



# Memorandum

**TO:** CITY COUNCIL

**FROM:** Mayor Sam Liccardo

**SUBJECT:** SEE BELOW

**DATE:** April 20, 2018

Approved

Date

4-20-18

**SUBJECT: AMENDMENTS TO THE APARTMENT RENT ORDINANCE - TITLE 17  
FOR UTILITY PASS THROUGH TO TENANTS**

## RECOMMENDATION

1. Adopt staff recommendation, affirming that Ratio Utility Billing System (RUBS) contracts for San José's Apartment Rent Ordinance (ARO) units remain null and void, but allowing for a one-time adjustment for units with existing contracts.
2. Direct the City Manager to:
  - a. Return through the prioritization process for Housing and/or PBCE and ESD Staff to explore additional incentives to facilitate retrofits for sub-metering existing multi-family buildings, including but not limited to:
    - Permit fee waivers;
    - Use of San José Clean Energy net revenues for low-cost loans or grants;
    - Facilitation of combining energy-efficiency retrofits with sub-metering through PACE programs;
    - City facilitation/negotiation of "group discounts" for San José properties with participating contractors; and/or
    - Better communication of information about existing incentive programs through PG&E, BAAQMD, AEA, and other agencies.

## DISCUSSION

I encourage the adoption of staff's recommendation for three reasons, but chief among these is simplicity. Maintaining the current prohibition of RUBS ensures predictability of rent increases for tenants, simplicity of implementation by landlords, and transparency that enables effective enforcement of the ARO by the City.

Second, staff's approach protects the reasonable expectations of both renters and landlords, an important consideration in light of the precarious nature of the housing market. Landlords raise reasonable concerns about past practices of ambiguous and contradictory enforcement by the City. These concerns are best—albeit imperfectly—addressed with a one-time adjustment, as contemplated by staff. Tenants have already agreed to, and have been, paying those utility costs, so incorporating them into the base rent—likely at a discount in light of HUD allowance rates—

does not disrupt the predictability of their housing costs. Future increases in utility costs appear very likely to be subsumed within the 5 percent escalator in nearly any market conditions, as reflected by the data presented on pages 7 and 8 of the staff memorandum on historical utility rate increases and their limited proportion of total operating costs. Moreover, landlords retain the ability to submit a fair return petition the City where highly unusual market conditions prevail.

Finally, the evidence does not persuade us that RUBS does much to promote conservation. Intuitively, it remains difficult to expect that a tenant in a four-plex apartment will substantially alter their water use where their consumption patterns have little to do with three quarters of the building's occupants.

The 1999 Industrial Economics study cited by landlord representatives provides contradictory and unpersuasive findings. While the study found lower median usage of water in RUBS-governed buildings, the study relied upon a relatively small sample of buildings in three states, and it appears unclear whether regression analysis was utilized to control for any exogenous factors other than water cost or building age. When buildings were converted from "within rent" to RUBS, the study found no clear reduction in water consumption. The study's authors admitted that "because monthly water bills tend to be low (less than \$20 per unit), we hypothesize that price increases do not affect monthly costs enough to trigger behavioral change," (p. 1) and that differences in different localities' cost allocation methods can mute price signals to consumers, depressing any conservation response to higher costs (p. 2).

All parties agree that sub-metering provides the best approach to conservation and equitable distribution of utility cost. Accordingly, we should focus our energies on incentives and other policies to encourage the retrofit and redevelopment of older, unsafe, and inefficient buildings to achieve that end.