



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: May 10, 2018

Approved

D. D. S. L.

Date

5/11/18

**SUBJECT: AMENDMENTS TO THE APARTMENT RENT ORDINANCE
REGARDING UTILITY PASS THROUGH TO TENANTS**

RECOMMENDATION

1. Approve an Ordinance amending Section 17.23.315 of the Apartment Rent Ordinance, Chapter 17.23 of Title 17 of Municipal Code to modify the date on which existing written Ratio Utility Billing Systems (RUBS) pass through agreements are no longer effective and changing the timing regarding petitions for the one-time offset rent increase, specifically:
 - a) All verbal utility pass through agreements are void upon the effective date of the ordinance amendment;
 - b) All written utility pass through agreements with new tenants executed after January 1, 2018 are void upon the effective date of the ordinance amendment;
 - c) The petition filing period for offset petitions will be July 5, 2018 to October 31, 2018, no longer linked to the rent registry process;
 - d) All pre-existing written utility pass through agreements will be void following the decision of a Petition Examiner determining the outcome of the offset petition. If the landlord does not file a petition, the existing written utility pass through agreement shall be void after October 31, 2018; and
 - e) If the landlord has a written utility pass through agreement with a new tenant executed prior to May 1, 2018 and the landlord can prove that he/she has prior to June 30, 2017 required utility pass through agreements with the same terms for all tenants in the building, the landlord may continue, on the same terms as for a pre-January 1, 2018 pass through agreement, to apply that pass through agreement and to petition for an offset rent increase.
2. Direct staff to submit to the City Manager for approval a proposed amendment adding a Chapter 13 to the Apartment Rent Ordinance Regulations, which describes the offset petition process.

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OUTCOME

City Council approval of the recommended actions will further amend San José's Apartment Rent Ordinance (ARO) so that utility pass through agreements executed with existing tenants before January 1, 2018 are not expressly void until the Landlord's offset increase petition is decided. The period for filing petitions will now be from July 5, 2018 to October 31, 2018. Landlords who can demonstrate a standing business practice of requiring pass throughs for all tenants since June 2017 may also participate in the offset petition process for agreements executed between January 1, 2018 and May 1, 2018.

BACKGROUND

On June 23, 2015, the City Council identified potential modifications to City's Apartment Rent Ordinance as its second highest policy priority. In subsequent policy rankings, this was raised to the top priority. On November 14, 2017, City Council approved the updated Apartment Rent Ordinance (ARO) and deferred implementation of proposed language clarifying that Ratio Utility Billing (RUBS) was not allowed until further analysis was completed by Staff. The City Council also directed Staff to return to Council with options for potential action related to RUBS, and with additional information on water submeter installations, and potential strategies to incentivize submetering. As part of its direction, the City Council requested Staff to consider how existing RUBS contracts could be addressed, if RUBS is not allowed for ARO properties.

On April 24, 2018, the City Council accepted the staff report and an amendment to the Apartment Rent Ordinance providing clarification that RUBS is not allowed and established a petition process for landlords with existing RUBS contracts. A supplemental memorandum was submitted by staff providing additional clarification regarding the proposed petition process. The City Council requested staff to work with the Attorney's Office to prepare an amendment to the ARO clarifying that RUBS will be allowed until the offset RUBS petitions are evaluated.

During the City Council discussion on April 24, the Mayor inquired about the possibility of including utility agreements executed after the January 1, 2018 date. Staff clarified that landlords who had an established business practice of offering utility pass through agreements to all tenants, may also participate in the offset petition process for agreements executed after January 1, 2018.

ANALYSIS

The amendment to the Apartment Rent Ordinance approved on April 24, 2018, provided clarity stating RUBS will no longer be allowed. City Council also provided direction to staff to develop a transition process for landlords with existing utility agreements to collect RUBS until a Petition Examiner has determined the outcome of the petition.

Transition Process for Existing Utility Pass Through Agreements

Staff will provide a transition period of approximately four months for landlords to learn about the petition process, complete the petition form, and submit the petition. During this time, the landlord may continue to charge for RUBS until a decision has been made by the Petition Examiner or a Hearing Officer. The proposed amendment to the Apartment Rent Ordinance Regulations will include the following steps for the utility offset petition process:

Steps	Action
Step 1	Landlord completes an offset petition form and provides supporting documentation
Step 2	Staff sends a copy of the petition to the impacted tenants who may contest the validity of the information provided in the petition
Step 3	Petition Examiner reviews the petition and any comments from the tenants and may refer the case to a Hearing Officer or make a determination if the landlord met the burden of proof for the offset petition
Step 4	The decision is sent to the landlord and impacted tenants.
Step 5	Following a ten-day circulation period allowing for any errors or omissions to be identified, the decision will be final.
Step 6	If the offset is approved through an administrative decision, the landlord will provide the notification (consistent with state law) to the tenant for the rent increase.

Under these proposed changes, landlords may only continue to charge RUBS in certain circumstances. The following parameters will apply to charging RUBS:

- Verbal Agreements – Any landlords operating under a verbal agreement will no longer be able to charge RUBS as of the effective date of the Apartment Rent Ordinance amendment.
- New Written Agreements – Landlords with a new written RUBS agreement executed on and after January 1, 2018 will no longer be able to charge RUBS as of the effective date of the Apartment Rent Ordinance amendment.
- Established Business Practices – Landlords who can demonstrate that all tenants in their building held a utility pass through agreement prior to July 1, 2017, establishing a standard business practice, may file an offset petition for agreements with new tenants between the dates of January 1, 2018 and May 1, 2018.
- Offset Petitions – Landlords filing for an offset petition may continue charging RUBS until the date a decision is made by a Petition Examiner or Hearing Officer.
- Filing Period – Landlords who do not file a complete offset petition during the filing period of July 5, 2018 – October 31, 2018 will no longer be able to charge RUBS.
- Documentation - Landlords may file an offset petition for a RUBS agreement entered into prior to January 1, 2018 and must provide documentation for the amount collected in utility pass through payments throughout the calendar year 2017.
- New Tenants - Tenancies entered into after January 1, 2018 will not be eligible for an offset petition except as allowed under Established Business Practice.

In cases where a landlord had an established business practice to pass through utilities to all tenants, agreements entered into between January 1, 2018 and May 1, 2018 may be considered by the offset petition process if the following documentation is provided:

- 1) Utility Pass Through Agreements with all Tenants Prior to July 1, 2017 – In order to document an established business practice, a landlord must provide copies of utility pass through agreements with the same terms for *all* tenancies in the building prior to July 1, 2017.
- 2) Average Utility Costs – A landlord must provide documentation for the average monthly utility charges paid by tenants for water, sewer, and garbage for all new tenancies between the date of agreement through May 1, 2018. An average of these costs will be limited by the Santa Clara County Housing Authority Monthly Utility Allowances for these utilities. Petitions for gas and electric will also be considered in the offset petition process.

In order to provide consistency throughout the amended Apartment Rent Ordinance document to reflect these changes, the definition of “Initial Rent” must be updated. The proposed amendment to this definition will allow landlords to define the Initial Rent rate differently in relation to the changes to the offset petition process established to combine charges for utilities and rent into one monthly payment.

EVALUATION AND FOLLOW-UP

The ARO will have a second reading by the City Council two weeks following the first reading of the ordinance. The updated ordinance will be effective 30 days following the second reading of the City Council. Adoption of this recommendation will complete the Administration’s work on the City Council’s top priority as it pertains to the ARO.

POLICY ALTERNATIVES

The following alternatives outline two options for City Council to consider.

- Alternative:*** Do not provide clarification to the recent ARO amendment.
- Pros:*** The proposed amendment provides a consistent end date for the charging of RUBS in ARO apartments.
- Cons:*** Without additional clarification, landlords currently charging RUBS may not receive a partial offset for utility costs during the petition period.
- Reason for not recommending:*** Landlords would not be provided a partial offset for current charges using RUBS following the effective date of the ordinance amendment.

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PUBLIC OUTREACH

Staff met with a wide range of stakeholders while developing the amendments to the issue of the RUBS in the Apartment Rent Ordinance. With the assistance of the California Apartment Association and the Renters' Coalition, the Housing Department met with property landlords and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

Pursuant to Section 7.01 of the existing regulations, the Ratio Utility Billing System (RUBS) were presented to the Housing and Community Development Commission (HCDC) at their regularly scheduled meeting on March 8, 2018. These reports and attachments is available at the following link: <http://www.sanjoseca.gov/index.aspx?NID=1265> The HCDC voted to support the following recommendation made by staff:

- Approve Staff recommendations to amend the Apartment Rent Ordinance to include the following regarding utility charges to clarifying that the pass through of utility charges to tenants via RUBS or other unmetered allocations is not allowed;
- Allow landlords with written utility pass through contracts in place prior to January 1, 2018, to seek a one-time rent increase equal to the lesser of the average monthly charges passed through to the Tenant over the prior twelve-month period or the 2018 Santa Clara County Multifamily Utility Allowance rates for water, sewer and garbage costs; and
- Include a proposal for City Council direction to staff to present the City Manager an amendment to the Regulations describing the limited term one-time rent increase petition process.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND

Director of Housing

For questions, please contact Jacky Morales-Ferrand, Director at (408) 535-3855.