



Memorandum

TO: NEIGHBORHOOD SERVICES AND
EDUCATION COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: October 22, 2018

Approved

Date

10-31-2018

**SUBJECT: RENT STABILIZATION PROGRAM IMPLEMENTATION PLAN
UPDATE**

RECOMMENDATION

It is recommended that the Neighborhood Services and Education Committee (NSE) accept the Rent Stabilization Program implementation report, including the Rent Stabilization Program 2017-2018 Annual Report.

BACKGROUND

The Rent Stabilization Program's mission is to oversee the City of San José's apartment and mobilehome ordinances through education, engagement, and collaboration to build and maintain safe, healthy, and sustainable communities. This memorandum summarizes the program accomplishments and Rent Stabilization Program Annual Report for 2017-2018 (**Attachment A**).

The Rent Stabilization Program oversees the enforcement and implementation of four Ordinances:

- ***Apartment Rent Ordinance (Municipal Code Chapter 17.23, Parts 1-9):*** The ARO covers most rental apartments with three units or more built before September 7, 1979, limits rent increases to 5% once every 12 months, and allows landlords to receive a fair return. All ARO properties must post a City-approved notice in a conspicuous location within each building indicating that the ARO applies to the units contained within the property.
- ***Tenant Protection Ordinance (Municipal Code Chapter 17.23, Part 12):*** Tenants living in building with three or more units are entitled to just cause protection from termination of their tenancy. The Ordinance provides 13 just cause bases, anti-retaliation and anti-harassment provisions.
- ***Ellis Act Ordinance (Municipal Code Chapter 17.23, Part 11):*** The City's Ellis Act Ordinance outlines the procedures that owners of both Rent Stabilized Units and non-Rent Stabilized Units can permanently remove their properties from the rental market.

The Ordinance creates a standardized process for issuing Ellis Act withdrawal notices to tenants, provides for required relocation benefits, establishes a tenant's right to return and the re-control of apartments returned to the market.

- ***Mobilehome Rent Ordinance (Municipal Code Chapter 17.22):*** The City's Mobilehome Rent Ordinance covers Mobilehome parks where rental lots were permitted with plumbing, electrical, and sewage before September 7, 1979 with certain exceptions. The Ordinance regulates the formula for a maximum annual percentage increase. It also permits landlords a fair rate of return on their investment and allows them to request a higher increase by filing a petition with the City.

The Rent Stabilization Program provides various services to owners, tenants, residents and stakeholders of apartments and mobilehomes. The primary services include:

- staffing the daily information lines (phone, e-mail, mail, faxes) to respond to general inquiries, and meeting in person with owners and tenants to discuss process and options;
- managing submission of notices of termination of tenancy, including reviewing submitted notices and analyzing trends;
- managing tenant and owner petitions through case management, scheduling mediations or administrative hearings with contracted hearing officers, or developing administrative decisions;
- creating and implementing multilingual outreach strategies, including mass mailings, presentations to community groups, site visits to apartment complexes, fact sheets and brochures, website updates, and workshops; and
- policy development and implementation.

ANALYSIS

The following summarizes the Rent Stabilization Program's accomplishments as of October 19, 2018.

APARTMENT RENT ORDINANCE (ARO)

The Housing Department began the process of updating the ARO and Regulations in August 2017, releasing drafts for public review and feedback. Staff conducted public meetings with owners and tenants to discuss the draft ordinance.

In the fall of 2017, staff returned to the City Council with the proposed amendments to the ARO and Regulations. On November 14, 2017, the City Council approved the Apartment Rent Ordinance (ARO), amending Parts 1 through 9 of Chapter 17.23 of Title 17 of the San José Municipal Code to make changes, which included some of the following: revising the petition and hearing process, providing for the registration of rent stabilized units, exempting certain affordable housing units from annual rent increase limitations, and authorizing tenant buyout agreements.

On April 24, 2018, the City Council approved an amendment to the ARO to clarify that the pass through of utility charges via Ratio Utility Billing Systems (RUBS) or other unmetered allocations is not permitted after October 31, 2018. The Council additionally approved an owner's right to petition for a one-time rent increase if a RUBS agreement executed prior to April 30, 2018 and included a written utility pass through contracts for water, sewer and/or garbage. The following section provides a summary of key program implementation highlights related to the Apartment Rent Ordinance.

Updated Apartment Rent Ordinance Regulations: In 2017-2018, City Council made substantial amendments to the ARO. Those amendments include an updated hearing process, rent registry, capital improvement, and refined fair return process. The Regulations were updated on June 28, 2018 and provided the process to administer RUBS petitions.

Rent Registry implementation: The City Council approved the creation of a rent registry to collect rent information and help monitor rental activity. On August 17, 2018, the online Rent Registry system was launched. As of October 26, 2018, 787 account users and 5,700 units have registered in the system.

The online rent registry offers owners two options to either input each unit individually by direct entry or input multiple units by using an Excel template. Smaller property owners and those less familiar with computers favor registering their units by direct entry because it provides step by step instructions throughout the registration process. Larger property owners prefer the use of the Excel rent template due to the ability to copy and paste rental information into the spreadsheet from their own data tracking system saving time.

Mailers with unique login credentials were sent to property owners with information on how to register their units, workshop dates, and the registration deadline. The phasing of the mailers allowed for timely system updates and prompt staff response times to owner inquiries. The mailers included a list of seven scheduled workshops where owners and property managers can receive one-on-one technical assistance from housing staff to register their properties. These mailers were mailed out in three different phases:

- Phase One: Mailed on August 17, 2018, targeted small property owners;
- Phase Two: Mailed on August 31, 2018 to a mix of small and large property owners; and
- Phase Three: Mailed on September 14, 2018 included large property owners.

To date, staff have facilitated four workshops with an average of 15 attendees at each workshop. The majority of attendees reported a need for technical assistance due to unfamiliarity with computers. In addition to the workshops, a user guide was developed and available on the website in English, Spanish, and Vietnamese. With the data collected from the registry, the Housing Department will be able to report out more accurate housing statistics, such as the average rent by bedroom size and average rent by City Council district.

Starting November 1, 2018, staff will conduct additional outreach to owners who have not yet completed the registration of their units. This additional outreach will include sending out mailers, email, and phone calls to those owners who have not yet registered their units.

Staff is continually evaluating the implementation process of the rent registry. The phasing of the rent registry naturally provided more time for property owners in the first two phases more time than those in the third phase. The majority of property owners with large properties were included in the third phase. In order to create the time necessary for owners of larger properties to register their apartments on time, staff is recommending moving the deadline for registration to February 1, 2019.

Petitions Summary: In 2017-2018, there were 161 tenant and landlord petitions submitted to the Rent Stabilization Program. Below is a breakdown of Resolved Petitions and Pending Petitions:

Table 1: Resolved and Pending Petitions

Resolved Petitions	# of Petitions	Percentage
Resolved by Voluntary Mutual Agreements	79	71%
Resolved by Hearing Officer's Decision	28	25%
By Administrative Decision	4	4%
TOTAL	111	

Type of Pending Petitions	# of Petitions	Percentage
Pending a mediation hearing <i>Note: All pending petitions are regarding utility charges</i>	20	40%
Pending Hearing Decision	5	10%
Ineligible	8	16%
Withdrawn by a tenant prior to the mediation hearing	17	34%
TOTAL	50	

The implementation of the amended Apartment Rent Ordinance required the development of several new petitions that did not exist in the prior Ordinance. Staff developed forms with instructions for the Capital Improvement petition, Joint petition, Fair Return petition, and Ratio Utility Billing Systems (RUBS) Offset petitions. The following is a summary of the implementation of these new petitions.

- ***Capital Improvement Petitions:*** There were two capital improvement petitions filed with the Rent Stabilization Program. The first capital improvement petition for a pass through of window replacements in seven apartments was submitted on July 11, 2018. The Petition Examiner provided an award dated September 26, 2018 for a pass through, amortized over a ten-year period ranging from \$12 to \$12.71 per month for each apartment. The second capital improvement petition for a pass through of window

replacements for two apartments was submitted on July 18, 2018. The Petition Examiner provided an award dated October 10, 2018 for a pass through, amortized over a ten-year period of \$19.95 per month for each apartment.

- *Joint Petitions:* There was one joint petition filed on August 13, 2018 with the Rent Stabilization Program. The tenants and landlord filed a petition to increase the security deposit to \$500 to add a pet. They also agreed to increase rent to add a friend as the additional occupant on the lease agreement by \$65 (2.8% less than the 5% cap). The Petition Examiner provided a decision on August 22, 2018 to allow these increases.
- *Fair Return Petitions:* The Interim Ordinance established a Fair Return petition process for landlords on May 10, 2016 and was effective September 1, 2016. There was a total of seven Fair Return Petitions filed with the Rent Stabilization Program. Below is a breakdown of each year:
 - *July 1, 2016 to June 30, 2017:* Three petitions were filed under the Interim Fair Return Petition. The first petition was filed on December 7, 2016 and the landlord withdrew on June 30, 2017. The second petition was filed on April 3, 2017. The Administrative Hearing Officer provided a decision dated December 18, 2017. The third petition was filed on April 25, 2017 which reviewed and deemed ineligible on June 13, 2017.
 - *July 1, 2017 to June 30, 2018:* There were two petitions filed under the Interim and current Fair Return petition. The first Interim Fair Return petition was filed on December 7, 2017 and was withdrawn on June 30, 2018. The second Fair Return petition was filed on June 28, 2018 and withdrawn on August 1, 2018.
 - *July 1, 2018 to October 19, 2018:* A Fair Return petition was filed on August 10, 2018 and an Administrative Hearing Officer provided a decision on September 26, 2018. Another Fair Return Petition was filed on October 5, 2018 and was deemed ineligible and closed on October 17, 2018.
- *Ratio Utility Billing Systems (RUBS) Offset Petitions:* On April 24, 2018, San José City Council voted to require utility charges to be included in the rent charged for rent stabilized apartments. The Ordinance allows landlords to file a for a one-time rent increase petition between July 5, 2018 to October 31, 2018 if they are currently charging separately for utilities from rent. Starting October 31, 2018, landlords will no longer be able to bill utilities to tenants if a petition is not submitted.

Program staff have provided outreach to landlords on how to notice their tenants, complete the petition, and process the supporting documentation. Mailers with information on the transition were sent to property owners in June 2018 on how to submit information for their units. Since July 5, 2018, 56 Petitions have been submitted to the Rent Stabilization Program, representing over 2,000 apartment units. There is a range of small and large properties who have submitted applications. The RUBS Offset petition offers owners two options to either submit the petition electronically or by hard copies.

As of October 19, 2018, there has not been a RUBS decision issued. Based on the number of verified petitions received thus far, the proposed range of rent increases range from \$60 to \$100.

TENANT PROTECTION ORDINANCE (TPO)

On May 10, 2017, the Tenant Protection Ordinance took effect, requiring a just cause to be stated on notices of termination served to tenants living in apartment buildings with three units or more. Through the public outreach process, concerns were voiced over the family exemption to the material or habitual violations of tenancy for unauthorized occupants. On November 14, 2017, City Council approved amendments to the TPO, limiting which additional family members were exempt by removing brother and sister. The exemption applies to spouses, domestic partners, parents, children (including a foster child). Additionally, the protection for adults is limited to circumstances where the number of adults in the apartment does not exceed the greater of the number of occupants allowed by the rental agreement, or two adults per bedroom. Staff received inquiries on the clarification of relationships permitted during public meetings and interests by tenants and landlords in the joint petition for additional tenants. If a tenant allows an additional member to reside in the unit whose relationship is not under the protected categories and does not file a joint petition, a landlord may issue a notice of termination identifying the just cause "Material or Habitual Violation of Tenancy."

On April 24, 2018, the City Council approved amendments to include a provision that prohibits owners from disclosing, or threatening to disclose, tenants' and/or tenant associates' immigration or citizenship status to authorities for the purposes or intent of retaliation, harassment, intimidation, or to recover possession of a rental unit. The TPO includes provisions that are consistent with applicable parts of new state law Assembly Bill 291, signed into law October 5, 2017. Immigration status is not one of the just cause reasons and therefore, landlords may not issue a notice of termination related to immigration status.

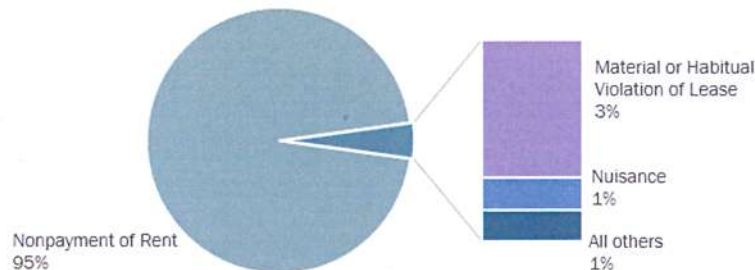
Also on April 24, 2018, the City Council approved adding "criminal activity" as a separate just cause basis for eviction when a tenant is "held to answer" for a serious or violent felony as defined under the California Penal Code that is committed during the tenancy and within 1,000 feet of the premises. A landlord, before terminating a tenancy, must allow the tenants at the rental unit the "opportunity to cure" by removing the tenant who was held to answer from the apartment or from the lease agreement. During 2017-2018, one notice of termination submitted included the just cause reason of criminal activity. The new developments and accomplishments are listed below.

Award of \$500K for Legal Services for Low-Income Tenants and Landlords Program: On February 21, 2018, the Housing Department released a RFP for Legal Services for Low-Income Tenants and Landlords Program. San José Housing Consortium, (comprised of Law Foundation, Bay Area Legal Aid, Senior Adults Legal Assistance, Asian Law Alliance, and Project Sentinel), was awarded a \$500,000 contract to provide legal education and services to tenants and landlords beginning fall 2018. The goal of the program is to increase housing stability by providing landlord/tenant counseling, education, referrals, and legal assistance to low-income tenants and landlords. Available legal assistance will include assistance with evictions under the City's TPO,

and/or violations of the ARO. These services will also include outreach and education to low-income tenants and landlords citywide. From July 1, 2018 to October 19, 2018, there were approximately 199 calls received on the Tenant Help Line.

Expanded implementation of TPO and tracking of notices of termination: Per the TPO, landlords or managers of multi-unit properties in San José are required to submit notices of termination to our office. Staff has expanded the tracking process for submissions. The City received 9,304 notices for just cause terminations during 2017-2018.

Table 2: Summary of Just Cause Submissions to the Rent Stabilization Program from 2017-2018



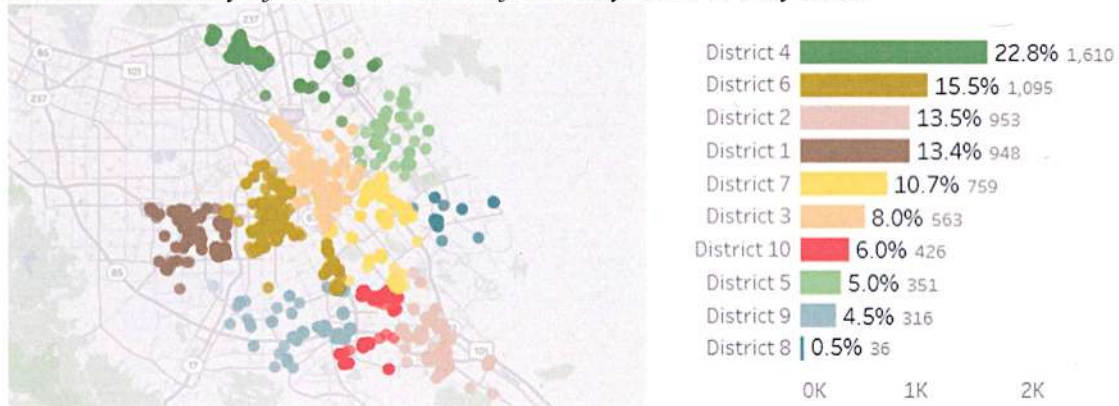
Just Cause Submissions		Total
1	Nonpayment of rent	8,903
2	Material or habitual violation of tenancy	274
3	Substantial damage to the rent unit	5
4	Refusal to agree to a like or new rental agreement	5
5	Nuisance behavior	63
6	Refusing access to the unit	3
7	Unapproved holdover subtenant	19
8	Criminal activity	1
9	Substantial rehabilitation of the unit	5
10	Ellis Act Removal	0
11	Owner move-in	15
12	Order to vacate	8
13	Vacation of unpermitted unit	3
Total		9,304

Prior to the implementation of the TPO, the notices reported to the Rent Stabilization Program only included no-cause notices. The number of no-cause notices by fiscal year in the two years prior to passing the TPO were 433 and 280. During this period, landlords were also serving notices to vacate due to non-payment of rent. However, staff was not aware of the frequency of these notices. After the TPO was passed, staff realized thousands of notices to vacate are being served each year, with over 96% of the notices for non-payment of rent. This new information is an indicator of the challenge faced by renters in San José to consistently afford the rent. Staff

have identified this as a challenge and is working with partners to create links between households facing non-payment of rent evictions and homeless prevention programs.

Developing an online dashboard of notices of termination¹: The Rent Stabilization Program collaborated with the Center for Social Research at Calvin College to develop a [Notice of Termination Dashboard](#) on the platform Tableau for the public to view. The information on this dashboard is derived from the notices of terminations that the Rent Stabilization Program has received, including 3-30-60 day notices of terminations and summons and complaints. Table 3 describes the number of notices received by council district during the first year of notices received (May 2017 to May 2018).

Table 3: Summary of Notices received from May 2017 to May 2018



ELLIS ACT ORDINANCE

The Ellis Act Ordinance was approved by City Council and went into effect on May 25, 2017. The Ordinance requires Landlords with apartment buildings with three or more units built prior to 1979 to comply with the following requirements if they are withdrawing their units from the rental market:

- ***Noticing Requirements:*** 120 days' notice to all tenants, with the right to extend up to one year if tenants are over the age of 62, disabled, terminally/catastrophically ill, or have school-aged children.
- ***Relocation Assistance:*** Required for all tenants, with additional assistance permitted for households with low-income families, tenants over the age of 62, disabled, terminally/catastrophically ill, or have school-aged children.
- ***Subject to the ARO:*** All new units built are subject to the City's Apartment Rent Ordinance.

On April 24, 2018, the City Council approved an amendment to the Ellis Act Ordinance amending the following:

¹ Multiple submissions may exist for tenant households because landlords are required to submit a three-day notice prior to a Summons and Complaint to initiate the Unlawful Detainer Process.

- **Modify the re-control provisions:** Permit re-control under the Apartment Rent Control Ordinance (ARO) of the greater of either the number of apartments removed from the market, or 50% of newly-built apartments;
- **Modify the inclusion from four units to three units:** Include under the Ordinance apartment buildings with three units to be consistent with the Apartment Rent Ordinance;
- **Allow non-ARO apartments with three units or more built after 1979:** Provide a 120-day notification to their tenants and the City and to provide relocation consultant services to impacted tenants.

Highlights of the Ellis Act Ordinance implementation are listed below.

- **Created and updated owner and tenant petition forms:** Following the amendments made at the November 14, 2017, and April 24, 2018, City Council meetings, staff created and updated new petition forms for the Ellis Act Ordinance.
- **Tracking of Ellis Act withdrawals:** To date, two properties have initiated an Ellis Act withdrawal by issuing a notice to withdraw their apartments from the rental market. This amounts to nine apartments. One property is a four-unit ARO apartment proposing to rebuild 285 units. The developers plan to transition from rental housing to “for-sale” housing, which will make this project subject to the Inclusionary Housing Ordinance (IHO). This project has paid the City’s filing fee, noticed the tenants, recorded a memorandum with the County, paid the tenants relocation benefits, and worked with the City’s contracted relocation specialist to assist impacted tenants. The second property, a five-unit apartment complex not subject to the ARO, is proposing to rebuild 249 units. This development is projected to remain as rental housing. This project has paid the City’s filing fee, noticed the tenants, and worked with the City’s contracted relocation specialist to assist impacted tenants.
- **Responding to inquiries:** Program staff continues to respond to owner and developer inquiries regarding the Ellis Act process. Specifically, staff is developing a fact sheet that clarifies re-control requirements and right to return provisions under the Ellis Act Ordinance.

MOBILEHOME RENT ORDINANCE

The Rent Stabilization Program also provides services to mobilehome owners, park owners, park managers, and park residents to provide education and information to improve their relationships. There are 59 mobile home parks in San José that are home to approximately 35,000 residents. San José has the largest number of mobile home households in California. Program updates related to the Mobilehome Rent Ordinance are listed below.

- **Policy review of the Opt-In Concept:** Since 2015, the City Council has taken several actions regarding mobilehome park preservation. One of those actions directed the Housing Department to explore the “Opt-In/Stay-In Business” (Opt-In) concept proposed by mobilehome park owners. Opt-In was intended to provide mobilehome park owners with financial incentives to make needed capital improvements in return for keeping parks operating for a defined period of time. From February through July 2017, an Opt-In/Stay-In Business Advisory Committee composed of park owners and residents met and worked diligently to discuss the components of the Opt-In Concept. Park owner

representatives strongly opposed resident consent to Opt-In, while resident committee members favored some form of consent. In March 2018, City Council directed staff to no longer work on this proposal.

- **Review of utility charges:** San José Verde Mobilehome Park Resident contacted staff alleging utility overcharges. As a result, staff collected and reviewed utility statements and determined an overcharge in trash and sewage billing. Program staff recommended that the Residents seek legal counsel.
- **Investigation of evictions:** Program staff was made aware of an eviction notice at Winchester Ranch Mobilehome Park. Program staff made contact with the impacted resident and shared referrals to legal agencies.
- **Mobilehome Rent Control Resource Guide and fact sheet:** Program staff is currently updating the Mobilehome Resource Guide and Fact Sheet to share with the Mobilehome communities. The guide will include an overview of the Rent Control Ordinance, Park Roster, and Referrals and Resources. The fact sheet will outline the basics of the Mobilehome Rent Control Ordinance.

STAFFING AND FEE IMPLEMENTATION

On November 14, 2017, the City Council approved the proposed staffing plan for the Rent Stabilization Program and the addition of Phase II including the following positions:

- One Senior Analyst position;
- Three Analyst positions;
- One Public Information Representative; and
- One Legal Analyst in the City Attorney's Office.

The City Council also approved the ARO Supplemental Fees for 2017-2018 for an additional \$25.50 per unit to administer Phase II of the Rent Stabilization Program, for a total of \$55.80 per unit. The initial billing of \$30.30 per unit was sent to landlords in October 2017. The supplemental billing of \$25.50 per unit was subsequently sent to landlords on March 28, 2018. According to the Department of Code Enforcement, 97% of the fees were collected as of October 19, 2018.

The Rent Stabilization Program has successfully filled most of the positions and created the following three distinct teams:

- **Petitions Team:** The Petitions Team is responsible for accepting and reviewing petitions filed by landlords and tenants. The team is also responsible for scheduling hearings on the petitions and issuing administrative decisions consistent with the Ordinance and Regulations.
- **Compliance Team:** The Compliance Team is responsible for enforcing the Ordinances and Regulations.
- **Administrative Team:** The Administrative Team provides administrative support.

The phased staffing plan is meeting the need of the program. As implementation of the expanded program continues, the proposed staffing level is adequate and supports the ongoing

program resource needs. Staffing levels will be reviewed each year as part of the annual fee analysis process.

OUTREACH

Staff members participate in a variety of events to interact with the community and convey information about program ordinances. Some of these events are forums to share information and answer questions from the public. Every year, the Rent Stabilization Program presents information specifically to owners and tenants. Upon request, smaller presentations are prepared for specific groups, such as realtor associations or building-specific organizations. During 2017-2018, the following events took place:

- 18 community meetings with over 100 attendees
- 44 stakeholder meetings
- 22 tabling and public outreach
- 5 mobilehome outreach
- 3 winter resource fairs for emergency preparedness

The new developments and accomplishments include:

- **Updated Materials:** Created a guidebook, fact sheets, and postcards available in English, Spanish, and Vietnamese. In a continuing effort to increase knowledge and awareness of the ordinances among owners and tenants, the Program has provided guidebooks, fact sheets, and postcards featuring basic information about the ARO, TPO, and Ellis Act ordinances in English, Spanish, and Vietnamese.
- **Newsletters:** Three newsletters were sent to landlords addressing new policy changes affecting tenants and landlords of residential rental property in San José. The newsletters included information about upcoming workshops, meetings, as well as information on other important topics and programs, including the rent registry.
- **Public Service Announcements:** Recorded two public service announcements in collaboration with CreaTV on Free PSA Days on June 17, 2017 and June 26, 2018. CreaTV San José is a non-profit community media center that manages four public and education channels for the City of San José. More than 150,000 Comcast Cable subscribers in San José and parts of Campbell watch locally produced programming.
- **Multilingual informational videos:** Staff recorded 18 short videos with CreaTV in English, Spanish, and Vietnamese to provide information on the Rent Stabilization Program, ARO, TPO, and Ellis Act Ordinance. The videos will be available on the Housing Department website for tenants and landlords to access.
- **Partnership with Rental Housing Network (RHN):** Staff has partnered with the Rental Housing Network (RHN) to assist its members, many of whom are owners of ARO properties, to help ensure they receive and understand the program's ordinances and procedures. Program staff delivered three presentations and conducted workshops for over 50 members to learn more about ARO and TPO.
- **Vietnamese Television:** Recorded [two segments](#) about the ordinances on VIETV, a popular local Vietnamese TV station that broadcasts nationwide. The partnership with VIETV provided essential information and services to the Vietnamese community.

- ***Spanish Media Interviews:*** Program staff provided five Spanish interviews with television stations (Telemundo and Univision) to provide outreach to the Spanish speaking community of rent control changes proposed to City Council.

EVALUATION AND FOLLOW-UP

The final annual report will be posted on the Housing Department's website at:
www.sanjoseca.gov/rent.

PUBLIC OUTREACH

The 2017-2018 Draft Annual Report for the Rent Stabilization Program was presented to the Housing and Community Development Commission (HCDC) on August 9, 2018. In addition, this item has been posted on the Neighborhood Services and Education Committee website for November 8, 2018.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
JACKY MORALES-FERRAND
Director, Department of Housing

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

ATTACHMENT:

- **Attachment A** – Annual Report for the Rent Stabilization Program 2017-2018