



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember
Donald Rocha

SUBJECT: APARTMENT RENT ORDINANCE

DATE: November 13, 2017

Approved

Date

11/13/17

RECOMMENDATION

That the City Council take the following actions:

1. Adopt staff recommendation (a)(1), with the modification that instead of a 5% maximum annual increase with no banking, the Council establish a 4% maximum annual increase with no banking, consistent with staff's recommendation in Alternative #1.
2. Adopt staff recommendation (b).
3. Adopt staff recommendation (c) with the amendment that staff be directed to begin work on including duplexes in the Apartment Rent Ordinance (ARO), consistent with the work plan provided in Attachment N, and return to City Council within a year with a recommendation on that topic.

ANALYSIS

The Council's path to a final decision on the rent ordinance has been long and meandering, but since January of this year, when we began to move away from the April 2016 "compromise" and towards more meaningful tenant protections, I think we've been progressing steadily towards our destination. All that remains is for us to decide exactly where we want to arrive. I've appreciated getting to read my colleagues' thoughts on what the final policy formulation should be, and want to take this opportunity to give my own opinion on the topic.

Duplexes

Despite the progress we've made on this issue, I continue to be concerned that the number of units covered by rent control has not increased by one unit since we began this effort. It is true that State law limits our ability to include more units within the ARO, but some of it is our own doing: there are approximately 11,392 duplexes that we have the discretion to include within the ARO if the Council so chooses. It's hard for me to understand why we haven't pursued this option even as we've made rapid progress in

other areas. Whether it's the ARO, the Ellis Act Ordinance, or just cause protections, we've dialed up our regulations over the past year, and with this item are considering whether to dial them up even further. I don't think dialing up our regulations on the same group of units without considering whether to expand protections to additional residents is the best approach.

Issue	Original Policy	Current Policy
Annual Allowable Increase	8% per year	5% per year
Ellis Act Ordinance	No Ordinance	Ordinance Adopted
Just Cause Protections	No Protections	Protections Adopted
Number of Units Covered by ARO	44,359	No Progress

The 11,392 duplex units are a significant proportion of the rental units in San Jose. There are 44,359 rent controlled units in San Jose today, so adding duplexes would constitute a 25% increase in the number of units covered by the ARO. Assuming that there are an average of 3.1 people per unit (consistent with census data), including duplexes could provide rent stabilization for over 35,000 residents. Staff recommends against helping these 35,000 people because their workload is too heavy.

I'm sympathetic to Housing Department's struggle with workload, but my sympathy is somewhat muted by the recent experience of seeing staff greenlight significant portions of the Mayor's "15 Point Plan" on housing. The greenlit items included some substantial policy efforts, including proposals to allow housing development in Neighborhood Business Districts and change urban village phasing. Given the ongoing concern about workload, it's notable that staff would volunteer to work on such significant efforts without seeking direction from the full Council. I issued a memo at the time expressing concern about moving forward with such substantial work items without adding staff capacity, but the work was greenlit anyway. I think we should show the same readiness to do work that would help the 35,000 people who live in duplexes.

We talk a lot about the housing crisis. How often are we presented with the opportunity to help tens of thousands of people stabilize their housing costs? If there really is a housing crisis, why wouldn't we pursue that opportunity? After pursuing the Rent Ordinance, the Ellis Act Ordinance, and just cause protections, our failure to pursue duplexes is a glaring omission that I feel strongly we need to correct.

I understand that some of my colleagues might have concerns about adding duplexes. It's important to point out that my recommended direction is for staff to analyze and conduct outreach on this issue. If there are concerns, we will have ample opportunity to vet them out through staff's work.

Annual Allowable Increase

With this memo, I also propose that we set the annual allowable rent increase for a rent controlled unit at a flat 4% with no banking, consistent with the recommendation in staff's Alternative #1. I know there are a variety of opinions on this issue on the Council; it's my hope that 4% can be the basis of a true compromise.

I'm sympathetic to the arguments made by my colleagues that we should tie the increase to CPI. I would point out, however, that staff's CPI proposal allows what amounts to unlimited banking, and allows rent increases of CPI plus banked increases of up to 5%. I appreciate that CPI could potentially help constrain increases during all points in the market cycle, but if we allow unlimited banking and 5% increases, I think renters could still potentially struggle in strong markets.

In my opinion, constraining increases at the top of the market cycle is our most critical objective. My recommendation of a flat 4% would create a reasonable cap on increases in strong markets. It's true that it would likely allow larger increases at the bottom of the market than CPI, but there's a reason why San Jose began working on rent policy in 2015 instead of, say, 2009—it's a strong market where this issue matters most.

I understand that some of my colleagues would prefer CPI, and other would prefer to stay at 5%. I suspect my recommendation of 4% will please nobody, but I would echo the wise words of my colleague Councilmember Jones, who in his memo on this issue pointed out the importance of respecting compromise. I would like to close by thanking my colleagues for their consideration and thanking both the tenant advocates and the landlords for taking time to share their opinions with me on this issue.