

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand

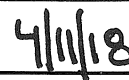
SUBJECT: SEE BELOW

DATE: April 11, 2018

Approved



Date



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

RECOMMENDATION

Accept the staff report on submetering, submetering incentives, and pass throughs of utility costs, including Ratio Utility Billing System (RUBS), and:

1. Approve an ordinance amending Part 3 of Chapter 17.23 of Title 17 of the San José Municipal Code to:
 - A. Clarify that the pass through of utility charges to tenants via RUBS or other unmetered allocations is not allowed;
 - B. Allow landlords with written utility pass through contracts for water, sewer, and/or garbage in place prior to January 1, 2018, to petition for a one-time rent increase equal to the lesser of:
 - i. The average monthly charges for water, sewer and/or garbage passed through to the tenant over the 2017 calendar year; or
 - ii. An amount equal to the sum of the 2018 Santa Clara County Housing Authority Utility Allowance rates for multifamily water, sewer, and garbage costs; and
 - C. Allow landlords with written gas and/or electric pass through contracts in place prior to January 1, 2018 to petition for a one-time increase if a landlord's units are not separately metered for gas and electricity and the landlord has complied with the requirements of Civil Code Section 1940.9. The increase shall be the lesser of:
 - i. The average monthly charges passed through to the tenant over the 2017 calendar year; or
 - ii. An amount equal to the sum of the 2018 Santa Clara County Housing Authority Utility Allowance rates for multifamily gas and electric costs.
2. Direct staff to submit the revisions to the Regulations implementing the limited term one-time rent increase petition process to the City Manager for approval.

OUTCOME

If City Council approves the recommended actions, San José's Apartment Rent Ordinance (ARO) will be amended to clarify that the pass through of utility charges to tenants via RUBS or other unmetered allocations is not allowed. Landlords with written utility pass through contracts in place prior to January 1, 2018 will be allowed to petition for a one-time rent increase, which increase would be based on the average amounts paid by the tenants and capped by the 2018 Santa Clara County Housing Authority Utility Allowance rates. Landlords who also pass through gas and electricity may receive an additional one-time rent increase.

EXECUTIVE SUMMARY

On November 14, 2017, the City Council discussed whether to include language in the ARO that would specifically prohibit utility charges including a Ratio Utility Billing System (RUBS). Some landlords who own buildings with master-meters for utilities pass on the utility costs to their tenants. Landlords often base these pass through costs on ratios pertaining to the number of occupants in the apartments, square footage of the apartment, or both.

City Council engaged in a discussion concerning RUBS's potential conservation impacts, alternative utility measuring methods, and potential consequences that a RUBS prohibition would have on existing contracts with RUBS provisions. After approving other updates to the Apartment Rent Ordinance (ARO), the City Council directed staff to research the cost of submetering in ARO buildings and incentives for financing submetering. Additionally, City Council instructed staff to defer adding language to the ARO which would have clarified that utility pass throughs are prohibited, until further review of RUBS could be completed.

Per City Council direction, staff evaluated the costs of submetering existing buildings and determined that it is very costly. There are several programs available to incentivize submetering, but they provide limited financial compensation. However, there are other conservation efforts that landlords can utilize to promote conservation in their apartment communities.

Staff also evaluated the application of RUBS in lease agreements. Staff found that RUBS contracts utilize different methodologies. There is an inherent lack of transparency in the way costs are calculated. This can result in fees being inappropriately assessed. In addition, there is often no direct correlation between the individual tenant's utility usage and the utility pass through being assessed to a specific apartment. To eliminate these risks to tenant communities, it is recommended that RUBS continue to be disallowed in ARO buildings, and the ordinance be amended to clarify that such pass throughs are not permitted.

The Department completed an analysis of the impact of utility rate increases over time. This analysis shows that the annual allowable rate of 5% rent increases is sufficient to absorb significant increases in utility costs in future years.

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In order to address concerns regarding existing RUBS agreements, staff is proposing a process to allow landlords with existing RUBS agreements to seek a one-time rent increase based on the utility costs previously billed to tenants. Landlords that own buildings with master-meters for gas and electricity may also apply for an additional one-time rent increase. The additional workload resulting from the administration of this process was not built into the Housing Department's approved staffing model. The Department will seek to address the one-time impact with existing staff. This could delay implementation of education and enforcement activities.

BACKGROUND

On June 23, 2015, the City Council identified potential modifications to City's Apartment Rent Ordinance as its second highest policy priority. This 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.

Rent as Defined in San José's Apartment Rent Ordinance

The purpose of the Apartment Rent Ordinance (ARO) is to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. The Apartment Rent Ordinance recognizes the value of residential rental units as a critical resource amid the continuing shortage of and persistent demand for housing in the City of San José. To further protect tenants from excessive and unreasonable rent increases, the ARO generally limits annual rent increases, requires notices be provided to the City, regulates how much and what types of costs may be passed through to tenants, provides for monitoring rents, and provides for an administrative review process for housing-related disputes.

The original ARO was intended to regulate rent as a single charge which included the payment for all housing services including utilities. "Housing Services" means those services provided and associated with the use or occupancy of a Rental Unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, pest control, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, storage, and any other benefits, privileges, or facilities. Moreover, the rent may only be increased once per twelve-month period.

Over the years, some landlords have been unbundling the housing services from rent, and charging tenants extra charges for utilities which can fluctuate on a monthly basis. Despite the limits in the original ARO on utility pass throughs, this practice has persisted. This led to confusion about these limits. Therefore, when staff brought the updated ARO to Council, it included a section expressly prohibiting this practice.

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RUBS Defined

Master-metered apartments do not have individual utility meters for each unit. Landlords who manage master-metered apartment complexes have utilized various methodologies to pass utility costs onto their tenants. Some property owners develop their own methodology to pass these costs onto tenants, while others utilize third party vendors to calculate and produce bills for the utility pass through. A Ratio Utility Billing System managed by a third party vendor takes the total utility bill for the property and applies a ratio, generally based on apartment square footage, number of occupants, or both, to establish a ratio for the tenant's share of the total utility bill. The vendor produces and distributes bills for each tenant based on their ratio of the total utility usage. In addition to the utility costs, these bills generally include service fees. Landlords provide input to the RUBS provider on billing methodology. Examples of billing methodology choices may include how common area utility costs are determined or how to charge tenants for a spike in water usage.

RUBS in California

While some states do not allow the use of RUBS to pass through utility costs to tenants, the State of California does not prohibit the use of RUBS. The California Public Utilities Commission (CPUC) has reviewed the issue and ruled that it lacks jurisdiction to regulate landlords' activity regarding utility billing of tenants. However, it affirmed that the regulatory responsibility of utility pass throughs falls within the purview of local rent control authorities. Most cities with active rent control ordinances do not allow RUBS for apartments covered by rent control. Cities that allow RUBS, have annual rent increases that are linked to a Consumer Price Index (CPI).

Research published in the *National Multifamily Submetering and Allocation Billing Program Study* funded by the United States Environmental Protection Agency (EPA) in 2004, asserts that individual meters (submeters) for each apartment that encompass all utilities, are the most effective method of promoting conservation of natural resources. Recognizing the need for water conservation in the state of California, Governor Brown signed SB 7 (**Attachment A**) requiring all new multifamily construction to include submeters effective January 1, 2018. Once submeters are installed, RUBS is no longer allowed (or necessary) for multifamily buildings.

ANALYSIS

Staff has completed its research and analysis on use of utility pass throughs (including RUBS) in ARO apartments. This memorandum discusses the following areas as they pertain to RUBS.

- I. Conservation Efforts in Multifamily Housing
 - A. Perspectives on RUBS Impact on Conservation
 - B. Research on Submetering
 - C. Conservation Incentives

II. Impact of Increased Utility Rates

- A. Historical Data on Utility Rates
- B. Potential Rate Increases

III. Challenges Pertaining to the Use of RUBS

- A. RUBS May Result in Annual Rent Increases that Exceed the 5% Annual Cap
- B. RUBS Cause Fluctuating Rents that are Difficult to Predict
- C. Lack of Transparency Regarding How Pass Throughs Are Calculated

IV. Current Contracts with RUBS Provisions

- A. Petitions Filed Regarding Utility Pass Throughs
- B. Options for Transitioning Current RUBS Contracts

I. Conservation Efforts in Multifamily Housing

A. Perspectives on the Effectiveness of RUBS as a Conservation Tool

Landlords assert that the utilization of RUBS in multifamily housing results in higher conservation of utilities by tenants. The premise is that if a tenant reviews a bill for water usage, they are more likely to report a leak and use less water. However, the EPA study previously cited, found that RUBS is not tied to actual usage, and therefore does not motivate tenants to conserve. Tenants receiving RUBS bills pay utilities based on the number of occupants and/or square footage of their apartment, rather than actual usage. For example, if a tenant actively conserves water while their neighbor chooses to hose off their patio daily, the tenant who is conserving water will pay a rate equal to the amount assessed their neighbor, despite using less water.

B. Research on Submetering

Submetering has been proven to be an effective conservation measure as it ties utility usage to each unit. This motivates the household to conserve as it directly correlates to their utility costs. For this reason, the City Council requested that staff conduct further research on the feasibility of installing submeters in existing master-metered apartment buildings.

Most multifamily buildings covered by the ARO are master-metered for water and sewer. To install submeters in existing buildings, landlords must purchase and install meter systems. This typically would require re-piping an entire building. A representational cost estimate for this work is provided in Table 1 below. Based on the research completed, it is not likely landlords will choose to invest in the installation of submeters because the cost exceeds the savings a landlord will experience over time resulting from this investment.

Table 1: Estimated Costs for Installing Submeters (per unit cost)

Component	Low	Mid	High
Labor to install meter	\$1,000	\$5,000	\$8,000
Meter	\$100	\$200	\$400
Labor to repair drywall	\$4,090	\$5,440	\$6,790
Drywall Materials	\$580	\$630	\$680
Total Per Unit Cost	\$5,770	\$11,270	\$15,870

Source: Survey of various local plumbers and contractors in San José conducted February 2018

C. Conservation Incentives

The City Council directed staff to conduct research on financial incentives landlords could use to alleviate the costs of water utility submetering. Staff identified two programs incentivizing the installation of water meters. Below is a summary of these two programs:

- **Santa Clara Valley Water District** – The Santa Clara Valley Water District offers a Submeter Rebate Program providing a rebate (up to \$150 per installed submeter) for multifamily landlords who install submeters in their apartment buildings.
- **City of San José** – On November 14, 2017, City Council approved the Capital Improvement Pass Through Program as a part of the ARO; Appendix B of the Regulations (<http://www.sanjoseca.gov/DocumentCenter/View/73546>) includes a list of specified improvements for the program. In order to utilize the capital pass through provisions, the landlord must petition for and receive an administrative decision authorizing a pass through for any costs to be charged to tenants.

The incentives provided by these two programs are limited. Staff concluded that the cost to install submeters in existing buildings is so high that the incentive programs do not provide sufficient funding to create a true incentive. The Housing Department has not received any petitions from landlords under the ARO's capital improvement incentive program.

Property Assessed Clean Energy Program (PACE)

The City Council also requested that staff explore the option of utilizing the Property Assessed Clean Energy (PACE) programs offered in San José to finance water submetering in ARO buildings. Upon review, staff has determined that the submetering of any utility is not eligible for PACE financing under State law as a stand-alone improvement, but submetering of a water utility meter may be available in conjunction with the financing of an energy or water efficiency project. The costs to submeter existing buildings is so high, even if the PACE financing were available and its terms were favorable, PACE financing may not provide a great enough incentive to influence future investments by landlords in these improvements.

Climate Smart San José

The City Council recently took action to adopt Climate Smart San José. This is an initiative to reduce greenhouse gas emissions related to energy and mobility and ensure a long-term water

supply. This research shows that while individual tenants may make efforts to conserve resources at the point of consumption, landlords can make efficiency investments that result in much higher resource conservation benefits. The City's Environmental Services Department developed a Multi-Family Energy Resource Table as a part of their City Energy Project in Fall 2017. This table provides a list of resources for property owners of multi-family buildings to incentivize various conservation efforts (**Attachment B**). This list includes rebate incentives to landlords for services including technical assistance and design, energy efficiency equipment, and costs for electric car charging stations.

II. Impact of Increased Utility Rates

Landlords have stated that the elimination of RUBS removes a landlord's ability to shift the risk of rising utility costs to tenants, leaving the landlord to bear the entire risk of utility increases. Landlords have also expressed concerns that the annual allowable rent increase may not be sufficient to cover future increases in utility costs. In order to assess the validity of these concerns, staff has analyzed historical data on utility increases, reviewed a study by the Economic Roundtable, and developed a hypothetical model to assess the ability of the 5% annual rent increase to cover future increases in utility costs.

A. Historical Data on Utility Rates

Staff collected information on historical utility rates to evaluate the impact of increased utility rates over time. Over the last five years, garbage rates for multifamily buildings increased by an average of 3.4% per year, San José Water Company rates increased an average of 13.9% per year, San José Municipal Water increased 11.8% per year and Great Oaks Water Company increased 11.9% per year. **Attachment C** provides further data from the original sources.

B. Utilities as a Proportion of Operating Costs

Understandably, landlords have expressed concerns about potential increases in utility costs. The historical utility increase data seems to bear that out. However, information from the San José ARO Study by Economic Roundtable shows that utilities such as water (2.6%) and garbage (1.7%) make up a small fraction of operating costs. This study indicates that increases in these costs have a limited impact on the overall expenses related to ownership of rental property.

C. Ability of Annual Rent Increase to Cover Utility Cost Increases

As mentioned, some landlords have stated that the 5% allowable rent increase is insufficient to cover future annual utility rate increases. While it is challenging to predict future increases in utility costs, staff developed a model to compare hypothetical increases for water, sewer and garbage collection, with rents increasing at 5% annually, to determine if the rent increase was sufficient to cover utility costs increases.

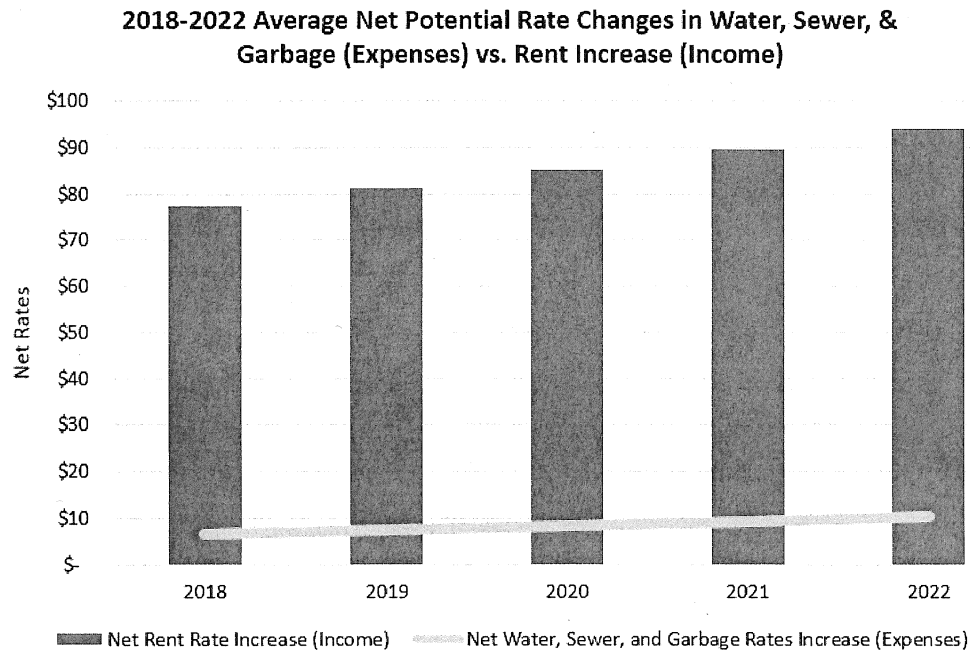
Using actual utility and rent information from all utility pass through petitions received by the Rent Stabilization Program from 2012 to 2017, staff compared the combined net potential

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increases in rates for water, sewer and garbage to the 5% net rent increase and created a graph comparing these figures. The information used to prepare this graph is provided as **Attachment D**.

**Assumptions:**

Assuming average rate increases for water, sewer, and trash from 2013-2017, and used the past five-year average as potential increases in rates.

Assuming San José Water Company, which has the highest rates.

Costs are based on utility petitions filed with the Rent Stabilization Program from 2012-2017.

This graph shows that the annual allowable 5% rent increase should be more than sufficient to cover utility increases. The San José data comports with the conclusions drawn by the Economic Roundtable Study. Furthermore, this example assumes no turnover of tenants. According to the *San Jose ARO Study* a majority of apartments turnover within a five-year period. This allows owners to raise rents to market rates for approximately 25% of their units every year. This further refutes the argument that utility increases will surpass rent increases allowed by the ARO. However, in the unlikely event that the annual general rent increase is insufficient to cover an owner's total costs, the landlord can file a fair return petition to seek an additional rent increase.

III. Challenges Pertaining to the use of RUBS

Staff has raised concerns regarding the impact of the pass through of RUBS and other utility costs on apartment residents. These concerns are summarized below.

A. RUBS May Result in Annual Rent Increases that Exceed the 5% Annual Cap

The annual general increase defined by the ARO is 5%. Tenants who are charged rent and utilities separately may experience a total annual rent increase that is greater than 5%. Petitions filed with the Rent Stabilization Program demonstrate examples of tenants receiving rent

increases beyond the allowable 5% rate when rent is combined with utility costs. Separating these charges may potentially mask a rent increase beyond the annual general increase.

B. RUBS Causes Fluctuating Rents that are Difficult to Predict

The ARO requires that tenants receive one rent increase during a twelve-month period. This feature of the ARO was approved to promote housing stability. The use of RUBS results in monthly cost variations that are very difficult for a tenant to predict. Variations can occur to a variety of factors. One such variation would be a change in the size or composition of the tenant household. A water leak or excessive usage by one individual could also contribute to significant oscillations in costs. Utility bills generated by RUBS pass on these fluctuating costs to tenants. These unanticipated costs may lead a tenant to a situation where they are unable to pay rent. The intention of the ARO is to protect tenants from sharp rises in rent costs, providing additional stability to families in our community. Moreover, the ARO states that rent may only be increased once per twelve-month period.

C. Lack of Transparency Regarding How Pass Throughs Are Calculated

Tenants who are charged utilities via RUBS have limited information on how the pass through amount is determined. Each tenant receives their own bill, without information regarding the total utility bill for the entire building, or amounts paid by other tenants. Without access to this information, a tenant will not know if the ratios used for their unit are consistent with the assumptions used for other tenants, or if they are being charged for other fees that are not allowed by the ARO. Based on specific RUBS cases reviewed by hearing officers, some landlords using RUBS do not make their utility bills available to tenants. This lack of transparency provides opportunity for abuse by landlords to charge excess utility charges to tenants.

In summary, RUBS may result in annual rent increases that exceed the 5% cap; causes fluctuating rents; and lack of transparency regarding calculation. For these reasons, Staff does not recommend the incorporation of RUBS into the ARO.

IV. Current Contracts with RUBS Provisions

As mentioned, the City Council asked staff to address the issue of existing leases with RUBS provisions. This section provides information on the known instances of RUBS utilized in San José and presents options as to how to address existing RUBS agreements.

A. Petitions Filed Regarding Utility Pass Throughs

From 2012 to 2017, forty-three (43) petitions were filed with the Rent Stabilization Program regarding rent increases from RUBS pass throughs (summary in **Attachment E**). Hearing officers have been challenged in determining the application of ARO to these RUBS agreements. Additionally, some of the petitions raised concerns regarding the inconsistent application of RUBS, and pass through of prohibited costs to tenants. These costs include set-up fees and transaction fees which are not allowed by the ARO.

Staff sampled petitions filed with the Housing Department to assess the utility charges passed through to tenants. Table 2 below illustrates the inconsistency in the amounts landlords passed through to tenants.

Table 2 Sample of Utility Charges Passed Through Using Petitions Filed with Housing Department

Address	Monthly RUBS Charge	Monthly Rent
550 Kiely #23	\$ 64.47	\$ 1,250
4311 Norwalk #210	\$ 103.15	\$ 2,881
1544 Maurice Ln #29	\$ 109.18	\$ 2,191
877 S. Winchester Blvd #50	\$ 152.95	\$ 2,572

B. Options for Transitioning Current RUBS Contracts

During the discussion of RUBS with the City Council, concerns were raised regarding the treatment of existing RUBS contracts. Although RUBS is not consistent with the ARO, it is evident that many landlords are using RUBS to pass through utility costs to tenants. The City Council asked staff to determine the impact to current contracts if RUBS was no longer allowed under the ARO.

Landlord Representative Proposal

Following the City Council discussion regarding RUBS in November 2017, staff worked with landlord representatives to develop a proposal that would allow the continuation of utilizing RUBS to charge tenants for utilities and adhere to the 5% annual general increase as described in the ARO. Per the representatives' proposal, the allowed RUBS amount would be limited on a monthly basis by both the 5% ARO limit and the Santa Clara County Housing Authority Utility Rates by utility and apartment size. Landlords would be required to limit the pass through of common area expenses and provide transparency of bills to their tenants. The complete proposal can be found in Public Comments which is provided as **Attachment F**.

Staff shared the proposal made by landlord representatives with the public. The feedback received from other stakeholders (including landlords and tenants) was that the model is highly complex. Stakeholders felt that it is difficult to have two concurrent standards. Landlords indicated they did not have the expertise in place to monitor these simultaneous restrictions. Tenants indicated the concept is difficult to understand.

Staff is concerned that the complexity of the model would require a reevaluation of the current staffing model to ensure ongoing compliance and public education necessary to support this concept. If this concept was implemented, significant amendments must be made to the ARO. It would also perpetuate fluctuating monthly rents which are a problem with current RUBS agreements. For these reasons, staff developed an alternative recommendation.

Staff Proposal to Address Existing Leases with Utility Pass Through Provisions

After reviewing the analysis and public input pertaining to RUBS, staff developed a proposal to address existing leases with utility pass throughs. Staff's proposal would allow a landlord to file a petition with the Housing Department to request a one-time rent increase to provide a partial revenue offset for utility charges that were previously passed through to tenants. The landlord must demonstrate that a written utility pass through contract was in place prior to January 1, 2018. The petition must be submitted within a year of the City Council's adoption of the amended ARO. If the petition is approved by staff, the pass through is added to the tenants' base rent for the duration of their tenancy. Pass throughs will not be approved until all units are registered.

The staff proposal has two components. The first is for landlords that have existing written leases with pass throughs for water, sewer, and garbage collection. The second is for landlords that have existing leases with pass through provisions for gas and electricity. If eligible, a landlord may apply for both.

Existing Leases with Water, Sewer, and Garbage Collection Pass throughs

The utility pass through amounts will be limited to the lesser of the average amounts charged for water, sewer, and/or garbage in calendar year 2017 *or* the sum of the Santa Clara County Housing Authority (SCCHA) Utility Allowances for water, sewer, and garbage in multifamily housing, to ensure that the offset amount is reasonable. **Attachment G** provides a summary of the SCCHA rates. Table 3 on the following page provides an excerpt of this attachment.

Existing Leases with Gas and Electric Pass throughs

In some limited circumstances, ARO properties do not have a master meter for gas or electricity (generally built over 50 years ago). State law allows landlords of these properties to pass through gas and electricity to tenants if they comply with the regulations included in Civil Code Section 1940.9 at the commencement of tenancy. A landlord may petition for a one-time rent increase to offset the cost of gas and electricity for their tenants. The landlord must demonstrate that a written utility pass through contract was in place prior to January 1, 2018 and verify the average monthly cost of those pass throughs for calendar year 2017. The amount that would be passed through would be limited to the lesser of the average charged in calendar year 2017 or the SCCHA electric and gas utility allowance amounts for multifamily housing as shown in Table 4 below by bedroom size.

Table 4: One-Time Pass Through Offset Allowances by Bedroom Size

	Studio	1 Bedroom	2 Bedroom	3 Bedroom
Water, Sewer and Garbage Collection Limit	\$ 86	\$ 91	\$ 102	\$ 149
Gas and Electricity Limit	\$36	\$58	\$70	\$84

As shown in Table 4, a landlord who holds a RUBS contract to pass through water to the tenant of a one-bedroom apartment, will be limited to a maximum of \$91 a month. If verified by staff, the landlord would be able to pass through the lesser of the SCCHA allowance or the average amounts charged for calendar year 2017.

Impacts of a One-Time Increase to Eliminate RUBS Agreements

The one-time rent increase option would provide landlords with a practical means to address existing RUBS agreements. The process will be transparent to tenants and landlords. The combined amount charged to tenants will not exceed the total amount paid previously when paying rent and utilities separately. It should be noted that if this option were to be approved, it is likely that some tenants will receive overall rent increases in excess of the 5% annual limit approved by City Council.

Regulations for One-Time Petition Process

Regulations should be developed to describe an expedited petition process for the allowance of a one-time rent increase for landlords with existing RUBS contracts. Table 5 outlines the framework for this petition process to be summarized in the Regulations:

Table 5: Outline of Framework for Petition Process to be Summarized in Regulations

Program Guideline	Proposal
Petitioner	Landlord submits required documents
Respondent	Tenant may challenge the amounts paid and authenticity of the agreement
Allowed Utilities	Unmetered utilities including water, sewer, garbage, electricity and/or gas
Basis	Average cost paid by tenant over calendar year 2017
Limit	HUD Utility Allowance cap
Petition Period	Must be filed concurrent with initial rent registration, but no later than 12 months after adoption of ordinance
Required Documents	Written utility agreement signed by tenant prior to January 1, 2018, copies of prior 12 months utility bills from the utility company, copies of utilities charged to tenant for prior 12 months, completed petition, bills to tenant, and evidence of the amounts actually paid by tenant under the agreement in 2017

It should be noted that there will be an additional administrative workload associated with this approach. The staffing plan that was approved by City Council did not contemplate administration of a RUBS offset rent increase petition process. While it is difficult to estimate the number of one-time RUBS petitions that may be filed by owners, the Housing Department will seek to utilize previously approved staffing to address the additional workload.

This may impact services to owners and tenants during the limited time the petition process is available (twelve-month period). It may also delay implementation of other ARO initiatives such as ARO education and the On-line Rent Registry.

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 and Regulations. 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. The Housing Department met any individual or group that requested a meeting during the public comment period. As previously noted, the public comment files are included as Attachment F. The list of community meetings held to discuss this issue are summarized in **Attachment H**.

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 #1: Clarify that Utility charges, including RUBS, are not allowed to be passed through to tenants. Do not provide for a one-time increase.

Pros: The ARO was written to include all housing services in rent. Tenants would not be impacted by fluctuating utility costs or total rent increases over the 5% annual limit approved by City Council. No additional staff would be needed as the approved staff proposal assumed no RUBS.

Cons: This approach does not provide an offset for landlords currently charging RUBS to tenants.

Reason for not recommending: Landlords would not be provided an offset for current charges using RUBS.

Alternative #2: Allow the pass through of utility charges, such as RUBS, providing parameters for the allowable pass through. Parameters would include the following:

- Landlords must invest in conservation improvements such as low flow faucets and toilets prior to utilizing RUBS to pass through utility costs
- Water and garbage costs may be passed on to tenants
- Combined rent and utility costs may not exceed 5% allowable rate
- Utility costs may not exceed HUD Utility Allowance amounts
- Landlords will make all utility bills accessible for review by tenants

Pros: Allows landlords to charge tenants utilities separately to continue using a more predictable and uniform method.

- Cons:** The complexity of the model makes it difficult for a tenant to understand and predict utility costs. The Ordinance would need to be re-written and the complexity of the model would require the Housing Department to reevaluate its staffing composition.
- Reason for not recommending:** The model is too complex for landlords, tenants and staff to understand and implement.

COST IMPLICATIONS

Although the introduction of a new petition process will create a new burden on staff, the Housing Department's recommendation is to absorb these costs into the current staffing levels.

BUDGET REFERENCE

There are no budget impacts associated with this proposed ordinance amendment.

COORDINATION

This memorandum was coordinated with the Environmental Services Department, Office of the City Attorney, 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.

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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 Rachel VanderVeen, Program Administrator, at (408) 535-8231.

ATTACHMENTS:

Attachment A – SB 7 Legislation

Attachment B – List of Resources for Property Owners of Multi-Family Buildings to
Incentivize Various Conservation Efforts

Attachment C – Average Utility Costs and Rates Over Time in San José

Attachment D – Staff Calculation for 2018-2022 Potential Utilities Cost

Attachment E – RUBS Petitions received by the Rent Stabilization Program

Attachment F – Public Comments

Attachment G – U.S. Department of Housing and Urban Development Utility Allowances

Attachment H – List of Community Meetings