant portion of buyers’ investment but see none of the benefit.

Debt Service Pass-Through – Tenant Input

- Debt-service pass-through should not be a public policy objective and should be eliminated.
- ARO provisions exist that allow fair & reasonable return.
 - Those provisions have not been utilized by the owners.

Debt Service Pass-Through – Public Comment

- Costs can be incurred by a landlord due to tenant neglect or damage. This isn't normal maintenance and owners have to bear those costs for a year before being able to pass it on.
- Did not know about pass-through process until night of meeting. Would need help to follow the process.
- 8% annual allowable increase too high.
- Landlords not using the existing pass-throughs to help with costs associated with running the business.
- Curious that landlords are making the investment, then transferring the risk/cost to tenants. Encourages speculation.
- Debt-service pass-through facilitates sales of apartment building if an owner needs to divest.

Debt Service Pass-Through – Temperature Check Result

Should the City continue to explore potential modifications to the ARO's debt-service provision?

- Green: 5 Committee members
- Yellow: 2 Committee members
- Red: 2 Committee members

Absent: 3 Committee members

Did we capture your comments sufficiently?

Petition, Mediation, and Arbitration Process

Petitions: Mediation and Arbitration – Owners

- Small number of items filed by owners (notices to terminate tenancy) and tenants (housing problems and excessive rent increases) with the City means that there is no problem with the ARO and that the issues that the City Council or the tenants are concerned about do not exist in a meaningful or prevalent way.
- What are the reasons owners give tenants notices to terminate tenancy? If this was known, it would provide a better understanding of the issues and concerns.
- Administrative hearing process is difficult to navigate. It takes time and energy to participate in the process.

Petitions: Mediation and Arbitration – Owners

- City should regularly notify owners of their responsibilities under ARO.
 - Lack of education and bad actors are the main issues.
 - Consider new programs to facilitate education and outreach.
- City should provide additional clarity about what is considered a “service reduction.”

Petitions: Mediation and Arbitration – Tenants

- Lack of petitions filed does not mean no problem.
 - May reflect that a “loose” Ordinance impacts tenants but there is nothing that could be done or that the apartment owners are not complying.
- Not possible to discover reason for the cause of a no-cause termination of tenancy. The ARO does not have a just cause ordinance.
- Tenants need more education of rights under Ordinance.
 - Many do not know their unit is subject to ARO or their right to mediation/arbitration.
 - Language access needs should be considered.

Petitions: Mediation and Arbitration – Tenants

- Mediation/arbitration process is long. Consider streamlining the process.
- Scheduling hearings and responding to petitions is cumbersome because of language, work scheduling, childcare, lack of resources, fear of retaliation from owners and other barriers.
- Burden falls of tenants to report what they believe to be violations against them.

Petitions: Mediation and Arbitration – Public Comment

- Apartments may need major repairs but rents may be too low to cover costs.
- Data does not support that there is problem with ARO.
- Number of petitions is low because the law is broken and ineffective. Ordinance does not work for tenants.
- Hearing process needs to be fair. It is too long and complicated for both owners and tenants.

Petitions: Mediation & Arbitration – Temperature Check Result

Should the City continue to explore potential modifications to the hearing and petition process?

 Green: 8 Committee members

 Yellow: 1 Committee members

 Red: 0 Committee members

Absent: 3 Committee members

Did we capture your comments sufficiently?

Administration, Monitoring, Enforcement

Admin, Monitoring & Enforcement – Owner Input

- Existing data does not suggest a problem.
- Explore new programs for outreach and education, such as ombudsman or community training program.
- City should track supply and demand of housing in SJ.
- City should not create bureaucratic systems that require additional staff.
- Data collection could be outsourced.

Admin, Monitoring & Enforcement – Tenant Input

- Need data on vulnerable populations.
- Lack of data does not mean there is not a problem. May be due to lack of compliance or understanding of City requirements.
- City needs to do more education for tenants.
- City needs to more closely monitor units to ensure compliance, enforce against bad landlords.

Admin, Monitoring & Enforcement – Public Comment

- City should conduct a survey of rents in ARO apartments. Duplexes should be surveyed separately.
- Data is important. Should collect data on all apartments to create clear dataset. ARO apartments rent for 30-40% below market rents.

Admin, Monitoring & Enforcement– Temperature Check Result

Should the City continue to explore potential modifications to the monitoring and enforcement process?

- Green: 5 Committee members
- Yellow: 4 Committee members
- Red: 0 Committee members

Absent: 3 Committee members

Did we capture your comments sufficiently?

Just/Good Cause

Just/Good Cause – Owner Input

- Current no cause termination of tenancy works for landlords. Just cause ordinance is not needed
- Owners need a simple and expedient method to terminate their relationship with tenants
- Current 60 & 90 day noticing requirements not expedient but is simple process to terminate tenancy and provides tenants enough time to find other housing.
- Some tenants are serial problem tenants.
- Unlawful detainer process expensive.
 - Small owners do not have resources to take tenants to Court.
 - Foregone rents add to the potential cost.

Just/Good Cause – Owner Input

- Unlawful detainer process is unpredictable and can go on for a longer period than described.
- Difficult to show evidence during the unlawful detainer process to demonstrate that problem tenant is violating lease terms.
- Landlords take their duty of care of tenants seriously, but just cause would take away safe harbor for landlords
- Tenants have the power in the current system. They can delay the process, or provide landlords a short notice if they voluntarily choose to vacate the apartment.
- Data does not support or show that there is a problem with the current provision for no-cause termination of tenancy.

Just/Good Cause – Tenant Input

- Current ARO does not protect tenants because it lacks a just cause provision.
- Good tenants need stable housing. Existing ARO allows good tenants to lose their housing without doing anything wrong.
- Most tenants are good tenants.
- If tenant does not vacate after being served a 3-day eviction notice or a no-cause notice to terminate tenancy, owner would still need to go through the unlawful detainer process.
- Imbalance of power must be acknowledged. The fact that landlords own property fundamentally elevates their power over tenants, who typically rent because they are unable to be homeowners.

Just/Good Cause – Tenant Input

- Just cause helps protect against retaliation. Many tenants file a petition against landlords regarding housing code violations or service reductions.
- Termination of tenancy to low-income families creates significant impact, including changing schools, loss of access to transit/commute to work, costs to move, loss of proximity to family, and other aspects of social capital.
- Some landlords terminate tenancy based on issues that would violate fair housing standards. The lack of just cause prevents knowledge of fair housing violations.
- Court system fundamentally biased against tenants. Easy for landlords to demonstrate proof against tenant.

Just/Good Cause – Public Comments

- Owners are trying to protect good tenants from bad tenants.
- Just cause is needed to protect good tenants from bad landlords. Would balance existing imbalance of power that currently favors landlords.
- Existing ARO works just fine. No need to strengthen, which will increase staffing costs.
- There may be unintended consequences from good intentions of just cause. Absence of just cause helps tenants, who may be afraid of retaliation from bad tenants.
- Tenants are being forced out and need protection.

Just/Good Cause – Temperature Check Result

Should the City continue to explore the creation of a Just/Good Cause for Eviction Ordinance?

 Green: 3 Committee members

 Yellow: 0 Committee members

 Red: 6 Committee members

Absent: 3 Committee members

Did we capture your comments sufficiently?

Next Steps

- **End of 2015:** Release public draft of consultant report.
- **Mid-to-late January 2016:** Advisory Committee meeting to provide input on draft consultant report.
- **Mid-to-late February 2016:** Hold two general public meetings and one Advisory Committee meeting to provide input on staff's draft recommendations.
- **March 10, 2016:** Housing and Community Development Commission to provide input of staff's draft recommendations for potential modifications to the ARO.
- **March 22, 2016:** City Council consideration of staff's recommendations for potential modifications to the ARO.

Public Comment

For more information visit:

<http://www.sanjoseca.gov/index.aspx?nid=4744>

Scan code with your smart phone/device to sign up
for email updates on this process



Open Forum

This time is reserved for comment
on items not on the Agenda

Next Meeting:

Mid-to-Late January 2016

Topic: Review draft consultant report

Have a happy and safe holiday season!