City of San Jose

Advisory Committee for the Apartment Rent Ordinance

Discussion & Presentation of Preliminary Consultant Report

Wednesday, February 17, 2016

San Jose City Hall Council Chamber

Item C – Discussion & Presentation of Preliminary Consultant Report

Meeting Purpose

- Interpret results of the report
- Receive additional input on report
- Present report on case studies
- Temperature check on alternative allowable annual rent standards

History

- September 1, 2016: City Council directed staff to explore potential modifications to ARO, including:
  - Annual allowable rent increases
  - Debt-service pass through
  - Revised notification requirements for notices to vacate and rents charged to tenants in properties subject to the ARO
  - Amendments to facilitate monitoring and enforcement of ARO
  - Consideration of a Just Cause Eviction Ordinance
  - Evaluation of the staffing levels to effectively monitor, enforce, and analyze the ARO program
  - Explore income eligibility criteria
  - Consideration of duplexes

Background

- ARO recommendations to City Council will be informed by:
  - Consultant report
  - Advisory Committee input
  - Public input
  - Staff research and case studies

Declaration of ARO Policy & Purpose

"In order to protect the health, safety and welfare of the citizens of San Jose, [this ARO] is a necessary measure designed to alleviate some of the more immediate needs created by San Jose's housing situation. These needs include but are not limited to:

- the prevention of excessive and unreasonable rent increases,
- the alleviation of undue hardship upon individual tenants,
- and the assurance to landlords of a fair and reasonable return on the value of their property"

Annual Allowable Rent Increases

- ARO has not stabilized rents.
- Data indicate that the 8% annual allowable increase has:
  - Exceeded average rate of CPI over 35 years (3.4% annually)
  - Exceeded average rate of market rent increase over 35 years (4.7% annually)
- ARO rents increased at faster rate than non-ARO rents.
- Majority of rent-stabilization cities link to some percentage of the CPI.

Annual Allowable Rent Increases

- Over one in four ARO units turnover annually and nearly 7 in 10 turnover in a 4-year period.
- Few notices to terminate tenancy filed by owners with the City (current ARO requirement).
- Possible interpretations:
  - Tenants are voluntarily vacating. If so, sizeable number of apartments regularly go to market prices.
  - Owners are terminating tenancies but are not notifying the City. If so, sizeable number of owners out of compliance.

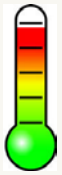
Annual Allowable Rent Increases

- Relatively few petitions filed for excessive rent increases.
- Typically filed w/service reductions or code violations.
- Possible interpretations:
  - Owners do not raise rents above 8%.
  - High allowable increase removes ability to file eligible petition.
  - Lack of tenant awareness of rights.
  - Owners afraid of retaliation by tenants.
  - Tenants might pay excessive rents as long as property is maintained and agreed upon services are provided.
- Few petitions do **not** inherently mean there is no problem.

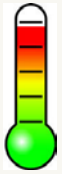
Annual Allowable Rent Increases

- Public input:
  - Owners – usually of small apartment buildings – have testified they do not raise rents annually, or only by small amounts when they do.
  - Tenants have testified that they receive triple-digit rent increases.
- Because many owners do not raise – or minimally raise – rents annually, a lower annual allowable increase may have minimal impact on the business model of small apartment owners, while increasing the stability of tenants under owners who do seek to maximize rent increases.
- Banking allowance can provide ability for owners to catch up from down markets.

Temperature Check



Should the City recommend an inflation based annual increase?



Should the City recommend a fixed rate annual increase?

Capital Improvement Pass-Through

- San Jose:
  - No operations & maintenance petitions filed.
  - No rehabilitation petitions filed.
  - Two capital improvement petitions (one withdrawn).
  - Suggests that owners can cover all costs under current 8% annual allowable increase, which undermines the purpose of the pass-through feature.
- Few capital improvement petitions in other apartment rent-stabilization cities with CPI standards.
  - Suggests that rent increases tied to inflation is sufficient to run business.
- Potential to create a limited capital improvement incentive program eg. sustainability investments, seismic retrofits.

Debt-Service Pass-Through

- San Jose:
  - Since 2000, nearly 1,000 ARO sales transactions
  - Only 14 debt-service petitions filed
  - Of those filed, rent increases ranged from 7%-78%
- Majority of other cities with apartment rent-stabilization do not have debt-service pass-through.
- Ability to pass investment cost & risk to tenants may lead to speculation.
- Debt-service provision does not appear to meet public purpose of ARO.

Debt-Service Pass-Through

[redacted] *7th ST, SAN JOSE, CA 95112 (MLS #* [redacted]

$1,400,000
Size: 3,324 sq ft
Lot size: 5,140 sqft
Year Built: 1950

Garage Spaces: n/a
Tract: n/a
Community: Central San Jose
County: Santa Clara
Total Parking: n/a
Last updated: 1/27/2016

Listing provided by [redacted]

Well-maintained 4-plex. 2 blocks to San Jose State University. Spacious apartments with in unit washers & dryers, individual hot water heaters. Front and back doors. Below market rents - tremendous upside potential. Large debt service pass through available. Market GRM: 12.71 and Market Cap Rate: 5.53%. Attractive 30-year fixed debt available. Termite report and property inspection available with all other disclosures.

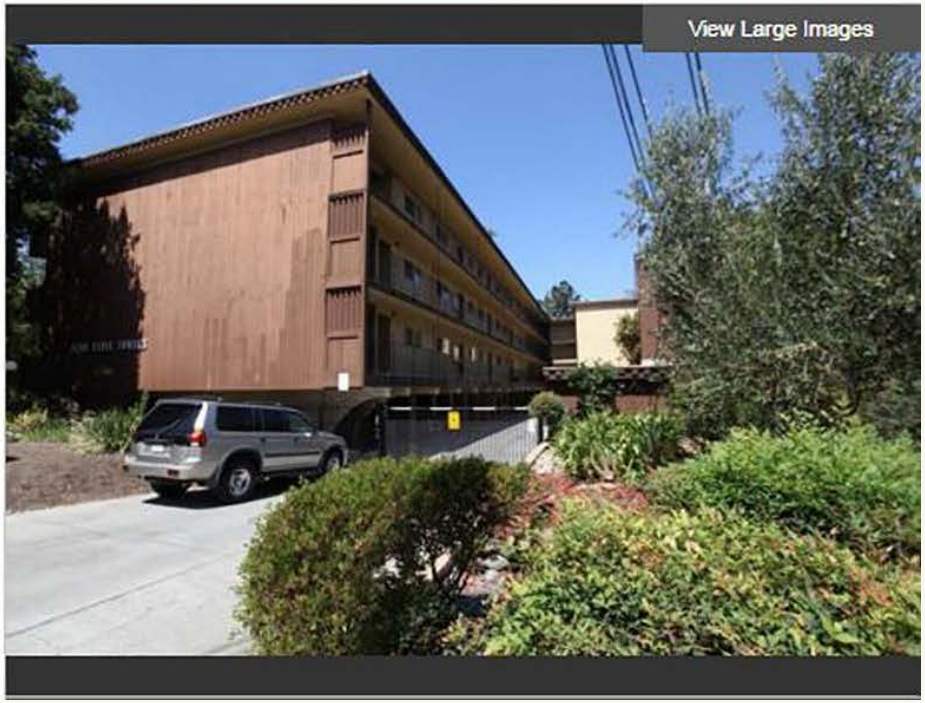
Debt-Service Pass-Through

$11,500,000 - [redacted] SAN JOSE

–	–	23,546	1.02
BEDROOMS	BATHS	SQ. FEET	ACRES

Rare Opportunity!Trophy property in Willow Glen with Stunning views. 1 block from Lincoln Ave.Units have large private balconies with forest & creek side views. Capital improvements; all new dbl pane windows & sliding doors. 50% of blg is on RUBS. Lg rec room w/kitchen & 2ba-Possible conversion to a 2br/2ba.Two potential addtl parking spaces. Property is owned free and clear of debt.The new owner will have the ability to pass through the entire new debt service and can attain market rents for every unit.

Inquire! ▸ Bookmark ▸



City Case Studies

	City (alpha order)	**Rent Reg.**	**Just Cause**	**Max. Annual Increase**	**Active Program**
1	Berkeley	X	X	65% of CPI-U	X
2	Beverly Hills	X	X	10%	
3	East Palo Alto	X	X	80% of CPI-U	X
4	Glendale		X	---	
5	Hayward	X	X	5%	
6	Los Angeles	X	X	100% CPI-U (3% min.)	X
14	Los Gatos	X		100% of CPI-U (5% min.)	
7	Maywood		X	---	
8	Oakland	X	X	100% CPI-U	X
9	San Diego		X	---	
10	San Francisco	X	X	60% of CPI-U	X
11	San Jose	X		8%	
12	Santa Monica	X	X	75% of CPI-U	X
13	West Hollywood	X	X	75% of CPI-U	X

Consideration of Just Cause Ordinance

- 14 cities have rent ordinance, just cause, or both
  - 11 cities have rent ordinance
  - 12 cities have a Just/Good Cause for Eviction Ordinance
  - 9 cities have both

Consideration of Just Cause Ordinance

- In the 9 cities with both rent regulation & just/good cause
  - Just/Good Cause typically applies to all rental housing, but in some it is restricted to rent stabilized units.
  - In cities with only just cause and no rent ordinance the causes for eviction are largely the same as in cities with both rent regulation and just cause.
- The causes for each City are similar, but some have nuanced differences
  - Berkeley: you must give a warning to tenants before serving a notice to quit
- Can have provision for repeat offenders.

Typical Just/Good Cause Provisions

The causes for each City are similar, but some have nuanced differences

- Nonpayment of rent
- Substantial violation of lease
- Caused or allowed substantial damage to unit
- Illegal activity (some stipulate conviction, others do not)
- Nuisance, threats or otherwise disturbing the community
- Illegal subletting
- Refused landlord access to the unit for repairs
- Refusal to sign a similar but new rental agreement
- Substantial repairs or capital improvements made to the property*
- Demolition of rental unit*
- Owner occupation or move-in of a close family member*

** May require relocation support to affected tenants*

Removing a Problem Tenant - Comparison

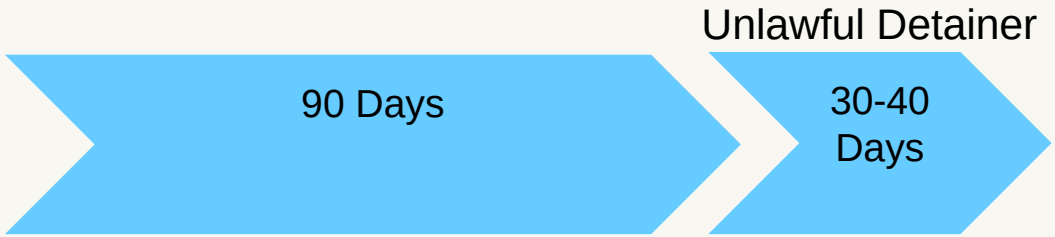
Issue Occurs, Notice Given

Just/Good Cause Process

33-43 days

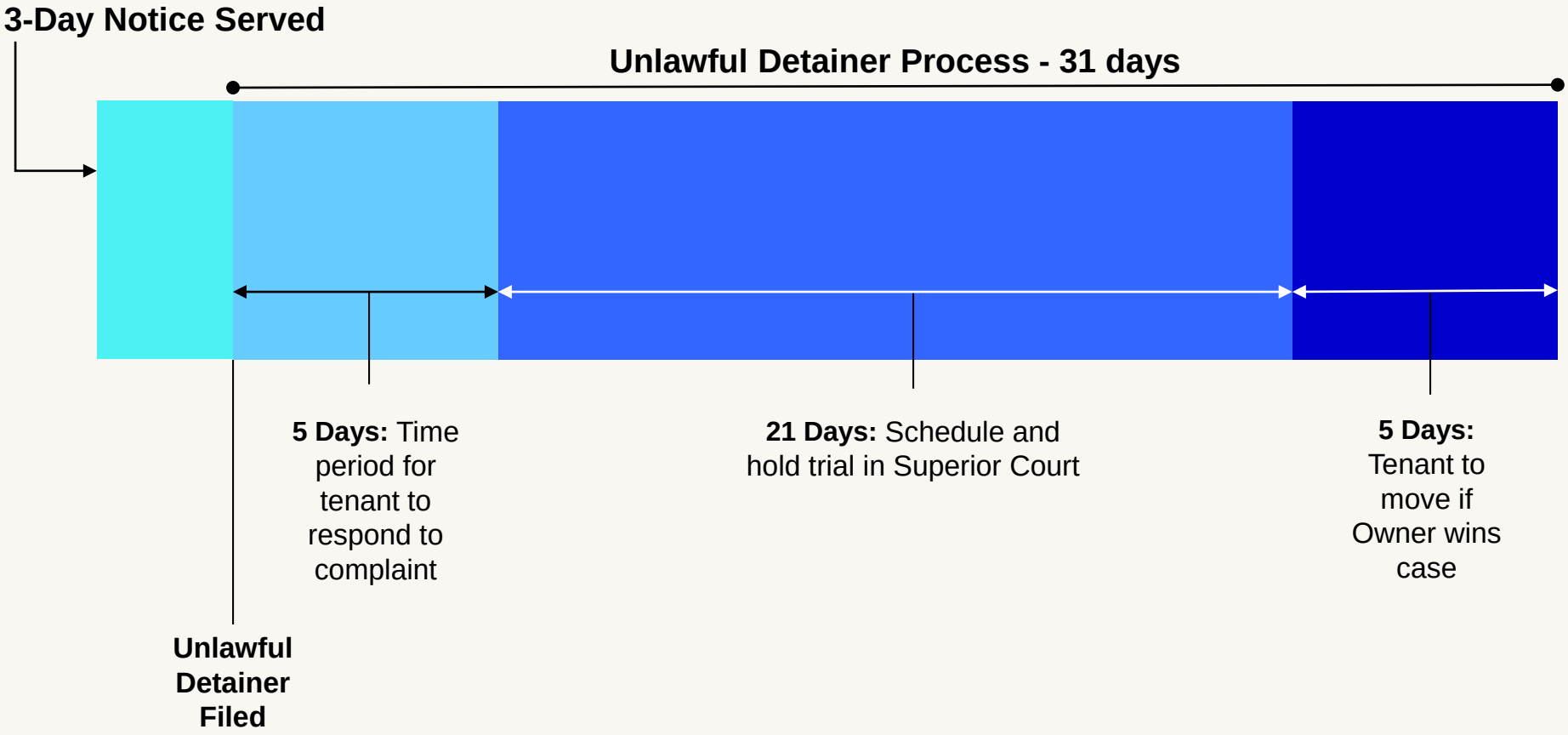
Termination of Tenancy

90-100+ days



120-130 days

Unlawful Detainer Process



Consideration of Limited Just Cause Ordinance

- **Purpose/Goal:** to eliminate tenant fear of retaliation for reporting certain Code violations
- **Potential scope:** enacting just/good cause protections for units/tenants where the landlord has been negligent/non-responsive to fixing substantiated code violations
  - May be limited to Tier III properties or the entire rental stock

Facilitate Monitoring & Enforcement

- Registries provide essential information to determine if owners are complying with requirements.
  - Ability to track rent increases.
  - Ability to track date and nature of tenant turnover.
  - Helps identify bad actors: non-compliance has penalties.
  - Increases communication

Facilitate Monitoring & Enforcement

- 6 cities require some form of registration.

Unit Registry

- May include:
  - initial rent amount
  - some tenant information such as number of occupants, number of adults/children/pets, etc.
- Requires annual submittal of information.

Rent Registry

- Includes rent, banking and tenant information.
- Information available to tenant, logged in database.
- Typically requires:
  - Vacancy registration when tenant leaves
  - Unit re-registration with new lease

Revised Notification Requirements

- Increased information exchange between owners and renters can increase compliance with ARO.
- Potential notification revisions may include:
  - New tenant receives information on rents charged to previous tenant.
  - Existing tenant annually receives information from owner on the amount of annual allowable rent increase v. actual changes in rent (if any).
  - If banking is allowed, owner informs tenant the amount of bank available to the owner (highlights when tenant benefited from little or no rent increase, and helps tenant prepare in the event that the banking is applied).

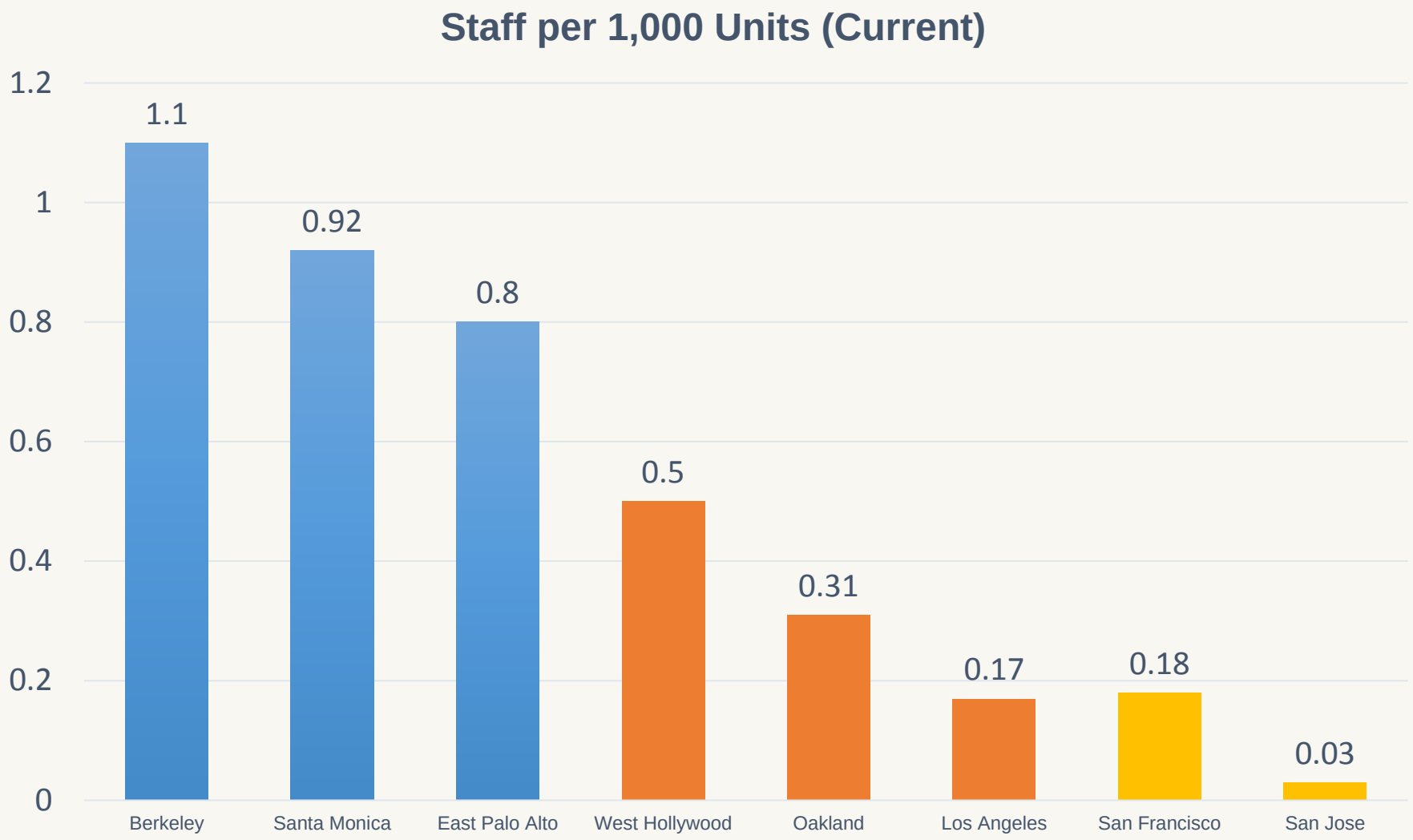
Outreach & Education

- Important component of successful program.
- May include:
  - Additional technical assistance materials in multiple languages, multi-media outreach.
  - Noticing to tenants that they are living in an ARO unit.
  - Workshops for tenants and landlords on the provisions in the ordinance.

Evaluation of Staffing Models

- **Blue**:
  - Full Rent Registration. Includes rent information, vacancy registration, re-registration with new lease
  - Higher service levels, staffing levels and annual fee costs; annual reporting of data and trends.
- **Orange**:
  - Annual Unit Registration. May include initial rents.
  - Lower service levels than rent registry, moderate staffing and registry costs; no annual reporting and little local data.
- **Yellow**:
  - No registration. Information gleaned from petition information.

Evaluation of Staffing Models



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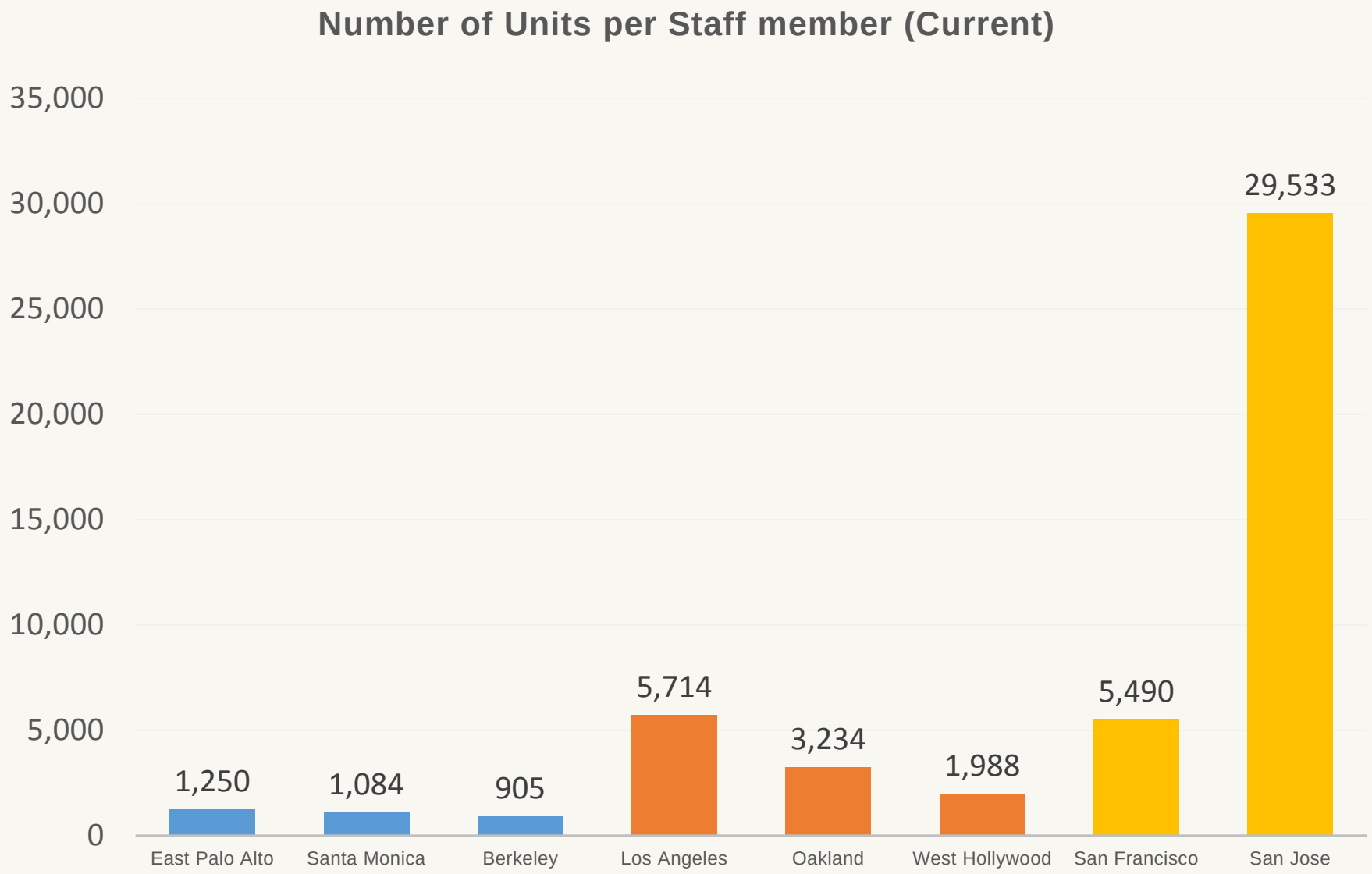

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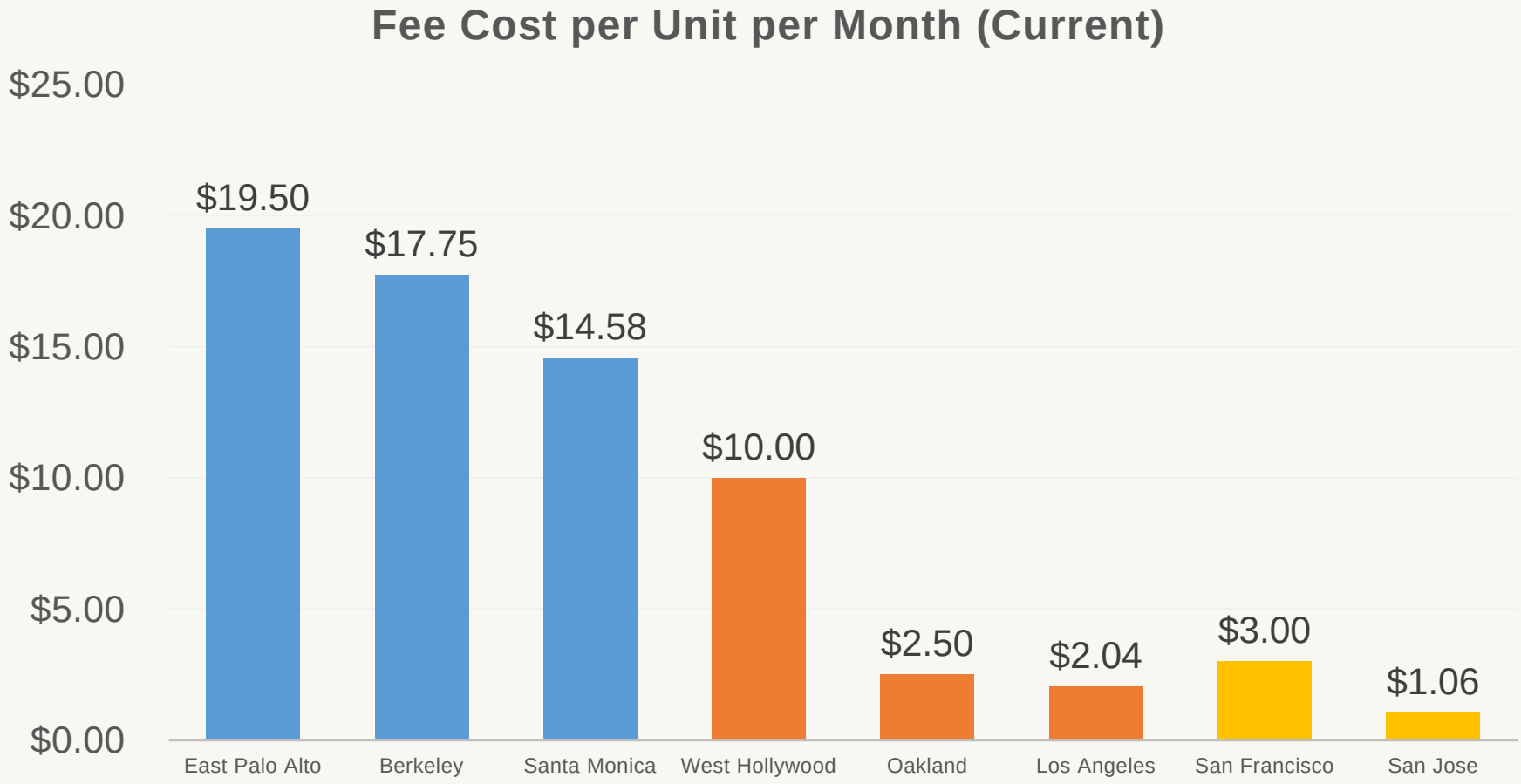

5 Cities allow 50% of the annual fee to be passed through to tenants on a monthly basis (not part of base rent)

Income Eligibility Criteria

- No program in California or US with this provision.
- Owner and tenant members of Advisory Committee do not support this consideration.

Consideration of Duplexes

- Potential increase of 10,000+ additional rentals under ARO.
- Advisory Committee was split:
  - Tenant members support.
  - Owner members do not support.
- Owners of duplexes testified during public comments that they do not support.
  - Inclusion under ARO will impact ability to operate business.
  - Duplex owners do not raise rents annually or only raise rents minimally.
- Administration of additional 10,000 units may be challenging.

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

Schedule

Date	Item	Information
~~Wednesday, January 20~~	~~Release of Preliminary Report~~	~~Begin public comment period~~
~~Wednesday, January 27~~	~~Advisory Committee meeting to discuss Preliminary Report~~	~~6-9pm, San Jose City Hall Wing Rooms~~
~~Wednesday, February 17~~	~~Advisory Committee meeting to comment on Preliminary Report~~	~~6-9pm, San Jose City Hall Council Chambers~~
Friday, February 19	Close public comment period for Preliminary Report	Written comments due by 5pm
Late February	Release draft recommendations	Begin public comment period
Wednesday, March 16 (to be confirmed)	Advisory Committee	6-9pm, San Jose City Hall Council Chambers
Thursday, March 10	HCDC meeting to review draft recommendations	5:45pm, San Jose City Hall Wing Rooms
Late March	Close public comment period for draft recommendations	Written comments due by 5pm
Thursday, April14	HCDC meeting (if needed)	5:45pm, San Jose City Hall Wing Rooms
Late April	City Council consideration	Time TBD, San Jose Council Chamber

Adjourn

Next Meeting (to be confirmed):

Wednesday, March 17

6pm

San Jose City Hall – Council Chambers

Topic: Provide input on Draft Recommendations