



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: June 16, 2021

Approved

Date

06/17/21

SUBJECT: SUNSET THE 2021 MORATORIUM ON RENT INCREASES FOR TENANTS AND MOBILEHOME RESIDENTS AND OWNERS FINANCIALLY IMPACTED BY COVID-19 ON JUNE 30, 2021

RECOMMENDATION

- (a) Accept the staff report to sunset 2021 COVID-19 Rent Increase Moratorium, Ordinance No. 30530, for rent stabilized tenants and mobilehome residents on the expiration date of June 30, 2021.
- (b) Terminate waiver of late registration fees and permitting fees for repairs/maintenance for rent stabilized apartments and mobilehomes covered under Chapter 17.22 and 17.23 of the San José Municipal Code, previously established under Ordinance No. 303530.

OUTCOME

After engaging with property owners, property managers, tenants of rent stabilized apartments as well as park owners and residents of rent stabilized mobilehomes, staff recommends sunsetting the 2021 Moratorium on Rent Increases (“2021 Moratorium”) given that rents have not increased, but have remained flat or have decreased. By sunsetting the 2021 Moratorium on Rent Increases on its current expiration date of June 30, 2021, the rent collection and management of rent increases for rent stabilized apartments and mobilehome park owners can be more predictable for noticing and billing, as well as allow flexibility for rent negotiations.

EXECUTIVE SUMMARY

The COVID-19 pandemic destabilized the local, state, and national economies since the first shelter-in-place order was promulgated on March 16, 2020. Since March 2020, billions of dollars have been dedicated to financial assistance, and coupled with a steady vaccine rollout, City residents have been propelled towards the road to recovery. The 2021 Moratorium on Rent

Increases fulfilled its purpose to promote housing stability during the COVID-19 pandemic by mitigating against increases to rent debt that could lead to increased homelessness. While the temporary Moratorium was necessary for the immediate preservation of public peace, health, and safety, staff's recommendation is to sunset the 2021 Moratorium on Rent Increases on its current expiration date of June 30, 2021. This recommendation is based upon research and public outreach with property owners, property managers, tenants from the rent-controlled apartments, and the mobilehome community.

BACKGROUND

On April 28, 2020, City Council approved the 2020 Moratorium on Rent Increases ("2020 Moratorium") as an urgency measure to help stabilize tenants when the COVID-19 pandemic and Shelter in Place Orders were in their infancy. The Moratorium applied only to rent stabilized apartments and mobilehomes and lasted through December 31, 2020. The Moratorium did not apply to income restricted apartments or market-rate rental properties with three apartments or more.

On February 5, 2021, due to continued Shelter in Place restrictions and unprecedented infection rates following the winter holidays, the City Council passed the 2021 Moratorium on Rent Increases effective through June 30, 2021. Following significant stakeholder feedback, the 2021 Moratorium was tailored to prohibit rent increases only for those residents who signed the Declaration that they could not pay the rent increase because of financial impact due to the COVID-19 pandemic. The Declaration is signed under penalty of perjury and may be found on the City's Housing website in Spanish, Vietnamese, and English. Other components of the 2021 Moratorium on Rent Increases (2021 Moratorium) include:

- Prohibition on charging a rent increase through June 30, 2021 when tenants or mobilehome owners/residents submit a Declaration of COVID-19 Related Financial distress;
- Suspension of any outstanding late fees for owners of rent stabilized apartments under the Apartment Rent Ordinance. Late fees did not accrue during the term of both Ordinances for failure to pay program fees due in fiscal year 2019-2020 and 2020-2021, as required under Chapter 17.22 of the San José Municipal Code;
- Waiver for building permit application fees that applied to repairs or maintenance of apartments that required a permit were also waived during the 2020 and 2021 Moratorium. The waiver was applied to the application fees for building permits including plumbing, electrical and mechanical permits;
- Prohibition on property owners and managers from charging a rent increase if they do not provide the Declaration form to their tenants or mobilehome owners/residents; and
- Prohibition on tenants from making service-reduction claims for the closure of recreational common areas at Apartment Rent Ordinance properties during the moratorium.

ANALYSIS

As the pandemic spiked during early January and February 2021, with case transmissions and death rates climbing to peaks not seen since the summer of 2020, staff conducted research and outreach to determine the depth of hardship to tenants, property owners, and property managers as well as the overall impact of COVID-19 on the rental housing market. The 2021 Moratorium prevented rent increases through the effective date of the Ordinance only when a tenant, who received a rent increase, submitted a Declaration of COVID-19 Related Financial Distress. This targeted approach protected those individuals and families who continued to experience financial hardship due to COVID-19 financial impacts between February and June 30, 2021. The provisions of the Ordinance included financial relief for landlords by waiving late fees for late registration payments and waiving certain building permit fees for repairs/maintenance:

- ***Suspension of Late Fees for Apartment Rent Ordinance and Mobilehome Rent Ordinance*** – Any outstanding late fees for owners of rent stabilized apartments under the Apartment Rent Ordinance and Mobilehome Rent Ordinance were suspended from May 2020 to December 31, 2020, and then through February 2, 2021 to June 30, 2021. Late fees will not accrue during the term of the Ordinance for failure to pay the Apartment Rent Ordinance fee due in 2019-2020 and 2020-2021, as required under Chapter 17.23 of the San José Municipal Code. Landlords remain financially responsible for any late fees accruing prior to adoption of the Ordinances and upon its expiration.
- ***Waiver of Building Permit Application Fees for Rental Properties*** – The waiver for building permit application fees applied to repairs or maintenance of apartments that would require a permit. The waiver applied to the application fees for building permits related to repairs or maintenance, which could include, for example, permits such as plumbing, electrical and mechanical.

Moving forward, staff recommends sunsetting the 2021 Moratorium on June 30, 2021, as well as the other provisions related to the suspension of late fees for Apartment Rent Ordinance Fees and building permit applications for rental properties. The current 2021 Moratorium only provides protections for rent stabilized apartments and mobilehomes and does not provide protections to income restricted apartments or market rate properties with three apartments or more. Staff is recommending sunsetting the Moratorium for the following reasons:

- Overall rent stabilized apartment rental rates and vacancy rates;
- A sample of rent stabilized apartment rents show trends of maintaining current rents even upon renewal of leases and even negotiations to reduce rents; and
- Mobilehome community's reliance on a fixed and predictable anniversary date.

A) Overall rent stabilized apartment rental rates decreasing and vacancy rates

A rent stabilized two-bedroom apartment in the City of San José has an average rent of \$2,108. To date, 33,728 apartments have been registered and of those apartments, 3,135 are vacant, giving a vacancy rate of 9.3%. A healthy vacancy rate in San José is at 5%. With rent stabilized

apartments having a 4.3% higher vacancy rate above the healthy percentage, this indicates that rent stabilized apartment owners in the City are experiencing challenges in renting their apartments.

B) Sample of rent stabilized apartment rents show trends of maintaining current rents even upon renewal of leases and some are negotiating to reducing rents

Rent Stabilization Program staff analyzed a sample data of rent changes in the Rent Registry, an online portal that tracks rent increases for rent stabilized apartments in San José. To ensure compliance with the 2020 Moratorium on Rent Increases, staff pulled a report of rent increases entered into the Rent Registry during the 2020 Registration period that ended in November 2020. By following up directly with the property owners of rent stabilized apartments, staff found the following trends from the sample of 50 rent increases entries in the Rent Registry that were identified as potentially out of compliance with the Rent Increase Moratorium:

- ***Rent negotiation*** – Property owners and property managers of rent stabilized apartments have negotiated to reduce rents or maintain current rents without the intention to increase rents at renewals. In the compliance report generated given the data entries available, the 2020 Registration data shows that there were rent decreases given to tenants.
- ***Rent credits provided for rent increases during Moratorium*** – Property owners and property managers who did increase the rent during the 2020 Moratorium realized it was an oversight due to many lease renewals being issued and accepted by the tenants before the Moratorium on Rent Increases period began. These property owners have issued a credit to their tenants for the overpayment and returned the monthly rent to the previous lower amount.

C) Mobilehome communities rely on fixed anniversary dates for rent increases, and Moratorium has created an administrative challenge for billing and confusion for residents

While property owners and managers of rent stabilized apartments can have different dates of rent increases for each tenant in a given complex, mobilehome park owners have the same annual date of rent increase for all residents in the mobilehome park – commonly referred to as the anniversary date. Annual allowable rent increases for mobilehomes in the City are regulated by the Mobilehome Rent Ordinance Section 17.22.450. Rent increases are permitted if they do not exceed the Maximum Annual Percentage Increase which is determined yearly based upon a percentage of the Consumer Price Index. For fiscal year 2020-2021, the Maximum Annual Percentage Index is 3%.

Mobilehome park owners rely on their fixed anniversary date to mail notices of rent increases in compliance with State law and use this date in their billing. The 2020 and 2021 Moratorium on Rent Increases did not prohibit mobilehome park owners from preserving their anniversary date of rent increase by noticing the mobilehome owner, so long as they did not charge the rent increase to the owner until after the moratorium. Some owners indicated on their rent ledgers that they were “crediting” the rent increase towards the billing of the mobilehome resident without

collecting the rent increase. This credit method was the park owners' practice of effectively preserving the anniversary date while remaining in compliance with the 2021 Moratorium on Rent Increases. Based upon feedback received, this method resulted in some confusion for the mobilehome residents who contacted park owners and park managers for clarification. When Program staff sent an informational postcard mailer to mobilehome residents to explain the 2021 Moratorium on Rent Increases, some mobilehome residents contacted the Program expressing confusion of the billing and impacts of the 2021 Moratorium on their park's anniversary dates. In addition, mobilehome residents contacted the Program with concerns that if park owners are unable to increase rents, park owners would be likely to file a fair return petition. Through stakeholder outreach, staff found that mobilehome park owners faced administrative challenges with billing, with issuing notices with their anniversary dates impacted, and tracking credits to remain in compliance with the 2021 Moratorium on Rent Increases.

CONCLUSION

The 2020 Moratorium on Rent Increases and the impact on COVID-19 on the market provided financial relief for all tenants living in rent stabilized apartments and mobilehome residents at the height of financial uncertainty due to the COVID-19 pandemic. The subsequent 2021 Moratorium on Rent Increases was modified to be more targeted to protect only tenants and residents with submitted declarations of COVID-19 impact. When considering further extensions to the 2021 Moratorium on Rent Increases, staff engaged with the communities of rent stabilization apartment and rent-controlled mobilehomes. Property owners and property managers of rent stabilized apartments interviewed expressed intentions to maintain rent levels given the current housing market and some have even negotiated with tenants to reduce rents during the pandemic. Mobilehome park owners of rent-controlled mobilehomes shared they have been working closely with the residents on rent payments and deferral programs. By not extending the Moratorium on Rent Increases, collection and management of rent increases for rent stabilized apartments and mobilehome park owners can be more predictable and allow flexibility for rent negotiations starting July 1, 2021.

EVALUATION AND FOLLOW-UP

During the COVID-19 crisis, the Administration will provide updates to the City Council on the rent increases in the upcoming Annual Rent Stabilization Report.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

Staff conducted stakeholder outreach with rent stabilized apartment property owners, property managers and tenants, mobilehome residents and park owners, and local legal services (**Table 1**). A summary of stakeholder comments can be viewed in **Attachment A**.

Table 1 – Outreach Summary with Stakeholders

DATE	STAKEHOLDER GROUP				
	Rent Stabilized Apartment Owners	Tenants	Mobilehome Park Owners & Managers	Mobilehome Residents	Legal Services
May 11, 2021			•	•	
May 12, 2021	•	•	•	•	
May 13, 2021		•	•	•	
May 14, 2021	•				•
May 17, 2021				•	
May 18, 2021	•				
May 20, 2021		•	•	•	
May 21, 2021			•	•	
May 24, 2021	•	•	•	•	•
May 25, 2021	•				
May 26, 2021	•				
May 28, 2021		•	•	•	
June 1, 2021	•	•	•	•	•

COORDINATION

Preparation of this report has been coordinated with the City Attorney's Office, City Manager's Budget Office, and Department of Planning, Building, and Code Enforcement.

COMMISSION RECOMMENDATION/INPUT

The Housing Department's recommendations was presented to the Housing and Community Development Commission regular meeting on June 10, 2021.¹ A motion was passed by the commissioners to authorize the chair to submit a letter summarizing the Commission's vote to City Council. This letter can be viewed as **Attachment B**. The Commission made the following recommendations:

- The 2021 Moratorium on Rent Increases as it currently stands be extended until August 31, 2021, with an authorization for the Chair to submit a letter summarizing the

¹ <https://www.sanjoseca.gov/your-government/departments/housing/about-us/housing-community-development-commission/agendas-minutes>

Commission's vote to the City Council on behalf of the Commission. The motion passed 8 to 3.

- Extend the waiver of late registration and permitting fees until August 31, 2021. The motion passed 11 to 0.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's Consolidated Plan 2015-2020, adopted by City Council on May 5, 2015, to provide homes for very low and extremely low-income households, and with Goal H-2 of the City's *Housing Element 2014-2023*, adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

COST IMPLICATIONS

The Building Development Fee Program is a full cost-recovery program. With the expiration of the Moratorium on Rent Increases, the building permit waivers for repairs or maintenance of apartments buildings with 20 or fewer apartments will no longer be waived. The waiver previously applied to the application fees for building permits including plumbing, electrical and mechanical permits. This did not include waivers on construction taxes, nor waivers of any State or school fees (which are outside of the City's authority to waive). The inspection work associated with the waived building permit and inspection fees was previously charged to the COVID-19 Emergency Response appropriation within the Emergency Reserve Fund. The suspension of late fees will no longer be waived with the expiration of the Eviction Moratorium.

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, Housing Department

For questions, please contact Deputy Director, Rachel VanderVeen at (408) 535-8231.

ATTACHMENTS:

Attachment A – Summary of Stakeholder Feedback on the Moratorium on Rent Increases
Attachment B – Letter from the Housing and Community Development Commission Chair Summarizing Commission's Votes

Staff Summary of Stakeholder Feedback for the Moratorium on Rent Increases

Property Owners and Property Managers of Apartments

Property Owners and Property Managers conveyed that the Moratorium on Rent Increase should not be extended for the market overall or for the ARO market.

- It is time to end the moratorium. This was one of the ‘blanket’ moratoriums by the City that has served its purpose. Now is a different moment in time: COVID-19 rates are down and remaining down, vaccine rates are high, the City is steadily moving up the tier levels, and the California economy is anticipated to fully re-open mid-June.
- The priority should be to get the rental assistance program to work and start distributing payments owed to landlords/property managers. Stop extending the moratoriums and get the programs working that have been put in place by the State, the City, etc.
- Our business is to house people. Don’t want vacancies. Not in anyone’s best interest. Eviction process not the default course of action because it is time-consuming/costly.
- There is a new normal and we need to transition to manage our business going forward as we all recover from impacts of COVID-19. This includes working with our renters who need go-forward assistance. We have been and will continue to work collaboratively.
- Landlords and property managers characterized the following market segments:
 - Current on rent. Largest cohort. Most tenants are consistently meeting their rent obligations, have not expressed need for rental assistance or other accommodation, and have not have filed paperwork to claim COVID-19 impact.
 - COVID-impacted and behind on paying rent. Small cohort of tenants that can be further delineated as follows:
 1. Trying to pay.
 - Declared, Applied & Waiting. Defined as tenants who are in communication with their landlord/property manager, have filed a declaration of impact, are working with landlord/property manager on repayment, and may or may not have applied for rental assistance.
 - Given up & Moved Out. Meet the criteria as those Declared, Applied & Waiting but with the added distinction that those in this group have crossed a threshold at which they believe they cannot catch up on paying rent owed so they abandon their rental unit. Thresholds:
 - a) by time (3-6 months behind on rent), and/or
 - b) by money (\$5K seems to be baseline).
 Lose-lose scenario for both landlord and tenant. Landlord can’t access rental assistance funds unless tenant is housed in the rental unit. Tenant has an ongoing liability to resolve that negatively impacts credit score, ability to rent a new dwelling.
 2. Not trying to pay
 - Exploiting the Pandemic. Small sub-segment. Defined as tenants who have the means to pay monthly rent but opt not to do so. Frustrating to landlords and property owners to not be able to take action because of blanket protections afforded tenants by the moratoriums.
 - Evading a Just Cause eviction: Small sub-segment. Defined as those who may or may not be COVID-impacted but would be subject to a Just Cause eviction. These tenants have skirted eviction because of the moratoriums. Frustrating to landlords

and property owners to not be able to take action because of blanket protections afforded by moratoriums.

- For ARO market, market dynamics are such that a rent increase doesn't make sense.

Tenants of Apartments

Tenants shared that the Moratorium on Rent Increase should be extended until the end of the year.

People cannot afford to pay rent, let alone an additional increase. That would put them out on the streets.

- Price inflation costs is increasing already for food, gas, bills and many are limited on how much they can afford each month.
- Many families with 3-4 children cannot afford a rent increase when families are struggling to provide.
- Many people have been out of work for more than a year and would not be able to afford a rent increase while trying to get back on their feet.

Mobilehome Park Owners

Mobilehome Park Owners shared that Moratorium on Rent Increase should not be extended as there is not a need and the City of San José should allow park owners to collect an increase.

- Maintenance expenses for mobilehome parks is much higher than last year, and park owners are being put on a hardship.
- A 3% of a rent increase for many mobilehome residents is not as much of a stress compared to park owners who lost the 3% for all mobilehome spaces.
- Unlike tenants, park owners must maintain the park infrastructure which includes the roads within the park, the street lighting and pay fees among other things, they end up losing a lot more than the residents at the end.

Mobilehome Residents

Mobilehome residents shared that the Moratorium on Rent Increase should be extended until at least September.

- For many residents the utility services costs are being increased like the water, garbage and electricity and an add on the rent would be devastating.
- It would be detrimental on senior residents because many are on a fixed income and have just enough to pay their current rent and it will make it hard to keep up with expenses.
- It has been hard and continues to be hard on many people to pay rent and not get behind, and a rent increase would put them in a hardship, especially those who have not been able to get back to work.

Legal Agencies

Legal Agencies shared that the Moratorium on Rent Increase should be extended.

- The clients we see are in a fragile economic position. Even if they have found a way to pay their rent or in some way stay housed – on their own, doubling up with others, etc. -- overall financial position is not stable.
- Priority should include providing assistance to those in legitimate need and not adding to their financial burdens at this delicate time of transition from relief to recovery.
- The statistics regarding on-time payment of rent are likely misleading because rent payment stats on their don't reveal what other costs people are not paying in order to keep up with rent (example: behind on car payments, can't afford food.)



Housing and Community Development Commission

June 11, 2021

Mayor Sam Liccardo
Members of the San José City Council
200 E. Santa Clara St., 18th Floor
San José, CA 95113

RE: Commission Recommendation on the 2021 Moratorium on Rent Increases for Tenants and Mobilehome Residents and Owners Financially Impacted by COVID-19

Dear Honorable Mayor Liccardo and City Council,

This letter is to convey to the Mayor and City Council the San José Housing and Community Development Commission's recommendation to continue the 2021 Rent Increase Moratorium for rent stabilized tenants and mobilehome residents to August 31, 2021. The Commission approved this recommendation by an 8-3 vote at its June 10, 2021 meeting. Votes were as follows:

Yes: O'Connell, Dawson, Del Buono, Navarro, Wheeler, Partida, Tran, Quinn (8)
No: Jasinsky, Moore, Duong (3)

In addition, the Commission voted unanimously to extend the waiver of late registration and permitting fees for repairs/maintenance for rent stabilized tenants and mobilehome residents covered under Chapters 17.22 and 17.23 of the San José Municipal Code until August 31, 2021. The Commission approved this recommendation by an 11-0 vote at its June 10, 2021 meeting. Votes were as follows:

Yes: O'Connell, Dawson, Del Buono, Navarro, Wheeler, Partida, Tran, Quinn, Jasinsky, Moore, Duong (11)
No: None

Thank you for your consideration of these recommendations. If you have any questions, please feel free to contact me at HCDCMR@sanjoseca.gov.

Sincerely,

/s/
Martha O'Connell
Commission Chair

cc: Jacky Morales-Ferrand, Department of Housing