COUNCIL AGENDA: 11/05/19
FILE: 19-994
ITEM: 4.5

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Kim Walesh

SUBJECT: SEE BELOW

DATE: October 24, 2019

Approved D. DSyl   Date 10/25/19

SUBJECT: ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS

RECOMMENDATION

(a) Accept the staff report on:
   (1) Research on Ellis Act Ordinance's existing re-control provisions including interviews with developers, lenders and tenants;
   (2) Updated research from other communities regarding the re-control provisions in other Ellis Act ordinances to assess the extent they may make new residential projects more difficult to build; and

(b) Direct the City Attorney to draft an Ordinance amending Part 11 of Chapter 17.23 of Title 17 of San José Municipal Code to:
   (1) Modify the base requirement of 50% re-control of newly-built units to require a cap of no more than seven times the number of withdrawn apartments; and
   (2) Modify the re-control waiver provision from 20% onsite to 15% of newly constructed rental units to be restricted affordable apartments and offer tenants displaced by the prior withdrawal and demolition of the rent stabilized units either:
      i. A right to return at the prior rent plus annual adjustments at the rate of the Consumer Price Index during the construction period and a maximum of 5% rent increases thereafter; or
      ii. An equivalent apartment immediately following displacement at the prior rent with annual rent adjustments no greater than 5% per year.

OUTCOME

City Council approval of the recommended actions will provide direction to amend San José's Ellis Act Ordinance re-control provisions to modify the base requirement to apply a cap and to amend the affordable housing re-control waiver to require 15% restricted affordable apartments in addition to additional tenant protections to minimize displacement. The proposed modifications are intended to balance for market-rate development that will create more density to the City, while creating a benefit of having more affordable onsite housing to offset the loss of naturally occurring affordable housing.

EXECUTIVE SUMMARY

Staff analyzed the impact of the current Ellis Act Ordinance re-control provisions in five areas of research: 1) market rents analysis, 2) interviews with developers and lenders, 3) interviews with tenants, 4) additional research on other cities' experience with the Ellis Act Ordinance Re-control Provisions, and 5) update on the demographic study by Economic Roundtable. The data demonstrate that the rents charged for existing rent-stabilized apartments are lower than rents in new Class A developments built in their place. The households displaced by the new development are unlikely to be able to afford the new housing built unless affordable housing is created to replace the lower rents removed from the housing market. At the same time, significant new housing production of a more dense nature is needed and encouraged by the City's General Plan. Consideration of the City's Ellis Act ordinance reflects the challenge of meeting our community's twin goals: the goal of significant new housing production and the goal of preserving existing community by avoiding displacement of existing residents.

Staff's intention is to find the appropriate balance point to achieve both goals in an optimal manner. After consideration of these factors, staff is recommending changes to the Ellis Act to cap the number of re-controlled units on developments that provide a significant increase in the density of units. Developers may also choose to provide both affordable units on site and provide replacement units for displaced tenants.

BACKGROUND

The Ellis Act Ordinance establishes the process when owners of rent stabilized apartments can permanently remove their apartment buildings from the rental market.

On February 5, 2019, the City Council directed staff to return with additional research on the impact of the Ellis Act Ordinance re-control provisions on new developments. The areas of research include:

- Feedback from interviews with developers and lenders regarding the impact of Ellis Act Ordinance re-control provisions on new developments,
- Other cities' experience with the Ellis Act Ordinance re-control provisions,
- An analysis determining the threshold of new apartments that results in net positive affordable housing following demolition of existing rent stabilized apartments, and
- Other formulations that would maintain a minimum one-for-one replacement of rent controlled or rent-restricted units while improving feasibility of housing development.

A summary of past City Actions related to the Ellis Act Ordinance is below in **Table 1**.

Table 1: Previous City Actions Pertaining to Ellis Act Ordinance

Date	Source	Actions
May 10, 2016	City Council	Directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market. The City Council gave this direction as part of the policies adopted to strengthen the Apartment Rent Ordinance (ARO).
April 18, 2017	City Council	Approved the Ellis Act Ordinance on April 18, 2017, and included re-control provisions on all new apartments.
April 24, 2018	City Council	Amended the Ellis Act Ordinance to reduce the number of replacement apartments subject to re-control to the greater of: (a) the number of demolished rent stabilized units, or (b) half of newly constructed replacement apartments (rather than all the replacement units). The City Council also approved an exemption from the re-control provisions if 20% of the new replacement apartments are deed-restricted affordable apartments (i.e. Inclusionary Housing Ordinance built on-site plus 5% of units at 100% of area median income).
February 5, 2019	City Council	Direction to research modifications to the Ellis Act re-control provisions and to consider whether other formulations – which still maintain a minimum 1-for-1 replacement of rent controlled or rent-restricted units can improve feasibility. Other direction included: • Feedback from interviews with developers and lenders regarding the impact of Ellis Act Ordinance re-control provisions on new developments, • Other cities' experience with the Ellis Act Ordinance re-control provisions, • An analysis determining the threshold of new apartments that results in net positive affordable housing following demolition of existing rent stabilized apartments, and • Other formulations that would maintain a minimum one-for-one replacement of rent controlled or rent-restricted units while improving feasibility of housing development.

A summary of the current Ellis Act Ordinance requirements is provided below:

Requirements for tenants of non-ARO apartments:

- **Noticing** – All households must be provided with a minimum of 120 days' notice prior to the removal of the property from the rental market. Upon request, special populations including residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children must be given up to one-year notice to vacate.
- **Relocation Specialist Services** – All tenant households are entitled to relocation services through a specialist who assists tenants in the procedures, obtaining assistance, and developing a relocation plan.

Requirements for tenants of ARO apartments:

- **Relocation Benefits** – All tenant households are eligible to receive relocation benefits. Qualifying households that include low-income residents, residents over the age of 62, disabled, terminally/catastrophically ill, or residents with school-aged children are eligible for additional relocation benefits.
- **Relocation Specialist Services** – All tenant households are entitled to relocation services through a specialist who assists tenants in the procedures, obtaining assistance, and developing a relocation plan.
- **Right to Return** – If the removed apartments return to the rental market within ten years, tenants have a right to return to their apartments. However, if the apartments are demolished, the tenant **does not** have a right to return.
- **Re-control** – If an owner demolishes rent stabilized apartments and rebuilds apartments at the same location within five years of the withdrawal, the greater of 50% of all new apartments or the number demolished will be subject to the City's Apartment Rent Ordinance. The owner sets the initial rent for these re-controlled replacement apartments.

The Ellis Act Ordinance contains re-control provisions when an owner demolishes rent stabilized apartments and rebuilds new apartments. The owner has not left the apartment businesses and therefore the new market-rate apartments are subject to the Apartment Rent Ordinance as follows:

- **Re-control to the greater of: (a) the number of demolished rent stabilized units, or (b) half of newly constructed replacement apartments (rather than all the replacement units) –** In this instance, the owner may set the initial rent to market rate. Any subsequent rent increase is subject to the ARO's annual maximum of 5%. All other provisions of the ARO would apply to these units.
- **A waiver of re-control if 20% of units built are onsite affordable apartments –** In April 2018, City Council approved an exemption from the re-control provisions if 20% of the newly-built apartments are deed-restricted affordable apartments (i.e., meet Inclusionary Housing Ordinance built on-site requirements plus 5% of units at 100% of area median income). For projects building 20 or more residential units, 20% of the rental units are restricted affordable rental units at the following AMI levels: 9% affordable at 80% AMI, 6% affordable at 50% AMI, and 5% affordable to 100% AMI.

ANALYSIS

This analysis covers five key areas for consideration:

- **Rents and income analysis** – Compares rent levels across different types of apartments.
- **Interviews with developers and lenders** – Provides input from developers and lenders.
- **Information about ARO tenants** – Provides tenant interviews, analysis of demographics and displacement impacts, and demographics of tenants.
- **Additional research on other cities' experience with the Ellis Act Ordinance Re-control Provisions** – Examines the six California cities that have adopted local Ellis Act Ordinances, including their re-control provisions and review of post-Ellis development activity.
- **Update of demographic data** – Examines the demographic update of tenants living in rent stabilized apartments and demographics of renters in the City of San José.

I. RENT AND INCOME ANALYSIS

Staff analyzed the market rent levels to better understand how much renters are paying on average for different types of apartments in San José. This includes the general market for apartments, and a breakdown between the different classifications of apartments including new market rate construction.

A. *Losing Some Rent Stabilized Apartments is Akin to Losing 60% AMI Affordable Apartments* – Staff analyzed the average rents of Class A, B, and C market rate apartment rents, as well as rent stabilized and restricted affordable apartment rents to provide a comparison of the potential income levels of tenants in each apartment type **(Table 2).** Assumed income levels were calculated for each market rate example by applying minimum income standards that market rate property managers use to qualify households to rent their apartments.

Table 2 – Average Effective Rents in San José and Projected Incomes

	1 Bedroom Rents	1 Bedroom Income at 2.5 Factor	2 Bedroom Rents	2 Bedroom Income at 3.0 Factor
Market Rent Apartments				
Class A	$2,678	$80,340	$3,365	$121,140
Class B	$2,440	$73,200	$2,864	$103,104
Class C	$1,803	$54090	$2,263	$81,468
Rent Stabilized Apartments				
Average Across Tiers	**$1,634**	**$49,020**	**$1,967**	**$70,812**
Affordable Apartments				
100% of the AMI	$2,628	$78,840	$2,956	$106,416
80% of the AMI	$2,079	$62,370	$2,339	$84,204
60% of the AMI	$1,757	$52,710	$1,976	$71,136
50% of the AMI	$1,464	$43,920	$1,646	$59,256

***Sources**: CoStar, September 30, 2019; City of San José Housing Department Rent Registry dated September 12, 2019*
Costar Definitions for Building Class:

- ***Class A**: In general, a class A building is an extremely desirable investment-grade property with the highest quality construction. It may have been built within the last 5-10 years, but if it is older, it has been renovated to maintain its status and provide it many amenities.*
- ***Class B**: In general, a class B building offers more utilitarian space without special attractions. It will typically not have the abundant amenities and location that a class A building will have.*
- ***Class C**: In general, a class C building is a no-frills, older building that offers basic space. The property has below-average maintenance and management, a mixed or low tenant prestige, and inferior elevators and mechanical/electrical systems*.

Typically, the owner requires that the gross monthly income of the household must be at least 2.5 to 3 times the monthly rent. The income calculations for the restricted affordable apartments are based on an assumption that the household cannot pay more than 30% of their income for the apartment. The one-bedroom assumes a two-person household and the two-bedroom assumes a three-person household. It should be noted, for market-rate apartments, the incomes listed are minimums needed to qualify. For the affordable apartments, incomes listed are maximum incomes allowed for qualifying households.

The rental data from the Rent Stabilization Program Rent Registry as of September 12, 2019 represents 81% of total rent stabilized apartments. The data indicates that the average rent for a one-bedroom apartment is $1,634 and a two-bedroom apartments is $1,967. For a two-bedroom rent stabilized apartment, a family needs to earn a minimum of $70,812 to afford rent (assuming an owner requires a tenant earn income that is three times the amount of rent). These assumed income levels are comparable to households qualifying for restricted affordable apartment rents at 60% of area median income. Thus the demolition of the average rent stabilized apartment is akin to losing a very low-income deed- restricted apartment.

B. ***Market and ARO Rents Have Increased, but ARO Rents Have Maintained Their Affordability*** – According to the market rate apartment rents recorded growth from 2011 to 2018 with rents for new apartment development in San José growing at an average rate of 6.4%[1] per year. In contrast, rents in ARO apartments have increased at slower rates than market rate apartments.[2] **Table 3** summarizes the rent levels for new apartment rent levels by regions in San José used to model protoype new development across the City.

[1] Keyser Marston Associates Report on the “Conceptual Pro Forma Analysis of High-Density Apartment Development,”
[2] Economic Round Table Report “City of San Jose ARO Research Update, November 2019”

Table 3 – Rent Levels for New Apartments

Region in City of San José	Rents	Annual Income Assuming 2.5 Factor	Rent Annual Income Assuming 3.0 Factor
South & East	$2,900	$87,000	$104,000
Central	$3,300	$99,000	$118,800
West	$3,550	$106,500	$127,800
North	$3,300	$99,000	$118,800
Downtown	$3,400	$102,000	$122,400
Rent Stabilized Apartments	**Rents**	**Annual Income** Assuming 2.5 Factor	**Rent Annual Income** Assuming 3.0 Factor
Average Across Tiers	**$1,634**	**$49,020**	**$58,824**

Source: *Keyser Marston Associates 2019 Report*

As new development takes place in San José, the new housing created demands much higher rents than the rents charged in apartments covered by the ARO. As a result, the incomes necessary to qualify for the new rents exceed the income of households living in ARO apartments.

C. Demand is Greater for Apartments with Lower Rents

One method for measuring demand for housing is to compare vacancy rates. Apartments in high demand generally have lower vacancy rates than apartments with less interest from apartment seekers. Based on CoStar vacancy rate data, apartments categorized as Building Class C have a lower vacancy rate, and thus a higher demand, than Class A apartments. It is also likely that tenants living in apartments with lower rents move less often and do not create vacancies as frequently as higher rent apartments.

Table 4 – Vacancy Rates by Apartment Building Class

Apartment Building Class	Vacancy Rate
Class A	7.1%
Class B	3.5%
Class C	3.7%
Average Over All Classes	4.2%

Source: CoStar October 2019

D. Value of Density and Affordable Rent Restricted Apartments – Staff reviewed proposed developments expressing interest in withdrawing apartments through the Ellis Act Ordinance. Staff then calculated the increase in apartments that would be needed in market rate development to fully replace the demolished apartments with rent restricted affordable apartments under the Inclusionary Housing Ordinance. Staff found that the production of seven times the number of apartments demolished would result in at least a 1:1 replacement in affordable housing units. To date, staff received interest from 12 projects proposing a replacement factor of seven or more. Based on staff research, it is unlikely that the majority of tenants displaced through an Ellis Act withdrawal will be able to afford Class A rents. Thus rent restricted apartments are more effective at preserving current affordability levels in a given area. The increased density necessary to maintain the number of apartments renting at affordable rents is an increase of seven times.

II. INTERVIEWS WITH DEVELOPERS AND LENDERS

Interviews were conducted with developers and lenders to better understand if the current Ellis Act provisions are preventing market rate housing from being constructed in San José. Staff from the Housing Department and the Office of Economic Development interviewed developers who submitted preliminary planning applications on sites with rent stabilized apartments located on the proposed development site. A total of twelve proposed developments were identified as affected by the Ellis Act re-control provisions. The interviews did not include those developers moving forward with projects not subject to re-control provisions, such as an affordable housing development or developments built on land with non-ARO buildings. Of the twelve proposed projects, ten developers represented the projects (two developers had more than one project). Three of the ten developers did not respond to our request. Seven interviews were conducted with developers and consultants who are working on residential projects impacted by the Ellis Ordinance re-control provision.

The interviews covered a range of topics, including:

- Review of the proposed projects,
- Reasons developers gave as to why a development was or was not moving forward,
- Developer's statements regarding the potential impact of the Ellis Act re-control provisions on proposed developments,
- Developer familiarity with the Ellis Act re-control provisions, including the Affordable Housing Waiver, and
- Impact of potential affordability requirements on proposed developments.

Attachment A provides a summary of the comments made by developers and lenders.

A. Developer Feedback – Developers reported multiple factors that have influenced them to reconsider or not move forward with their development proposals both in and outside of San José. Of the seven developers contacted, three indicated that they would not move forward with their proposed developments for reasons unrelated to the Ellis re-control provisions. Additional developer feedback includes:

- **Range of challenges –** Developers cited a range of issues that make moving forward with their projects challenging, including dealing with historic buildings, high land costs, the time it takes to get through the development process, softening rents and City fees including housing and parks.
- **Short-term Investment Strategy** – Some developers indicated that their business model is to offer rent concessions in the first year in order to have a successful lease-up period and then increase rents in year two by as much as 10-20%. Therefore, they believed that restricting annual rent increases to 5% for potentially half of the apartments, as required

under the current Ellis Act Ordinance, will make their project not viable. The short-term investors are highly concerned with capturing the maximum rent potential from the building within the first two years to maximize the value of the building. The value of the building is a function of the rents - therefore the higher the rents, the higher the value of the building when it is sold to a long-term investor. According to developers interviewed, the 5% limitation on half of the new units from the Ellis Act provisions may reduce the anticipated profit for short-term investors.

- **Long-term Investment Strategy** – Developers also expressed concern that they would be unable to benefit when future market rent increases could exceed 5%, but they will be exposed to the risks when rents are flat or may need to be decreased. While developers expressed concerns about the Ellis re-control provisions, no one has been rejected for financing because of the Ellis re-control provision. When talking with developers, it became clear some developers are making long-term investments while others intend to sell their buildings one or two years after lease-up.

B. Lender Feedback – The Housing Department had limited success in interviewing lenders and investors, given the lack of referrals from developers and lenders' restrictive policies on disclosing lending practices. Staff interviewed three lenders and investors who work in the San José market and found the following:

- **Lack in understanding of Ellis Act Ordinance requirements –** None of the lenders understood San José's specific requirements before talking to staff.
- **Financial structure –** Based on the three interviews, staff learned that a typical financing structure for a development's construction is up to 30-40% equity, both from the developers and from third-party equity investors, and 60-70% from commercial bank loans. Investors try to limit their risks and increase their financial returns. Commercial bank loans are secured by the value of the property and are typically senior over the equity debt. Therefore, they would be the first to be repaid in the event of liquidation. Equity debt is usually last in the capital stack and faces the highest risk. Lenders indicated that loans are generally underwritten assuming rent growth rates tracking the Consumer Price Index.
- **Risks for short-term equity providers –** Short-term equity providers and lenders generally participate in the development for only five years, so they are most concerned about risks regarding construction timeline, short-term market conditions such as market rents, and how quickly the apartments lease-up. These equity investment transactions are designed to maximize the rents to sell the building quickly at the highest sale price. Long-term lenders generally split 30-40% equity and 60-70% commercial bank loans and typically purchase the building at year five or six for a longer term investment. While some lenders expressed a negative perception of the Ellis re-control provision, it is unclear if they would refuse to loan on a development or offer less competitive rates because of the re-control provision.

III. TENANT INTERVIEWS AND DEMOGRAPHICS

Research on tenant demographics and interviews were conducted with tenants to better understand their concerns about displacement in San José given the current rents and developments subject to the Ellis Act Ordinance. Staff reviewed feedback provided by tenants, information from tenants who received Ellis Act Ordinance noticing, and conducted site visits and door-to-door interviews with 57 tenants living in four properties where the owner indicated interest in withdrawing the apartments from the rental market. **Attachment B** provides a summary of the tenant feedback.

A. Summary of Tenant Feedback – Staff summarized feedback provided by tenants living in San José at a community meeting conducted with the assistance of Spanish translation:

- **Displacement** – Tenants are concerned about how to increase housing stock without displacing current residents and resulting in homelessness.
- **Education about rights –** Tenants recommended to increase awareness on tenants' rights to have proper notice or relocation benefits if eligible.
- **Strengthen current provisions –** Tenants recommended to strengthen the current Ellis Act provisions and even increase from 50% re-control to 100% re-control.
- **Encourage new housing development while preserving affordable rents –** Tenants were concerned about affordable rents being replaced by Class A housing. Tenants asked how San José can make housing available and affordable for all residents of different income levels. According to tenants, Class A rents are unaffordable, and it is more important to build rent-restricted affordable apartments.

B. Tenants that Received Ellis Act Ordinance Noticing or Living at Properties that Inquired about Ellis Act Ordinance **–** The impact on tenants who experienced displacement through withdrawal of apartments from the rental market has continued since 2016. In 2016 before the City passed a local Ellis Act Ordinance, the property owner of the Reserve Apartments with 215 apartments began the process to withdraw the property from the rental market for the purpose of demolishing the existing structures and redeveloping the property as a more dense, new apartment complex. The developer of the Reserve Apartments was only required to comply with the State Ellis Act's noticing process and the new rental housing to be constructed on-site is not subject to the Apartment Rent Ordinance. Limited relocation benefits were negotiated as part of the land use approval process and provided to income-qualified tenants.

Since the Ellis Act Ordinance was effective in San José in 2017, there have been three properties with tenants that have received notices to vacate as a result of the Ellis Act Ordinance. The tenant households at three properties received relocation assistance from the Associated Right of Ways Services (ARWS) and the outcomes are summarized in **Table 5**. Overall, of the tenants displaced from their homes, 28% remained in San José and an additional 15% remained in Santa Clara County.

Table 5 – Outcomes of Relocation of Tenant Households who Received Ellis Noticing

Year Served	Types of Property	Outcomes of Tenant Households
2019	**Subject to ARO – Built before 1979** • Noticing • ARWS Relocation Services	**7-unit apartment complex** *Average Rent: $1,948 for 1 BR* • 5 received noticing • 2 vacant
2018	**Subject to ARO – Built before 1979** • Noticing • Relocation Benefits by Owner • ARWS Relocation Services	**4-unit apartment complex** *Average Rent: $913 for 1 BR* • 2 relocated with benefits to Morgan Hill, San Mateo • 1 relocated without benefits but unknown where due to voluntary vacation • 1 occupied by owner
2018	**Not Subject to ARO – Built after 1979** • Noticing • ARWS Relocation Services	**5-unit apartment complex** *Average Rent: $1,500 for 1 BR* • 1 relocated to San José • 1 relocated to unknown • 2 vacant
2017	**Subject to the ARO – Prior to Ellis Act** • Noticing • Relocation Services • Relocation benefits for income-qualified households	**215-unit apartment complex** *Average Rent: $2,038* • 60 relocated in San José (28%) • 33 relocated in Santa Clara County (15%) • 22 relocated inside California (10%) • 6 relocated out of State (3%) • 84 relocation unknown (39%) • 10 vacant apartments (5%)

Source: Housing Department Records, October 2019

Staff also conducted site visits and door-to-door interviews with 57 tenants living in four properties where the owner indicated interest in withdrawing the apartments from the rental market. The purpose of the interviews was to determine if tenants could afford to live in the new development, to learn about their current rents they are paying, and to learn about their occupation. The findings include:

- **Profiles of tenants –** The occupants of these rent stabilized buildings generally represented three profiles for the larger complexes: recent immigrants, working class families, and very-low income households who often doubled up to afford the apartments.
- **Building characteristics –** Each building represents a different sub-population based on the location and condition of the building.
- **Unaffordability of Class A rents –** Tenants who would be displaced from their rent stabilized apartments reported they would not be able to afford Class A market rents if faced with their owner removing their apartment from the rental market. It is unknown whether tenants would qualify for an affordable housing apartment if the developer choose to provide the Inclusionary Housing option. It is likely tenants would be displaced

by the redevelopment regardless of the option chosen by the developer because of the timing of when the units would be made available.

In conclusion staff learned that tenants are concerned about the net loss of rent stabilized apartments, about the timing between demolition and possible right of return, and that relocation assistance provides mixed results such that residents have had to move out of their neighborhoods to other cities, counties or out of state.

IV. ADDITIONAL RESEARCH ON OTHER CITIES' EXPERIENCE WITH LOCAL ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS

Staff also researched the different re-control provisions in other cities' Ellis Act Ordinances. Depending on the rental market, the Ellis Act Ordinance has had various impacts on the developments of new housing in the jurisdictions.

A. Most Cities with Ellis Act Ordinances Require 100% Re-control – There are six cities that have enacted local Ellis Act Ordinances. The ordinances of San Francisco, Berkeley, West Hollywood, and Santa Monica have provisions requiring that all new rental housing development, following an Ellis Act withdrawal, are subject to the rent control provisions of that jurisdiction. Los Angeles also requires 100% re-control but provides an exemption from rent control provisions if 20% restricted affordable units are built onsite. This provision is similar to the exemption in the San José Ordinance except the required target incomes are different. In Los Angeles, the target income is set at 80% of the AMI. In San José, the income targets are set at 50%, 80% and 100% of the AMI. **Table 6** summarizes these provisions. Mountain View provides a right to return to tenants impacted by an Ellis Act withdrawal, but re-control provisions are not currently in place.

Table 6 – Summary of Cities with Ellis Act Provisions

	San Francisco	Berkeley	West Hollywood	Santa Monica	Los Angeles	Mountain View
What is covered by Ellis?	3 units or more	All	2 units or more & single family homes when tenant occupied	4 units or more & single family homes	2 units or more	3 units or more
How many replacement units will be subject to re-control?	All	All	All	All	All	None
Are there exemptions to re-control?	None	None	None	None	Yes	None

B. Ellis Act Ordinance Impacts and Development Activity in Other Cities – The six cities with Ellis Act Ordinance have experienced a range of outcomes with respect to actions taken following removal of apartments from the rental market. Cities such as Berkeley and San Francisco have adopted policies discouraging the demolition of current rent stabilized housing through strict review processes and permitting restrictions. Other cities such as Santa Monica and West Hollywood are experiencing limited new construction following Ellis Act removals due to developers choosing to build condominiums or waiting five years before bringing new rental housing onto the market (avoiding re-control requirements). The two cities that are observing new construction development following Ellis Act removals are Mountain View and Los Angeles.

- **City of Mountain View –** While Mountain View is experiencing high levels of Ellis Act removals followed by demolition and new construction activity, the Mountain View Ellis Act does not include a re-control provision **(Table 7).** Currently, the City of Mountain View is considering policy changes for re-control and wavier provisions.

Table 7 – Ellis Act Activity in City of Mountain View from 2016 to 2018

Number of Ellis Units	# of New Units	% of Total Units (1,627)	Redeveloped As
224	941	58%	Rental
380	456	28%	Rowhouses
9	9	9%	Demolition
56	138	8%	Condominiums
68	68	4%	Undecided
20	15	1%	Residential
757	**1,627**		

- **City of Los Angeles –** Los Angeles also has a high level of Ellis Act removals followed by redevelopment activity. The Ellis Act in Los Angeles includes an exemption from re-control provisions when affordable housing units are provided on-site. In the City of Los Angeles, the Ellis Act Ordinance was adopted in 2006 impacting approximately 630,000 apartments. An owner may apply for re-control exemption if they meet one of the two options:
  - Replacement of the number of demolished rental units with a number of affordable housing units (at 80% AMI) at least equal to the number of withdrawn rental units subject to the Rent Stabilization Ordinance on a one-for-one basis, or
  - At least 20% of the total number of newly constructed rental units are affordable housing units, whichever is greater.

  The affordable housing units must be located in the newly constructed developments. Since the adoption of the Ellis Act Ordinance in Los Angeles, the new projects were typically replacing the number of apartments demolished by 2.5 times that original number of units with 100% re-control. According to the data provided by Los Angeles, from July 2014 to March 2019, Los Angeles has received a total of 1,735 project applications and 6,773 units withdrawn, with the following breakdown in **Table 8**:

Table 8 – Ellis Act Activity in City of Los Angeles from July 2014 to March 2019

Number of Ellis Units	# of New Units	% of Total Units (6,773)	Redeveloped As
748	2,967	43%	Rental Housing
300	1,260	17%	Undecided
214	504	12%	Single Family
104	180	6%	Commercial
65	299	4%	Condominiums
304	1,563	18%	Other conversions including: Co-op ownership, hotel, housing for vets, elder care facility
1,735	**6,773**		

Many of the new rental developments assembled land parcels after the Ellis Act withdrawal and the 100% re-control provision was applied on the entire new development. It is not clear from the information provided if the average densities in Los Angeles match those desired in San José. While the majority of developments were redeveloped as rental housing, it is not clear how many developers choose other redevelopment options, such as commercial, industrial, in order to avoid the Ellis re-control provisions. Regardless, Los Angeles staff do not believe that the Ellis Act has stopped the redevelopment of residential apartments in Los Angeles.

V. UPDATE ON THE DEMOGRAPHIC STUDY BY ECONOMIC ROUNDTABLE

In 2015, the San José City Council identified the review and exploration of potential modification of the Apartment Rent Ordinance as an important policy priority for 2015-2016. The City Council tasked the Housing Department with gathering information about the ARO inventory, comparing allowable rent increases under the ARO and those of other jurisdictions, documenting the socioeconomic characters of ARO and non-ARO renter households, and analyzing financial outcomes of ARO rental properties. The 2016 Economic Roundtable Report is available for review.

This fall, staff engaged the Economic Roundtable to update the report using the most recent data available including the 2017 Five-Year American Community Survey to analyze the following key items:

- Comparison of ARO and non-ARO rents
- Comparison of ARO and non-ARO renter household incomes and conditions
- Estimate of the number of ARO residents in each council district
- Demographic characteristics of ARO tenants

The Apartment Rent Ordinance applies to 39,337 apartments built and occupied prior to September 7, 1979. Today, rent stabilized apartments make up 12% of San Jose's housing stock. The 2019 Economic Roundtable Report "City of San José ARO Research Update" **(Attachment C)** provides extensive demographic information based on the tenants living in apartments covered by the Apartment Rent Ordinance.

A summary of the findings of the report on tenants, rent income levels, and displacement are:

- **Majority of ARO Tenants Are Latino and Asian American and Pacific Islanders** – There are approximately 130,000 people living in ARO units in San José. Council districts with the greatest numbers of ARO residents are District 1 with 34,632; District 3 with 29,217; and District 6 with 24,041. In addition, the racial-ethnic profile of renters living in the City of San José is very diverse, with the majority of ARO renters are Latino households (47%), Asian American and Pacific Islander (26%).

  The distribution of San José renter households by Council Districts show that only four Council districts have more than 50% or an absolute majority of renter residents in one racial-ethnic group. District 4 has approximately 58% Asian American or Native Hawaiian or Pacific Islander renters; District 5 and 7 have approximately 57 and 53% Hispanic or Latinx renters; and District 9 has approximately 56% White renters.

  When race and ethnicity data for all renters in San José is compared to renters living in ARO apartments, it is found there is a greater population of Hispanic of Latinx renters living in ARO apartments. At the same time, a greater portion of Asian American or Pacific Islander and White tenants live in non-ARO apartments. This data demonstrates there may be a disparate impact on the Hispanic or Latinx population when considering changes to the Ellis Act Ordinance. The summary of the race-ethnicity of ARO renters is summarized in **Table 9:**

Table 9 – Race-Ethnicity of San José ARO Renters

Race-Ethnicity	ARO Renters	Total San José Renter Population
African American	5%	5%
Asian American or Pacific Islander	26%	29%
Hispanic or Latinx	47%	34%
White	19%	29%
Other	3%	3%

The demographic study includes an analysis on several additional factors including tenant's age, gender, families with children, household structure, disability status, health insurance coverage, citizenship status, duration of tenancy, residential mobility (where did they move from), educational attainment, English speaking ability, and veteran status. A summary of key findings is included on page 55 of the report.

VI. STAFF RECOMMENDATIONS

The main concerns regarding the modifications to the Ellis Act Ordinance Provision from lenders and developers is the potential impediments to development and future revenue, while tenants of rent stabilized apartments are concerned about displacement and finding affordable housing in the City of San José. Given the information collected through the process, staff is recommending modifications to the Ellis Act Ordinance that provide additional options to developers, create new options for long-term affordable housing throughout the City, and minimize displacement.

A. Modification #1 to the base requirement: Cap the 50% re-control requirement of new units to no more than seven times the number of withdrawn apartments

This modification would cap the number of re-control units to seven times the number demolished (**Table 14**). The Ellis Act Ordinance will continue to require 50% of the total proposed apartments to be built be subject to the Apartment Rent Ordinance if the number of apartments demolished multiplied by seven is less than the 50% requirement, the number of apartments re-controlled would be capped.

Developments that increase density more than seven times will benefit from this modification. Overall, the significant increase in the number of market-rate apartments is needed to address the housing crisis that is impacting a range of households in San José. It will also result in a greater than a one-to-one replacement of the rent stabilized apartments. However, there is a possibility that the overall number of affordable rent-restricted housing will not be obtained if the development does not have an Inclusionary Housing requirement.

Table 10 – Example of Modification #1

Current # of Rent Stabilized Apartments	# of New Units in the Proposed Development	**Modification #1:** *50% re-control of new units capped to seven times apartments demolished*			
(A)	**(B)**	**50% of New (B)**		**7 Times # Demolished (A) OR Capped at (B)**	**# Re-controlled**
5	250	125	vs	35	35
5	20	10	vs	35	10

Developers that increase the density more than seven times of the original development will benefit from this modification. Staff arrived at the 7x multiplier cap by calculating the increase in density needed in market rate development that would result in a replacement of the lost units with restricted affordable apartments required under the Inclusionary Housing Ordinance. Staff determined that significant increases in density would result from replacement of the previously demolished rent stabilized apartments with the application of the 15% from the Inclusionary Housing requirement. The significant increase in the number of market-rate apartments is needed to address the housing crisis that is impacting a range of households in San José. The community benefit of high-density housing coupled with the Inclusionary Housing Ordinance requirement results in an overall positive. With an increase in density by 7x (15% requirement), the calculation shows that when the number of total apartments demolished is replaced by seven times the number of original apartments, the loss of the rent stabilized apartments can be replaced with new restricted affordable housing. An increase of density of eight times or more will result in a positive number of restricted affordable housing units. However, there is a possibility that affordable rent-restricted apartments will not be received if the development is a high-rise located in the downtown as staff has proposed setting the in-lieu fee for this building type to $0 under the Inclusionary Housing Ordinance.

B. Modification #2 of re-control waiver: Modify the waiver provision of re-control from 20% onsite to 15% onsite of newly constructed rental units to be affordable rent restricted apartments and offer tenants displaced from the removal either: 1) an opportunity to return to the new development at the prior rent with increase at the rate of the Consumer Price Index (CPI) following the withdrawal date and 5% rent increase subsequently OR 2) an opportunity to be relocated to an apartment at the same rent with a maximum 5% increase per year for the duration of their tenancy.

The obligation to continue restricting the market-rate apartments terminates once the tenant vacates, the apartment returns to full market rate or restricted rent. Affordable rent restricted apartments would continue to be made available under the Inclusionary Housing Program. This will allow displaced tenants to have an option to return to their communities following the development of new housing.

Table 11 – Example of Modification #2

Current # of Rent Stabilized Apartments	**# of New Units in the Proposed Development**	**Modification #2:** *Re-control waiver if 15% of new units are onsite affordable*
(A)	**(B)**	**# Affordable (15% of B)**
5	250	38
15	20	3

Staff also evaluated a one-to-one replacement option and determined that it is not equal replacement for re-control of rent stabilized apartments. The rents of replacement of Class A housing as a result of the Ellis Act Ordinance are higher than the rents of apartments withdrawn. Although the rent increases may be limited to 5%, the starting base rent of the market rate apartments is unaffordable to the majority of tenants.

EVALUATION AND FOLLOW UP

Staff will return with the Ordinance based on the City Council's direction. The Ellis Act Ordinance 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. Staff will include information on the Ellis Act Ordinance in the annual Rent Stabilization Program Report.

POLICY ALTERNATIVES

The following is a policy alternative to discuss another option to modify the re-control waiver.

Alternative #1: ***Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a two to one basis. The on-site affordable rental units would be consistent with the standards and affordability restriction requirements in the modified Inclusionary Housing Ordinance.***

Pros: Allows developers to receive two-to-one "credit" towards their 50% re-control requirement with a seven times cap by building onsite affordable housing (**Table 12**). For each unit of onsite affordable housing created, the developer would receive two units of "credit" towards the re-control requirement consistent with the modified Inclusionary Housing Ordinance. The difference would be the apartments would be remain under re-control.

Cons: The onsite affordable units may result in more 100% AMI apartments, which is above current rent stabilized rents.

Table 12 – Example of Policy Alternative #1

Current # of Rent Stabilized Apartments	**# of New Units in the Proposed Development**		**Policy Alternative #1:** *Onsite Affordable Housing Incentive*		
(A)	**(B)**	**50% of New Re-control Requirement or capped at 7x**	**# of Onsite Affordable Built to Meet New IHO**	**Affordable Credit for 3** *(Three times # of onsite affordable)*	**Remaining re-control** *(Difference between Re-control requirement and Credit)*
5	250	35 (A capped at 7x)	**250 x 5% = 13**	13 * 2 = **26 apts**	35 – 26 = **9 apts**
15	20	10 (50% of A)	**20 x 5% = 1**	1 * 2 = **2 apts**	10 – 2 = **8 apts**

Alternative #2:	***One-for-one replacement of re-control apartments.***
Pros:	Allows developers to receive one-to-one replacement of re-control apartments that was demolished at market rate.
Cons:	The rents of replacement of Class A housing are higher than the rents of apartments withdrawn. Although the rent increases may be limited to 5%, the starting base rent of the market rate apartments is unaffordable to the majority of tenants.
Reason for not recommending:	The replacement of one-to-one is not a replacement of the rent levels at the rent of the rent stabilized apartment at the date of the withdrawal. The rent stabilized rate is lost without a replacement of affordable rents.

PUBLIC OUTREACH

The Housing Department conducted community outreach and met with stakeholders while developing the revisions to the Ellis Act Ordinance. Staff also interviewed developers, lenders, owners, and tenants for feedback on re-control impacts and modifications to the current provisions. Additional public comments are included as **Attachment D**.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

Pursuant to Section 7.01 of the existing regulations, the Ellis Act Ordinance was presented to the Housing and Community Development Commission at their scheduled meetings on: March 7, 2019, March 14, 2019, and August 8, 2019. These reports and attachments are available online.

- On March 7, 2019, the Commission reviewed staff proposal on amendments to the Ellis Act Ordinance and voted 9-0 to create an Ad Hoc Subcommittee to draft a letter to recommend no changes to the Ellis Act Ordinance to submit to City Council and return on March 14, 2019.
- On March 14, 2019, the Commission voted (8-1) to approve the letter to recommend no changes to the Ellis Act Ordinance to submit to City Council (**Attachment E**).
- On August 8, 2019, the Commission reviewed staff proposal on additional amendments to the Ellis Act Ordinance and voted (7-1) to not make any amendments to the current Ellis Act re-control provisions.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/
KIM WALESH
Deputy City Manager
Director of Economic Development

/s/
JACKY MORALES-FERRAND
Director, Housing Department

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

ATTACHMENTS:
Attachment A – Summary of Lender and Developer Feedback
Attachment B – Summary of Tenant Feedback
Attachment C – 2019 Economic Roundtable: “City of San José ARO Research Update”
Attachment D – Additional Public Comments
Attachment E – Letter from the Housing and Community Development Commission

SUMMARY OF DEVELOPER AND LENDER FEEDBACK

This section summarizes the staff insights gathered from communicating with developers and lenders.

- **Lack of knowledge and understanding of San José's Ellis Act provisions –** Both developers and lenders had misconceptions regarding the Ellis Act and the Apartment Rent Ordinance provisions. All of the lenders interviewed assumed that the allowable rent increases in San José were a factor of the Consumer Price Index, consistent with most rent stabilization programs throughout the State. More education is necessary to inform developers and lenders regarding local rent control and Ellis Act provisions. Rents set following demolition of rent stabilized apartments may initially be set at market rates and rents are limited to 5% annual rent increases thereafter. Rents are set again at market when a tenant voluntary leaves the apartment. Additionally, developers and lenders must be educated regarding the option under the Ellis Act Ordinance to provide on-site affordable housing as an alternative to implementing re-control provisions.

- **Limitations on rent increases during the lease-up period** – Developers expressed a concern that they would not be able to provide rent concessions during the initial lease up period. The Apartment Rent Ordinance states the annual rent increase of 5% is based on the rent paid in the prior year. The initial rent is defined as the actual rent paid by the tenant at commencement of the tenancy. As noted above, one developer stated they depress the initial rents in order to lease-up the building and a concern is that the 5% cap would not allow them to catch up after the first year. An alternative to the developer's practice of initially depressing the rents at lease-up (as is common in many business models) is to offer a rent reduction, such as one-month free rent, in the second month following payment of the first months' rent. Both the monthly discount method and this method can result in the same discount but the latter option resolves the developer's concerns about a 5% cap on a discounted rent. Therefore, the developer can rent the apartment at the rate they desire and generate interest with the free rent concession. Allowing increases greater than 5% after the end of the lease would be inconsistent with the policy goal of the Apartment Rent Ordinance which is to prohibit rent spikes.

- **Limitations on rent increases following a recession and/or during a strong market –** Developers are concerned about the amount of time it takes to "catch up" on rents after a recession and/or the inability to increase rents rapidly when the market is hot. To the extent that residential development in San José is predominately being built on the higher end of the market, it may be the least resilient during a recession. The purpose of the 5% rent limitation is to provide stability for renters during periods of spiking rents. Allowing increases in order to "catch up" with the market is inconsistent with the Rent Stabilization program and the policy goal of providing stability to renters.

- **Loans to developments with rent stabilized apartments –** Developers were concerned that they would not be able to finance their developments with Ellis re-controls. Both debt and equity lenders underwrite loans using industry-standard growth rates of 2-3% on future rents. Interviews with both debt and equity lenders indicated that a 5% rent limitation is reasonable and would not impact their decision to move forward with an investment in new development. One lender stated that although the 5% rent limitation is reasonable, the concept of rent stabilization is not attractive. The ability to generate higher level of returns that exceed average growth rates is what attracts capital to markets like San José that are undergoing transformation. This perception of rent stabilization may or may not impact a lenders decision to invest in San José.

- **Limitations on rent increases could reduce the value of new buildings –** Developers were concerned that Ellis re-control provisions would not allow them to maximize their profit. Short-term investors and developers are typically anticipating a sale or refinancing of a new building in the first or second year following lease-up. Developers want to maximize the rents received prior to the sale as higher rents justify a higher sales price. The 5% rent limitation may reduce the potential for sharp rent increases leading up to a sale or refinancing event, however this will only impact the amount of profit made on the sale, not on the ability to pay the debt incurred to complete the development. This limitation on profit may or may not impact a lenders decision to invest in San José.

Overall, developers and lenders expressed concerns about the Ellis Act re-control provision but initially did not fully understand how it is implemented in San José. One of the primary concerns expressed is the inability to rapidly increase rents. Developers also expressed concerns that given the current market cycle and investor choice, any perceived limitation on rents may negatively impact their developments.

SUMMARY OF INTERVIEWS WITH DEVELOPERS

Factors to Consider when Determining if the Development will Move Forward

- Financial feasibility – price difference between the current sale price and the redevelopment resale value.
- Historic structures on adjacent parcels are presenting a challenge.
- Challenges negotiating land price.
- Park fees are challenging for the development.
- Housing type is challenging; wanting to explore options such as co-living to make the development move forward.
- The developer's lender needs to see $4,000 monthly rent for the new apartments to make the investment.
- Developer is looking for a 10% return; narrow margin considering all of the variables that may shift during the development process.
- Ellis requirements represent another item in a long list of requirements by the City that make developing residential difficult.
- Developing in an opportunity zone – rushed timeline means the Developer needs the development process to move forward quickly to maintain investment.
- Developers are making investments in areas where they think the market will develop and improve over time – speculating on the opportunity to make a larger return in areas as they become more desirable. Ellis potentially limits the opportunity (and therefore the attractiveness) of these areas.
- Land costs already reflect future investment in San José including Bay Area Rapid

Transit (BART) and Diridon expansions. Returns must be made on the development to recapture the initial funding of the land purchase.

- High rise housing developments face unique challenges due to the cost of development and difficulty building to the heights necessary to cover the costs.
- While the cost of steel, glass and labor are always a concern, the cost of land in San José is the greatest concern.
- Softening rents are making new developments difficult to move forward.

Familiarity with Affordable Housing Programs

- No direct experience with affordable housing.
- Familiar – interested in producing the 20% affordable option rather than having 50% of the new apartments subject to the Rent Stabilization program.
- Very interested in affordable housing – if the requirement to replace the demolished apartments on a one-for-one basis with affordable apartments restricted at 80% to 100% Area Median Income (AMI), the development could move forward. This option would be preferred over the 50% re-control provision.

SUMMARY OF INTERVIEWS WITH LENDERS

Current Market

- Developments are moving forward with approximately 30% from equity investors and 70% from typical bank loans. Equity investors are assuming greater risk on the development.
- Equity investors are concerned about the first five years of a development – construction and lease up are the most critical points in the process.
- Long-term investors purchase the property once construction is complete and the building is stabilized – meaning it is leased up for one to two years.

Impact of Ellis Act on Development

- In general, equity investors and bank underwriters are projecting conservative growth rates on rents generally tracking the Consumer Price Index (CPI). The 5% annual increases under the re-control provisions are generous and reasonable.
- Debt providers will be comfortable with a 5% growth rate; equity investors may feel a little tighter with the 5% limitation; overall, both types of lenders will find a 5% rent increase reasonable.
- Approximately 70% of the developers partnered with use rent discounting as a business model to ensure an expedited lease up period. If the re-control provisions would not allow the rents to “catch up” to market in the first two years, this may be a challenge.

Familiarity with affordable housing programs

- Familiar – affordable rents work at the 80% to 100% AMI levels when included in a market-rate development.
- Familiar – for sale is challenging to make work due to the high sale prices; rental at lower income levels is also challenging. Generally, affordable housing works best when concentrated in a separate building.
- Deed restrictions are predictable and the programs are clearly defined.

ATTACHMENT B

SUMMARY OF TENANT FEEDBACK

This section summarizes the staff insights gathered from talking with tenants living in San Jose and tenants who have been served Ellis or owners expressed interest in Ellis.

COMMUNITY MEETING

- **Displacement** – Tenants are concerned about how to increase housing stock without displacing current residents and resulting in homelessness.
- **Education about rights –** Tenants recommended to increase awareness on tenants' rights to have proper notice or relocation benefits if eligible.
- **Encourage new housing development while preserving affordable rents –** Tenants are concerned about the potential decrease in affordable rents with new housing development. Tenants asked how San Jose can make housing available and affordable for all residents of different income levels. Market rate rents are unaffordable and it is more important to build deed restricted affordable rents, according to tenants.
- **Strengthen current provisions –** Tenants recommended to strengthen the current Ellis Act provisions and even increase from 50% re-control to 100% re-control.

DOOR-TO-DOOR INTERVIEWS WITH TENANTS LIVING IN APARTMENTS CONSIDERING WITHDRAWAL THROUGH ELLIS ACT ORDINANCE

Staff also conducted site visits and door-to-door interviews with 57 tenants living in four properties where the owner indicated interest in withdrawing the apartments from the rental market. The purpose of the interviews was to determine if tenants could afford to live in the new development to learn about their current rents they are paying, and their occupation.

Current Rent Level:

- $1,900
- $1,992
- $2,042
- $2,100
- $2,300

Aspects of Living in this Neighborhood or Complex:

- Access to transportation, such as light rail, is critical to some residents.
- Lack of maintenance or dilapidated buildings, but rents are still high.
- Immigrants of India - work for tech companies but are contracted out and do not make a six figure salary, or they make a six figure salary, but support their families back

home. Cost of day care and school is also expensive and eats away at what appears to be a larger salary.

- Transportation and amenities attract lower income families to certain neighborhoods, and also attract tech workers traveling to neighboring cities.
- Majority are seniors with fixed incomes, that live pay-check to pay-check. Can't imagine moving to another apartment because of market-rate rents. Residents would most likely have to leave the State or would be forced to move in with family members.
- Long-term tenants who have established a community and raised their families feel uncertain and uneasy about pressures of displacement. Questions such as, "Where will I move to?"; "What will happen to my neighbors?"; and "How will I afford market-rate rents?"

Occupation and Work Location:

- Hospital – City of Santa Clara
- Software engineer – City of Palo Alto
- Teacher – City of San José
- Real estate – City of San José
- Driver – City of San José
- Engineer – City of San José
- Consultant – City of San José
- Custodian and truck driver – City of San José
- Construction – City of San José
- Retired and on fixed-income
- Domestic worker – City of San José

ATTACHMENT C

City of San José ARO Research Update

November 2019

Patrick Burns
Daniel Flaming

ECONOMIC ROUNDTABLE
Knowledge for the Greater Good

City of San José
ARO Research Update

November 2019

Patrick Burns
Daniel Flaming

Commissioned by
The City of San José Housing Department

Report available at:

https://economicrt.org

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Photograph by Michael, San José California Skyline, January 9, 2009. Flickr Creative Commons.

Executive Summary

Update Research on the City of San José Apartment Rent Ordinance

This report updates an earlier Economic Roundtable report, "*City Of San José ARO: Research to Support 2016 Updates to the Rent Stabilization Regulations*," also underwritten by the City of San José's Housing Department. Back in June 2015, the San José City Council identified the review and exploration of potential modification of the San José Rental Dispute Mediation and Arbitration Ordinance (Municipal Code Chapter 17.23, referred to in this report as the Apartment Rent Ordinance or ARO) as an important policy priority for FY 2015-16. The San José City Council tasked the Housing Department with gathering information about the ARO inventory, comparing allowable rents increases under the ARO and those of other jurisdictions, documenting the socioeconomic characteristics of ARO and non-ARO renter households, and analyzing financial outcomes of ARO rental properties, including debt-service pass-through.

That earlier ARO Study helped inform Housing Department staff recommendations brought back to the City Council for consideration. The City Council approved several updates to the ARO in April 2016, including: lowering the city's annual allowable rent increase 5 percent, removing the debt-service pass-through provision, modifying the capital improvement program, establishing anti-retaliation and protection ordinance to help tenants, and establishing a new rental registry to collect data on rent increases, tenant turnover and non-compliance. Our initial report also recommended the city increase the annual allowable rent increase rate based upon inflation, but this was not approved.

This fall, the City Council is continuing its review of the ARO, and requested updated information to support the policy debate. Using the most recent data available, including the 2017 5-Year American Community Survey, this includes the following key items:

- Comparison of ARO and non-ARO rents
- Comparison of ARO and non-ARO renter household incomes and conditions
- Estimate of the number of ARO residents in each council district
- Demographic characteristics of ARO tenants

This Executive Summary provides key findings related to the questions posed in the City Council-approved scope of work.

ARO Origins and Effects on Apartment Rent Levels

The ARO was adopted in 1979 and applies to multifamily rental units in buildings with three or more units constructed before September 7, 1979. Among these apartments, those that are owner-occupied, occupied by Section 8 tenants, or received public subsidies are exempt from coverage under the ordinance. Approximately 39,300 apartments, or about 30 percent of the rental units in the City, are subject to the ARO.

Since 2005, median rent increases for ARO units have climbed almost as much as those of non-ARO units on both an absolute and percentage basis. Median rents for ARO housing units rose from \$1,290 in 2005 to \$1,701 in 2017, in CPI-adjusted dollars, a 32 percent increase. Median monthly rents for non-ARO housing units rose from \$1,458 in 2005 to \$1,940 in 2017, a 33 percent increase. The gap between ARO and non-ARO rent levels has stayed steady since 2005, with ARO units costing \$169 less per month, or about 4 percent lower, on average. Additional updated information about the ARO rent levels appear in Chapter 1.

ARO Renter Household Income and Characteristics

The median household income of ARO renters in San José was $57,773 in 2017, having risen over the past three years after a decade of stagnation related to the Great Recession. The gap between ARO and non-ARO renters' median annual household income now stands at just over $5,700, and non-ARO renter households have enjoyed an average of just under $7,900 more annual income than ARO households have since 2005.

Renter households in ARO units are slightly more rent burdened than those in non-ARO apartments in San José. Fifty-three percent of ARO renters pay 30 percent or more of their income for housing compared to 52 percent of non-ARO renters.

Also, there are higher rates of overcrowding in units covered by the ARO than those that are not. Thirty-four percent of ARO units have more than one person per room versus 29 percent of non-ARO units. Thirteen percent of ARO units are severely crowded (greater than 1.5 persons per room) versus 10 percent of non-ARO units.

ARO units have a significant amount of turnover, with 22 percent of renters residing in their current units less than 12 months, and 30 percent for less than two years. Another 30 percent have resided in ARO units 2-4 years, and 40 percent have lived there 5 years or longer. Compared to findings in our 2016 ARO study, ARO renters have stayed longer in their current units: 26 percent of ARO renters were in their units less than 12 months, and 37 percent for less than two years. This may indicate more renters taking advantage of the city's rent stabilization ordinance.

The demographic data on renters living in ARO units reveal that they are slightly younger than non-ARO renters, and significantly younger than San José's other residents. Over half of ARO renter households have children age under the age of 18. The plurality of these renter households are Latino households (47 percent), with Asian American and Pacific Islander households constituting another 26 percent. Fifty-seven percent of ARO renters are citizens either born in the United States, or else were born overseas to U.S. parents. Another 17 percent are U.S. citizens by naturalization.

Forty-four percent of ARO renters do not have an education beyond high school, versus 40 percent for non-ARO renters.

ARO renters have the largest share of residents who speak English "Not Well" or "Not at All" (27 percent) versus 26 percent for non-ARO renters. Further updated information about the ARO unit inventory and the socioeconomic and demographic characteristics of ARO renters appear in Chapter 2.

Photo Credit: Economic Roundtable, 2016

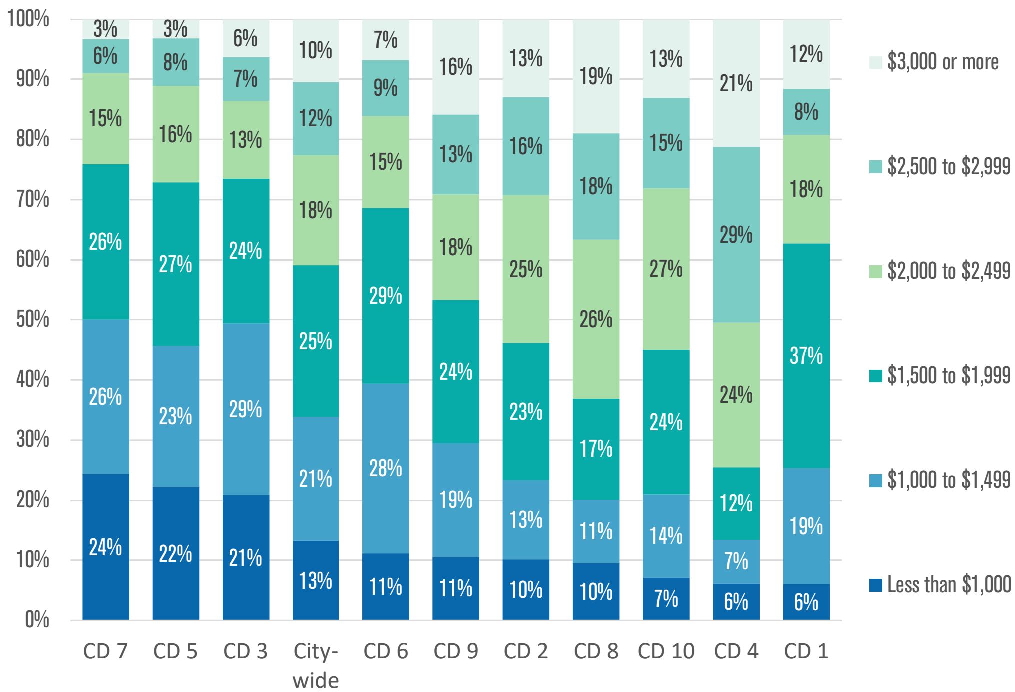
I. City of San José Tenant Rent, Income and Socioeconomic Conditions

1. City of San José Tenant Rent, Income and Socioeconomic Conditions

1a. Differences in Tenant Rent Levels across the City

Rent levels vary by building age, square footage per unit, number of bedrooms per unit, neighborhood, and even by costs of building maintenance and type of ownership. In the City of San José, neighborhood differences in actual rents[1] can be seen at the level of Council Districts (CD) (Figure 1.1). For all renter occupied housing, tenant rent levels are predominantly over $1,000 per month, ranging from 94 percent of renters in CD 1 and CD 4, to 66 percent of residents in CD 7 paying that amount or more. Districts 7, 5 and 3 have the most low-cost rental housing, all lower than the Citywide average.

Figure 1.1 – Rent Levels for All Apartments, by Council Districts, City of San José



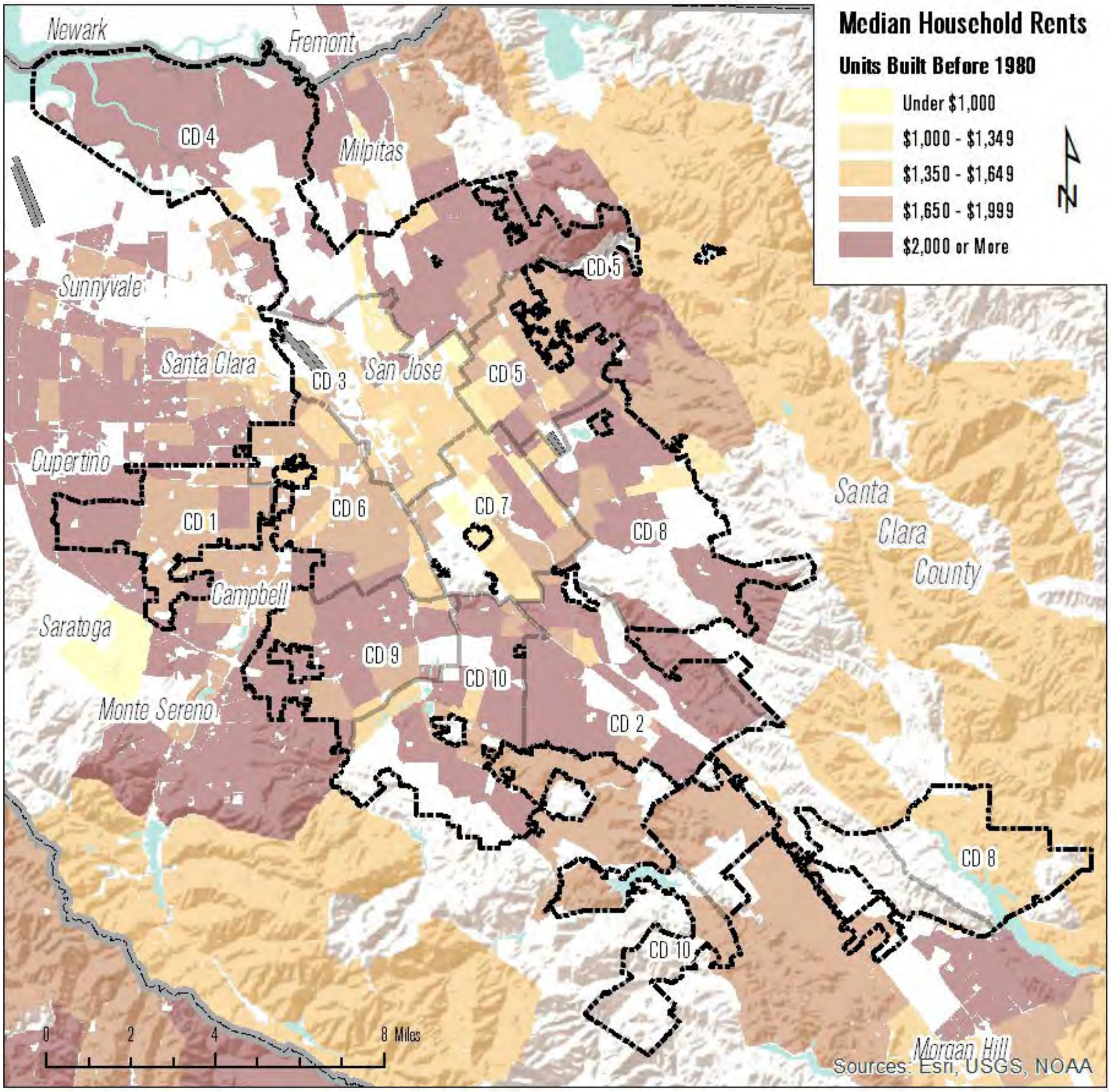
Sources: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Table B25063 Gross Rent Levels. Universe: Renter-occupied housing units. Notes: Data includes all rental housing, including ARO units, duplexes and rented condominiums, as well as units of all bedroom sizes. Data columns may not add up to 100 percent due to rounding.

87 percent of San José renters pay at least $1,000 per month

The following map reveals a few isolated neighborhoods with median rent under $1,000 per month, and more numerous areas with median rents in excess of $2,000 per month (Figure 1.2). Median rents at $2,000 or above are found in the perimeter of the City, including neighborhoods adjacent to Cupertino and Monte Sereno. The larger San José metropolitan area (also known as the San José-Sunnyvale-Santa Clara, CA metropolitan statistical area, composed of Santa Clara and San Benito Counties) has had some of the lowest vacancy rate in the nation in recent years. [2] Median rents in the City of San José reflect this, with more residents competing for rental housing as the cost of owner-occupied housing has trended upwards despite the early 2000s dot-com recession (March 2001 to November 2001) and the "Great Recession" (December 2007 to June 2009).[3]

Adjusted for inflation, both ARO and non-ARO rents in the City of San José rose over the past two and half decades (Figure 1.3).[4] Median monthly rents for ARO housing units rose from $1,290 in 2005 to $1,701 in 2017, in adjusted dollars, a 32 percent increase.

Figure 1.2 – Median Household Rent, Pre-1980 Housing

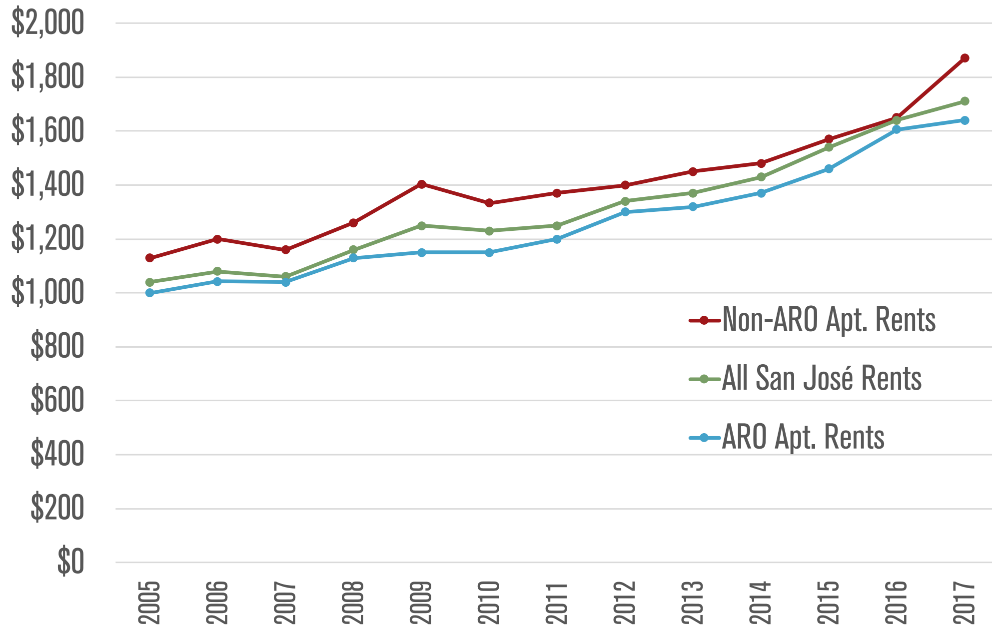


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Table B25111 Median Gross Rent by Year Structure Built. Notes: Data includes all pre-1980 rental housing, including ARO units, duplexes, rented condominiums and other rented housing units, for all bedroom sizes. Geographic units displayed are census tracts, with City Council District boundaries overlaid for reference. Map areas filled white (no color) indicate that either no or too few pre-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.

Median monthly rents for non-ARO housing units rose from $1,458 in 2005 to $1,940 in 2017, a 33 percent increase.[5] For this period, non-ARO rents grew slightly faster than ARO rents, and that the differential between ARO and non-ARO rents has fluctuated, rising up to $230 in 2017. For both types of San José rental housing combined, rents rose from $1,342 in 2005 to $1,774 in 2017, in adjusted dollars, a 32 percent increase.[6]

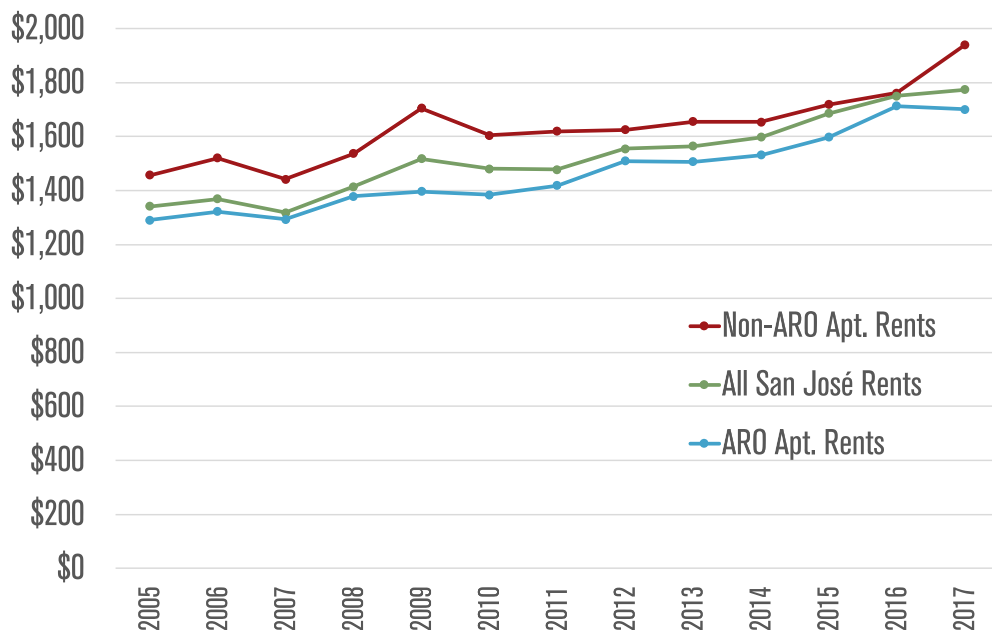
Historically, nominal median rent prices for ARO and non-ARO rental housing in San José have risen since 2005 (Figure 1. 3), although experiencing a brief slowdown in 2007 and 2010 due to the Great Recession. Non-ARO median rents have recently been 4 percent higher than ARO median rents, although the gap was 9 percent in 2009. Adjusted for inflation to 2018 dollars, median rents in San José fell slightly from 2005 to 2007 and from 2009 to 2010, but otherwise have been rising to their current highpoint (Figure 1.4). Nominal and adjusted rents have risen since 2010. Why? Although the

Figure 1.3 – Median Gross Rent by ARO Status, City of San José, Unadjusted



San José median rents have risen since 2005, both for ARO and non-ARO units

Figure 1.4 – Median Gross Rent by ARO Status, City of San José, Adjusted for Inflation



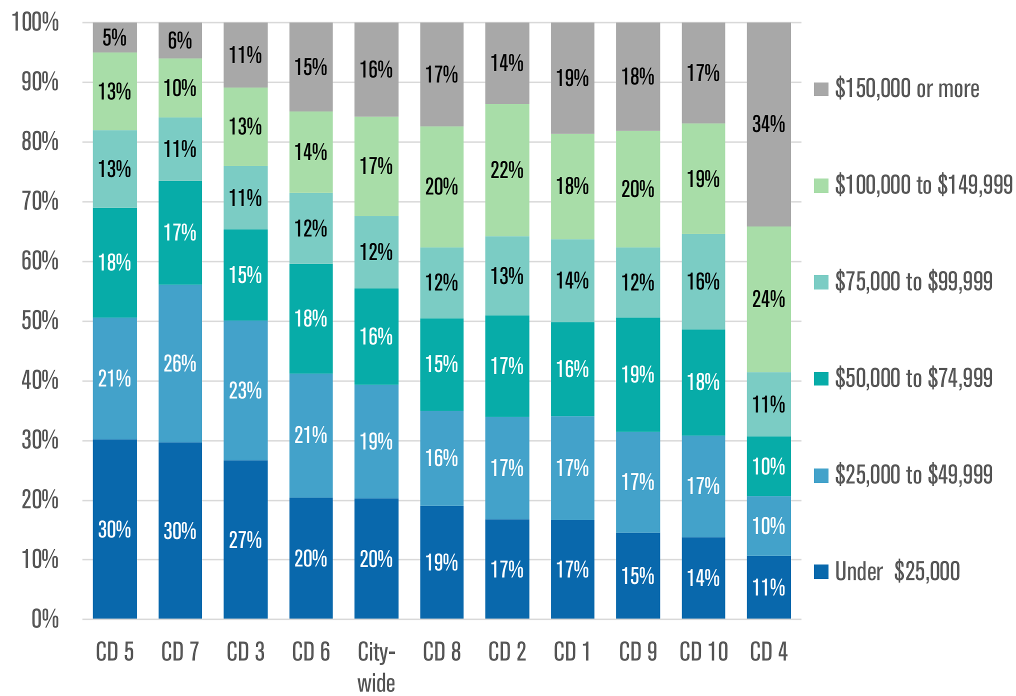
Sources: U.S. Census Bureau, 2005-2017 1-Year American Community Survey, PUMS: Median Gross Rent by Year Structure Built, Tenure and Units in Structure. Bottom chart adjusted to 2018 dollars using the CPI-U for San Francisco-Oakland-San José, California. Data shown are for all bedroom sizes.

California economy experienced a major, prolonged downturn in early- to mid-1990s[7], it was growing again in the late 1990s through the early-2000s "Dot-Com" boom. The early 2000s dot-com recession stifled the Northern California economy for several years, including housing rents, business sales, and worker earnings. Since 2010, however, median adjusted rents have risen somewhat or held steady.

1b. Household Incomes of ARO Renters

Household incomes in the City of San José vary by neighborhood, similar to the rent households pay. At the level of Council Districts, half of renter households in CD 7, CD 5 and CD 3 have annual incomes of $50,000 or less (Figure 1.5). Comparatively, over half of renter households in CD 4 have annual incomes of over $100,000. Citywide, 39 percent of renter households have annual incomes of $50,000 or less, and 23 percent have $100,000 annual incomes or more.

Figure 1.5 – Household Incomes for All Renters, by Council Districts, City of San José



77 percent of San José renter households have annual incomes under $100,000

Sources: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Table B25118: Household Income in the Past 12 Months. Universe: Renter-occupied housing units. Notes: Data includes all rental housing, including ARO units, duplexes and rented condominiums, as well as units of all bedroom sizes. Data columns may not add up to 100 percent due to rounding.

Broken out by the race-ethnicity of San José ARO renters, household incomes vary noticeably (Figure 1.6). ARO residents that identify as Hispanic or Latino are the largest group, and just over half live in households with annual incomes under $50,000. Asian American and Pacific Islander households are the next largest group, and are relatively better off with 37 percent living in households with annual incomes under $50,000 and 11 percent with household incomes of $150,000 or more. White/European American residents – the third largest group – have the highest household incomes, relatively. Thirty-four percent live in households with annual incomes under $50,000, while 12 percent are in households with $150,000 or more. African American households, the fourth largest group, are the worst off, with 57 percent living in households with annual incomes under $50,000. ARO residents who identify as "Other" – including Native Americans – or "Two or More Ethnicities/Races" are the smallest group, and have the second worst household income profile: 38 percent are in households with under $50,000 annual income. See Chapter 2 for detailed information about the numbers and geography of ARO residents.

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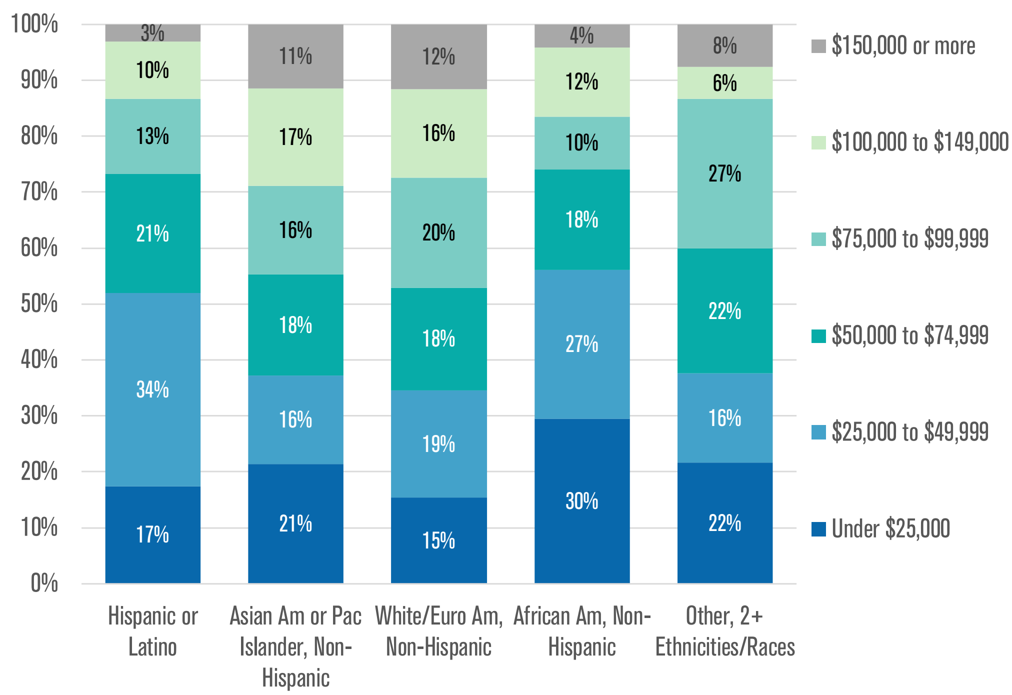
Among San José ARO renters, household incomes vary noticeably by Race-Ethnicity

Figure 1.6 – Household Incomes for All Renters, by Race-Ethnicity, City of San José



Sources: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Table B25118: Household Income in the Past 12 Months. Universe: Renter-occupied housing units. Notes: Data includes all rental housing, including ARO units, duplexes and rented condominiums, as well as units of all bedroom sizes. Data columns may not add up to 100 percent due to rounding.

The median household income of ARO renters in San José is higher during the past three years after stagnating in the prior decade, currently eight percent above its previous 2008 high water mark when adjusted for inflation (Figures 1.7 and 1.8). Non-ARO renters have fared somewhat better, with incomes 11 percent higher than their 2008 level of

Renter households' median incomes had stagnated since 2005, but risen lately

Figure 1.7 – Median Household Income by ARO Status, Unadjusted

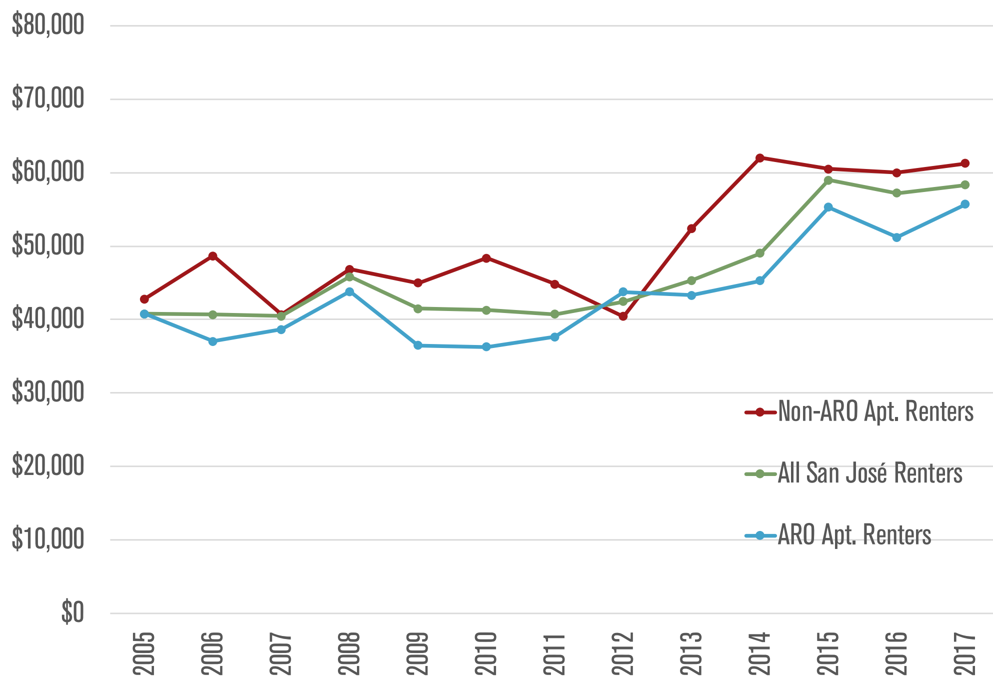
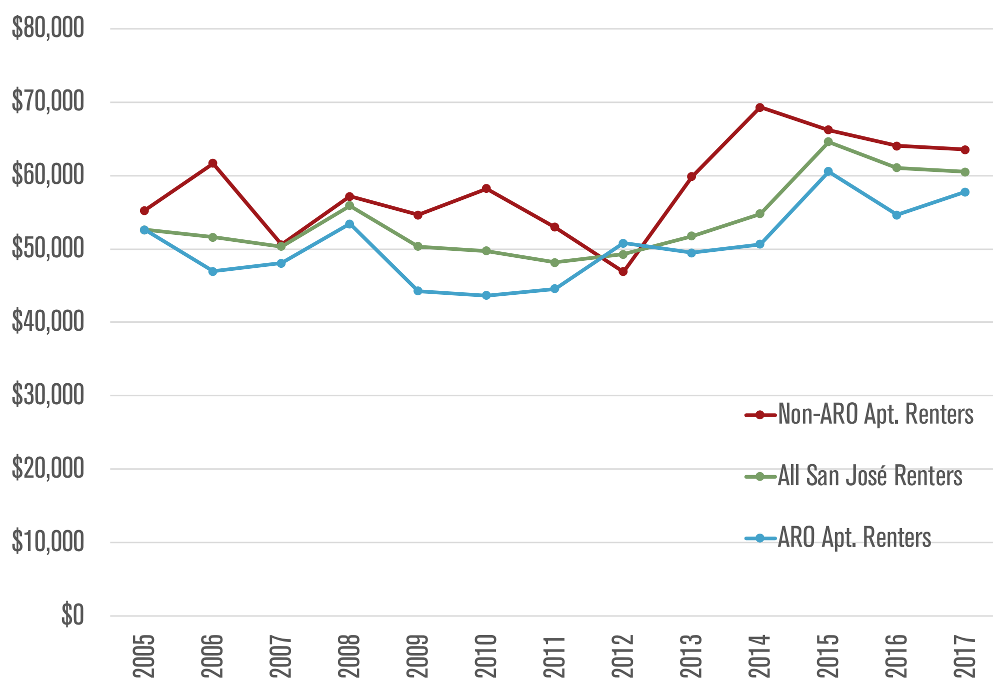


Figure 1.8 – Median Household Income by ARO Status, Adjusted for Inflation to $2018

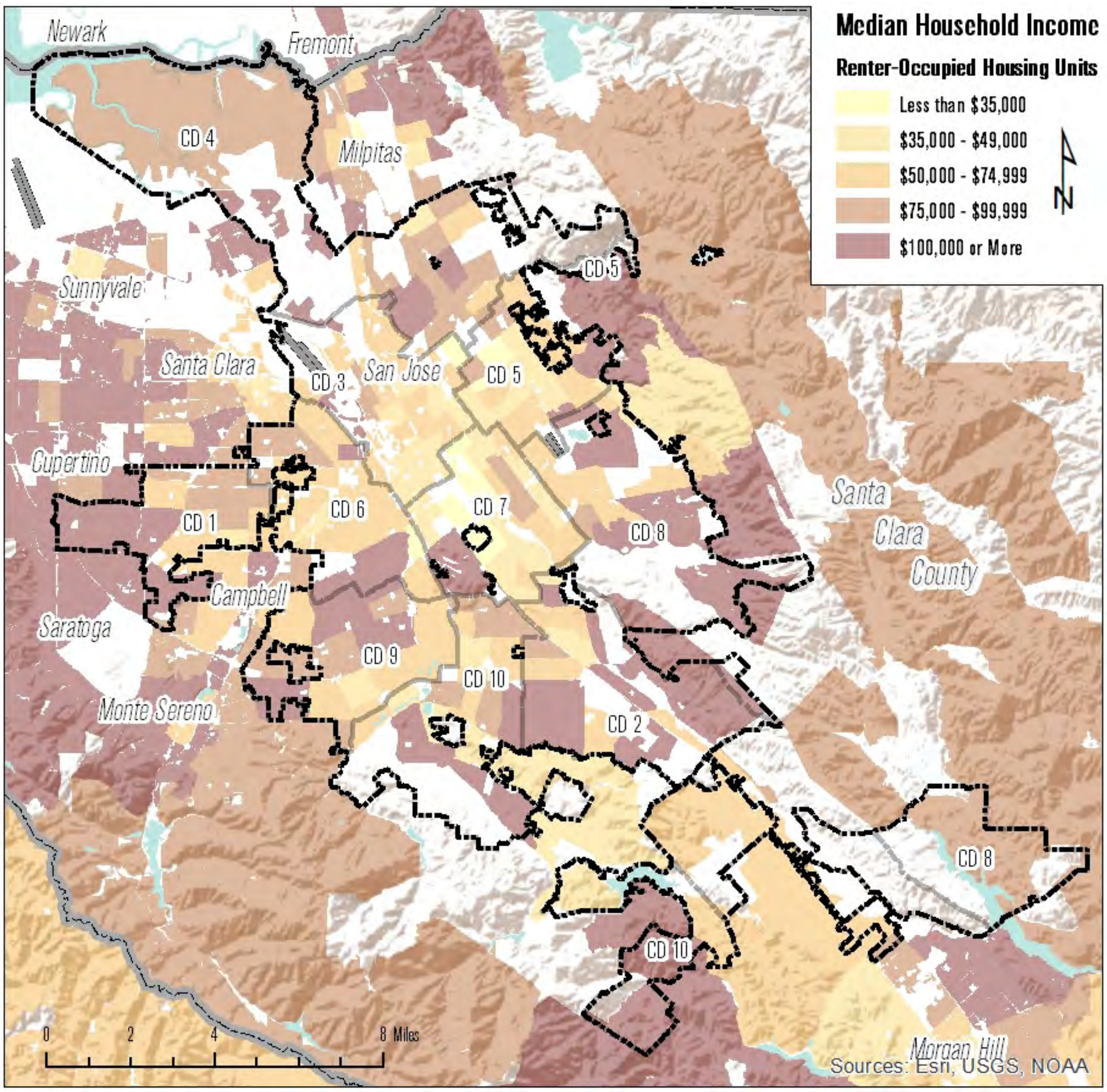


Sources: Economic Roundtable analysis; U.S. Census Bureau, 1990 Census of Population and Housing, Public Use Microdata Set (PUMS); U.S. Census Bureau, 1990 Census of Population and Housing, Public Use Microdata Set (PUMS); U.S. Census Bureau, 2005-2014 1-Year American Community Survey, Public Use Microdata Set (PUMS): Median Household Income by Year Structure Built, Tenure and Units in Structure. All data adjusted to first-half 2015 dollars using the CPI-U for San Francisco-Oakland-San José, California. Data shown is for all bedroom sizes.

earnings. The gap between ARO and non-ARO renters' median annual household income now stands at just over $5,700, and non-ARO renter households have enjoyed an average of just under $7,900 more annual income than ARO households have since 2005. The gap between ARO and non-ARO renters' median household incomes was at its widest in 2014 – around $18,000 higher for non-ARO renter households.

Across San José neighborhoods, the central part of the City has the lowest median renter household incomes, although pockets of low- and high-income areas exist across the City (Figure 1.9).

Figure 1.9 – Median Household Income of All Renters



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-20173 5-Year American Community Survey, Table B25119 (Median Household Income the Past 12 Months by Tenure). Universe: All renter-occupied housing units, including rented single-family homes, duplexes, condominiums and other rented housing; includes ARO and non-ARO units. Data shown are for all bedroom sizes. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

Comparing renter households' median monthly rent and median *monthly* income (converted from annual income) – for ARO, non-ARO and both groups of renters combined – it is clear that as rents have risen gradually or held steady, incomes stagnated from 2005 to 2012 but recently increased (Figures 1.10 and 1.11). This is the situation for the median, or "middle," renter household in San José; the percentage of San José renter households paying an outsized share of their income for rent is discussed next.

Figure 1.10 – Median Monthly Gross Rent & Household Income by ARO Status, Unadjusted

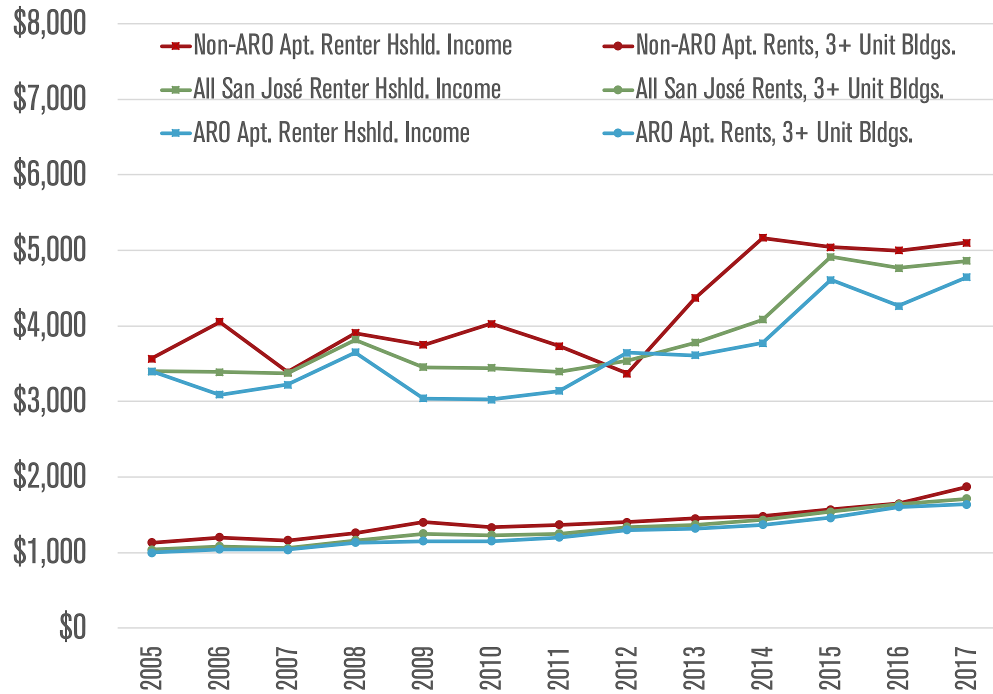
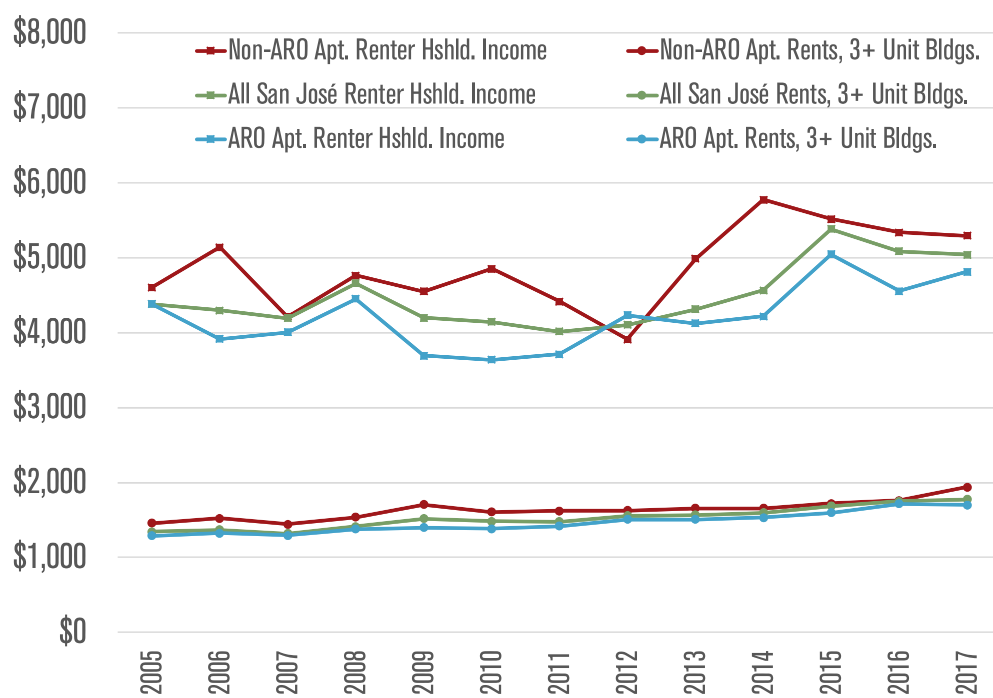


Figure 1.11 – Median Monthly Gross Rent & Household Income by ARO Status, Adjusted for Inflation to $2018

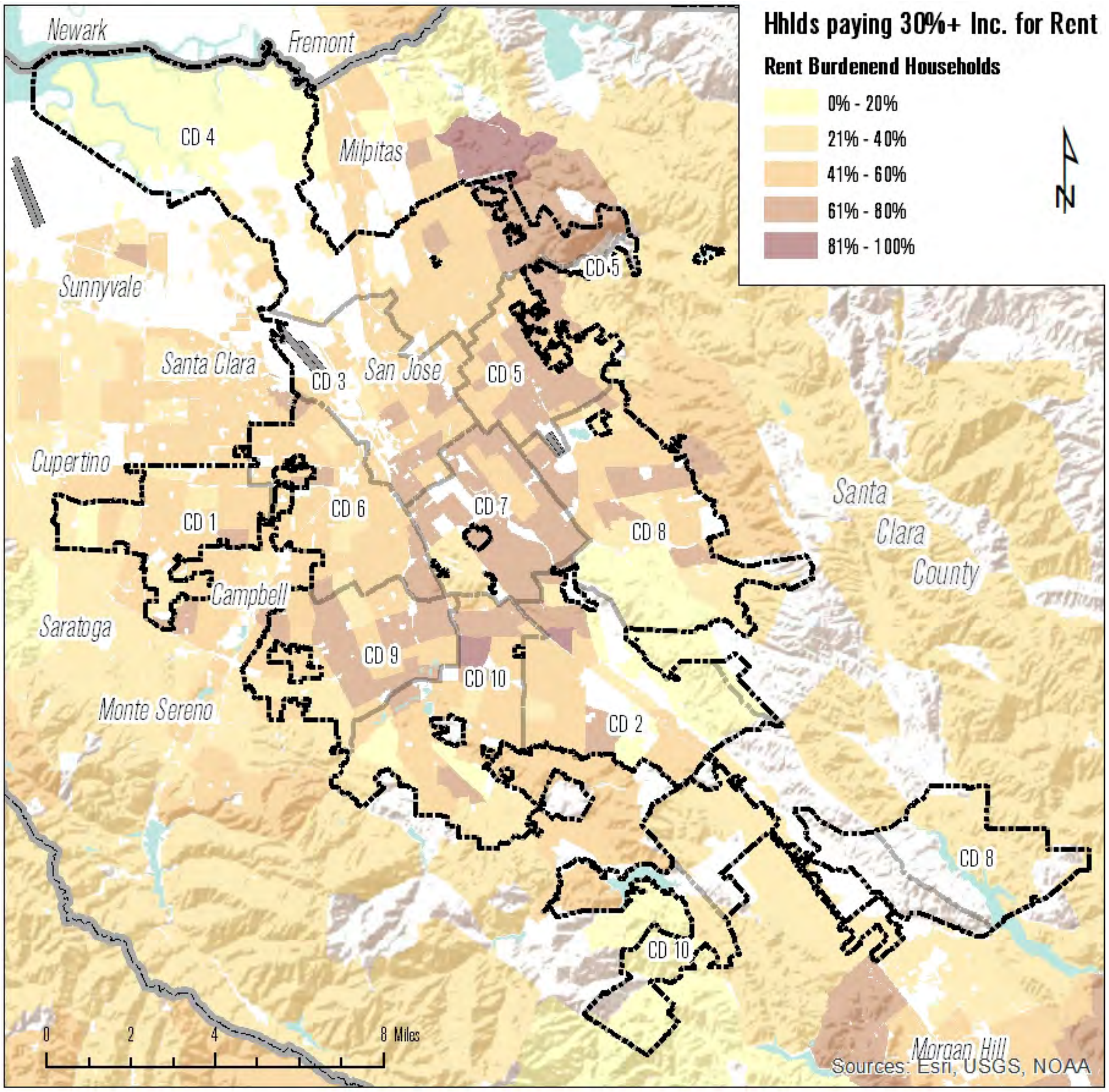


Sources: Economic Roundtable analysis; U.S. Census Bureau, 2005-2017 1-Year American Community Survey, Public Use Microdata Set (PUMS): Median Gross Rent and Median Household Income by Year Structure Built, Tenure and Units in Structure. All data adjusted to first-half 2015 dollars using the CPI-U for San Francisco-Oakland-San José, California.

1c. Rent Burden

Rent burdened San José households, defined as those spending more than 30 percent of income on rent, stand out relative to other cities in the Santa Clara Valley (Figure 1.12). Fifty-three percent of all renter households in San José are rent burdened. Neighborhoods with higher shares of rent burdened households appear in CD 7 (64 percent), CD 5 (59 percent), CD 10 (55 percent) and CD 2 (54 percent).

Figure 1.12 – Percent of Households Paying 30 Percent or More of Income for Rent



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Table B25070, Gross Rent as a Percent of Household Income in the Past 12 Months. Universe: Renter-occupied housing units. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

51 percent of San José renter households are rent burdened, paying 30 percent or more of their income on housing

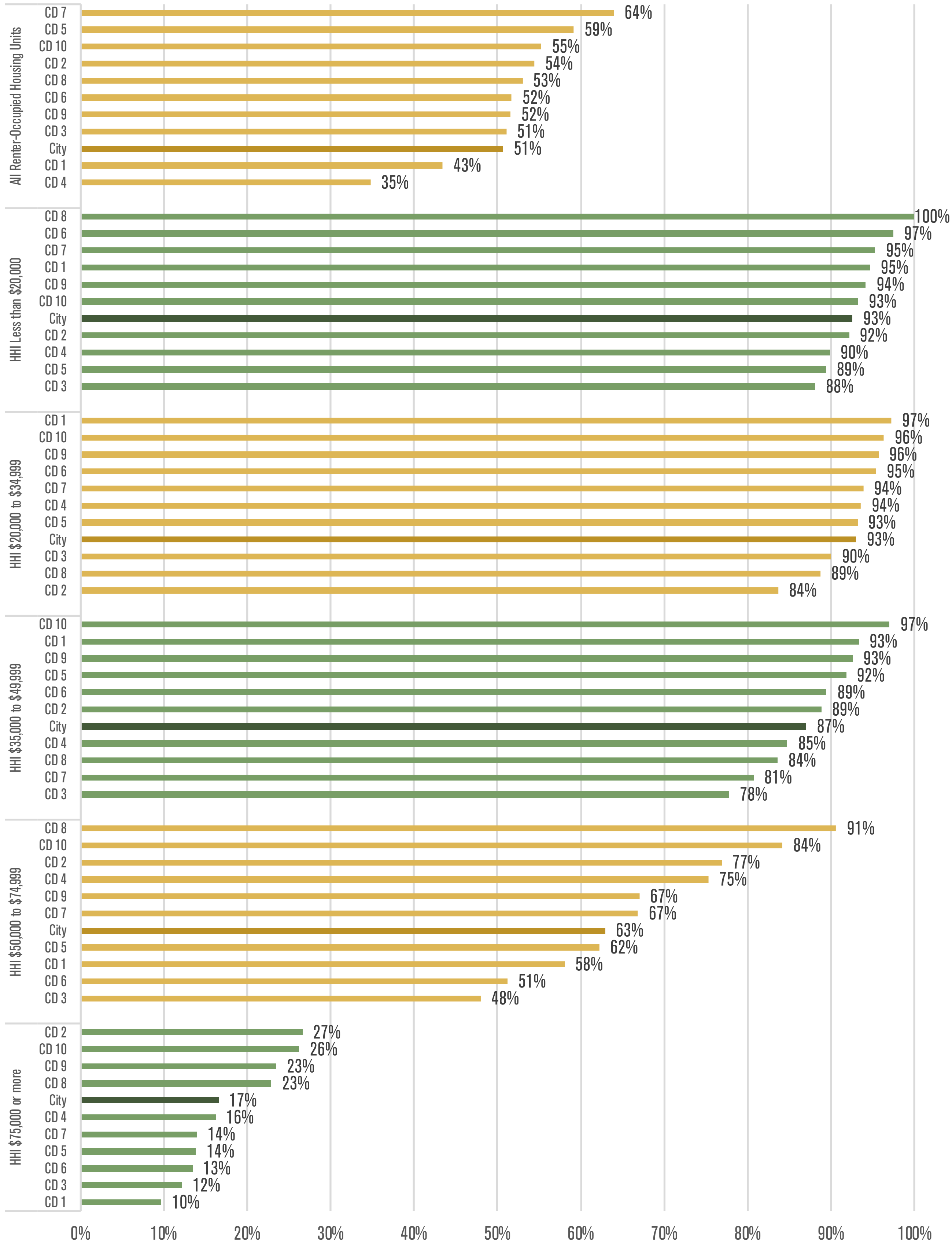
Table 1.2 and Figure 1.13 break out the percentages of rent burdened households in each Council District by household income, since rent burden an affect high-income as well as low-income households. For households with less than $35,000 annual income, 93 percent of households citywide are rent burdened, reflecting their difficulty in affording rental housing while paying for other basic necessities. For households with higher incomes – $50,000 to $74,999 and $75,000 or more – the share of rent burdened households in each Council District declines significantly.

Table 1.2 – Rent Burden: Percent of All Renter-Occupied Housing Units Paying 30 Percent or More of Household Income (HHI) for Rent

City Council District	All Renter-Occupied Housing Units	HHI Less than $20,000	HHI $20,000 to $34,999	HHI $35,000 to $49,999	HHI $50,000 to $74,999	HHI $75,000 or more
CD 1	43%	95%	97%	93%	58%	10%
CD 2	54%	92%	84%	89%	77%	27%
CD 3	51%	88%	90%	78%	48%	12%
CD 4	35%	90%	94%	85%	75%	16%
CD 5	59%	89%	93%	92%	62%	14%
CD 6	52%	97%	95%	89%	51%	13%
CD 7	64%	95%	94%	81%	67%	14%
CD 8	53%	100%	89%	84%	91%	23%
CD 9	52%	94%	96%	93%	67%	23%
CD 10	55%	93%	96%	97%	84%	26%
City Total	51%	93%	93%	87%	63%	17%

Sources: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Estimates, B25106 Tenure by Housing Costs as a Percentage of Household Income in the Past 12 Months. Universe: All Renter-occupied housing units. Note: Renter-occupied housing units with "zero or negative income" and "no cash rent" are excluded from this table. Data shown is for all bedroom sizes. Data columns may not add up to 100 percent due to rounding.

Figure 1.13 – Rent Burden by Household Income and City Council District



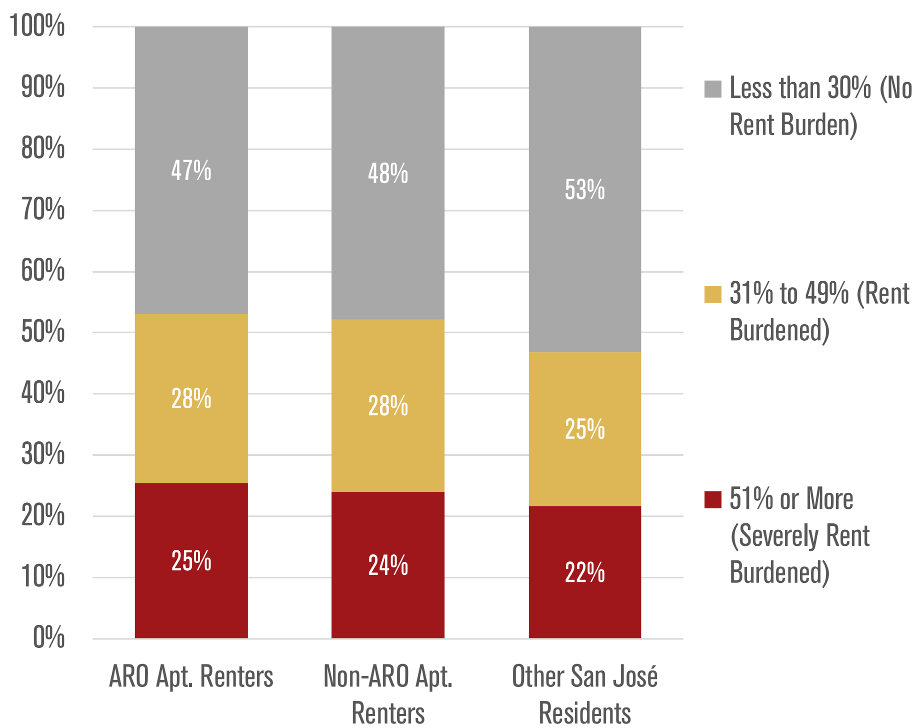
Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Table B25106 Tenure by Housing Costs as a Percentage of Household Income in the Past 12 Months. Universe: All Renter-occupied housing units. Note: Renter-occupied housing units with "zero or negative income" and "no cash rent" are excluded from this table. Data shown is for all bedroom sizes.

53 percent of ARO renters pay 30+ percent of their income for housing, compared to 52 percent of non-ARO renters

San José renter households living in ARO units are slightly more rent burdened than those in non-ARO apartments are. Fifty-three percent of ARO renters pay 30 percent or more of their income for housing compared to 52 percent of non-ARO renters (Figure 1.14). Other San José residents (not renting in buildings with three or more units) experience rent burden similar to what ARO and non-ARO renters experience.

For comparison purposes, 51 percent of *all* San José renter households are rent burdened (25 percent severely rent burdened), 53 percent of all California renter households are rent burdened (27 percent severely rent burdened), and 47 percent of all renter households nationwide are rent burdened (24 percent severely rent burdened).[8]

Figure 1.14 – Percent of Renter Households Experiencing Rent Burden and Severe Rent Burden, by ARO Status, City of San José



Sources: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Public Use Microdata Sample (PUMS), Tenure by Year Built by Housing Costs as a Percentage of Household Income in the Past 12 Months. Universe: All Renter-occupied housing units. Notes: Renter-occupied housing units with "zero or negative income" and "no cash rent" are excluded from this table. Data shown is for all bedroom sizes. Owner-occupied households are excluded from the "Other San José Residents" group in this figure, since they do not rent their housing. Data columns may not add up to 100 percent due to rounding.

1d. Overcrowding

Overcrowded living conditions are detrimental to human wellbeing.[9] Overcrowding is measured using a ratio of occupants per room, including bedrooms, kitchens, living rooms, family rooms, and dining rooms, but excluding bathrooms, porches, balconies, foyers, halls, or half-rooms.[10] Overcrowding in rental housing may result from a shortage of units with more affordable rents, forcing renters to bring on more income earners to pool share the cost of housing, or from a general shortage of two- and three-bedroom units large enough to accommodate demand from families that rent. There are different standards for measuring overcrowding. To illustrate the definition of housing overcrowding using the federal standard as determined by the Department of Housing and Urban Development, three people occupying a one bedroom apartment with a kitchen and dining room are not overcrowded (3 people:3 rooms=1.0 ratio), but four people would be overcrowded (4:3=1.33), and five persons would be severely overcrowded (5:3=1.66).[11]

San José has some of the worst rental overcrowding in the Santa Clara Valley

Rental household overcrowding within the City of San José varies by council district. CD 5 and CD 7 have the highest rate of overall overcrowding (28 percent), followed by CD 3 (20 percent) (Table 1.3). These three council districts also have the highest percentage of severely overcrowded renter households – each nine percent or more. These rates are much higher than the aforementioned Citywide averages of 16 percent of renter housing units experiencing overcrowded living conditions, and six percent experiencing severe overcrowding. CD 9 is the only area with single-digit levels of renter housing unit overcrowding, eight percent overall with three percent experiencing severe overcrowding.

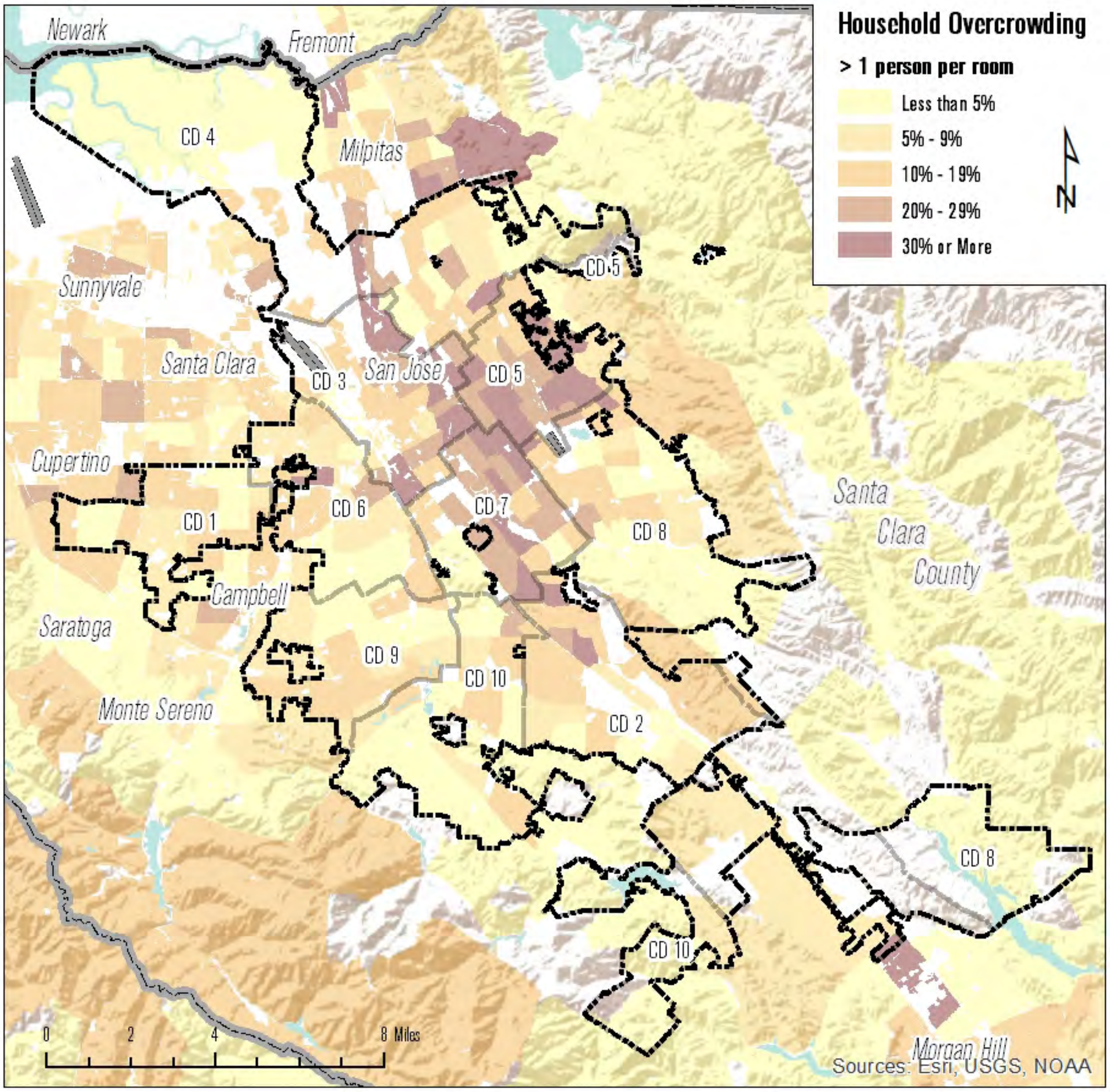
Table 1.3 – Overcrowding in All Renter-Occupied Housing Units, City of San José

City Council District	Not Overcrowded (< 1.01 occupants per room)	Overcrowded (1.01 to 1.50 occupants per room)	Severely Overcrowded (1.51 or more occupants per room)	All Overcrowded (1.01 or more occupants per room)
CD 1	89%	6%	5%	11%
CD 2	85%	9%	6%	15%
CD 3	80%	11%	9%	20%
CD 4	87%	8%	5%	13%
CD 5	72%	18%	10%	28%
CD 6	88%	8%	4%	12%
CD 7	72%	19%	10%	28%
CD 8	89%	7%	4%	11%
CD 9	92%	5%	3%	8%
CD 10	89%	7%	4%	11%
City Total	84%	10%	6%	16%

Sources: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Estimates, B25014 Tenure by Occupants per Room. Universe: Occupied rental housing units. Data in this figure are for all renters, regardless of year built, and in all types of rental housing, including single-family homes, duplexes, mobile homes, and condominiums. The last column, "All Overcrowded," is the sum of the prior two columns.

How does overcrowding in the City of San José compare to the region? The percent of Santa Clara Valley households experiencing overcrowding varies from city to city, but the City of San José stands out with some of the highest rates of renter households in this condition (Figure 1.15). Sixteen percent of San José renter households are overcrowded, with six percent severely overcrowded. Only the Alum Rock neighborhood (24 percent overcrowded, with 6 percent severely overcrowded), City of Milpitas (20 percent overcrowded, 3 percent severely) and City of Gilroy (17 percent overcrowded, 4 percent severely) rank higher. The Santa Clara County communities with the least amount of renter overcrowding are Fruitdale, Lexington Hills, and Monte Sereno.[12]

Figure 1.15 – Percent of Renter Households Experiencing Overcrowding

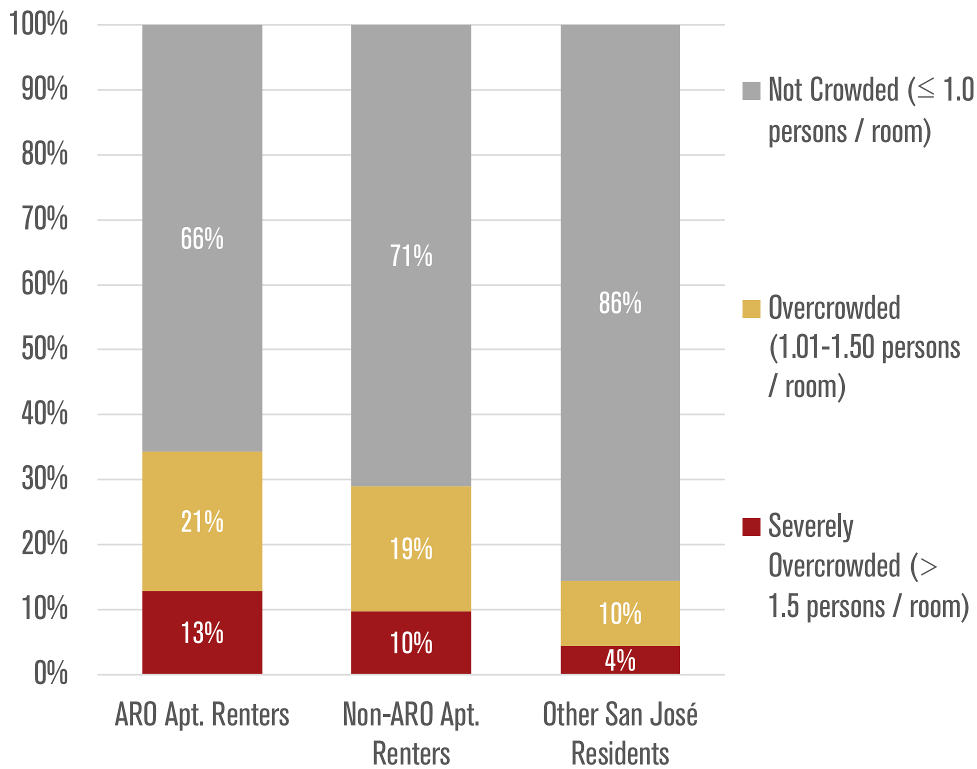


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, B25014 Tenure by Occupants per Room. Universe: Occupied rental housing units. Note: Data in this figure are for all renters, regardless of year built. Geographic units displayed are census tracts, with City Council District boundaries overlaid for reference. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

Based upon the ARO status of renter households in the City of San José, there are higher rates of overcrowding in units covered by the Ordinance than those that are not (Figure 1.16). Thirty-four percent of ARO units have more than one person per room, while 13 percent of those are severely crowded with greater than 1.5 persons per room. Households residing in non-ARO apartments have lower levels of overcrowding, 29 percent, with 10 percent severely overcrowded. Other San José residents (including owner-occupied housing and those not renting in buildings with three or more units) have much lower rates of overcrowding, 14 percent overall and four percent severely overcrowded.

34 percent of San José ARO units are overcrowded, compared to 29 percent of units not covered by the Ordinance

Figure 1.16 – Overcrowding among Renter Households, by ARO Status, City of San José



Source: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Public Use Microdata Sample (PUMS). Tenure by Year Built by Occupants per Room. Note: Overcrowded is 1.01 to 1.50 occupants per room, severely overcrowded is 1.51 or more occupants per room. Data in this figure distinguish between year built and type of rental housing, such as single-family homes, duplexes, mobile homes, and condominiums. See endnotes for category definitions. Data columns may not add up to 100 percent due to rounding.

Summary of Findings

- Over the past 13 years, rent increases for ARO housing have slightly trailed those for non-ARO housing on both an absolute and percentage basis. Median rents for ARO housing units rose from $1,290 in 2005 to $1,701 in 2017, in adjusted dollars, a 32 percent increase. Median rents for non-ARO housing units rose from $1,458 in 2005 to $1,940 in 2017, a 33 percent increase.
- The gap between ARO and non-ARO rent levels has narrowed. Non-ARO median rents have recently been 5 percent higher than ARO median rents. While the non-ARO median rent was 9 percent higher than the ARO median rent in 2009, that gap has narrowed to just 4 percent by 2017.

- ARO renters have somewhat lower incomes than non-ARO renters. The gap between ARO and non-ARO renters' median household incomes was just above $5,700 in 2017, the latest year of data available. This gap was around $18,000 in 2014, the largest it had been since 2005.
- In comparison, as rents have gradually risen or held steady, renter households' incomes were stagnant between 2005 and 2012, for ARO, non-ARO and both renters combined. These median household incomes have increased in the past three years.
- Renter households in ARO units are slightly more rent burdened than those in non-ARO apartments in San José. Fifty-three percent of ARO renters pay 30 percent or more of their income for housing compared to 52 percent of non-ARO renters.
- There are higher rates of overcrowding in units covered by the Apartment Rent Ordinance than those that are not. Thirty-four percent of ARO units have more than one person per room versus 29 percent of non-ARO units, while 13 percent of ARO units are severely crowded with greater than 1.5 persons per room, versus 10 percent of non-ARO units.

Photo Credit: Economic Roundtable, 2016

II. San José Renter Demographics

2. San José Renter Demographics

2a. Data and Definitions

Most of the analysis in this and the prior chapter uses the U.S. Census Bureau's 5-Year and 1-Year American Community Survey (ACS) Estimates and Public Use Microdata Sample (PUMS) files. These ongoing federal surveys of population and housing conditions offer the largest sample sizes of San José households, the most recently released data, and the widest range of subject matter variables.[13] Public policy makers and researchers across the country use ACS data regularly.

Given the intricacies of San José's Apartment Rent Ordinance (ARO) and the irregular shape of its Council Districts (CD) and overall boundaries, we select Census variables, variable categories, and areas that best match "ARO Apartment Renters" in the City, as well as creating two comparison groups of our own: "Non-ARO Apartment Renters" and "Other San Jose Residents." Although not exact matches to San José's renters living in ARO units described inventoried in the previous chapter, they are extremely close and the best that these data allow. Please read the notes at the end of this chapter for detailed definitions of these three groups.[14]

2b. Number of Tenants in ARO Units by Council District

We estimate that there are 113,284 persons living in ARO units in the City of San José, California (Table 2.1). While there is no official census of the numbers of these residents, our estimate combines the latest data from the U.S. Census with the City of San Jose's Multiple Housing Roster. The city council districts (CD) with the greatest numbers of these CD 1 (33,009 ARO residents), CD 3 (23,917), and CD 6 (22,939). Across the city, CD 8 (20), CD 4 (1,057), and CD 10 (1,996) have the fewest ARO residents, just over a thousand.

Just under 130,000 San José residents live in housing under the ARO jurisdiction

Table 2.1 – Estimated Number of Tenants Living in ARO Units, by Council District

City Council District	Population Living in Renter-Occupied Housing Units (All)	Number of Renter-Occupied Housing Units	Number of ARO Units (Multiple Housing Roster)	Percent of Rental Units that are under the ARO	Number of Renters Living in ARO Units
CD 1	45,586	16,662	12,065	72.4%	33,009
CD 2	32,069	9,106	1,177	12.9%	4,145
CD 3	67,970	23,420	8,241	35.2%	23,917
CD 4	45,433	16,078	374	2.3%	1,057
CD 5	45,966	11,250	1,984	17.6%	8,106
CD 6	50,779	20,315	9,177	45.2%	22,939
CD 7	45,525	11,627	2,161	18.6%	8,461
CD 8	18,006	4,519	5	0.1%	20
CD 9	27,526	9,875	3,456	35.0%	9,633
CD 10	27,168	9,406	691	7.3%	1,996
City Total	406,028	132,258	39,337	29.7%	113,284

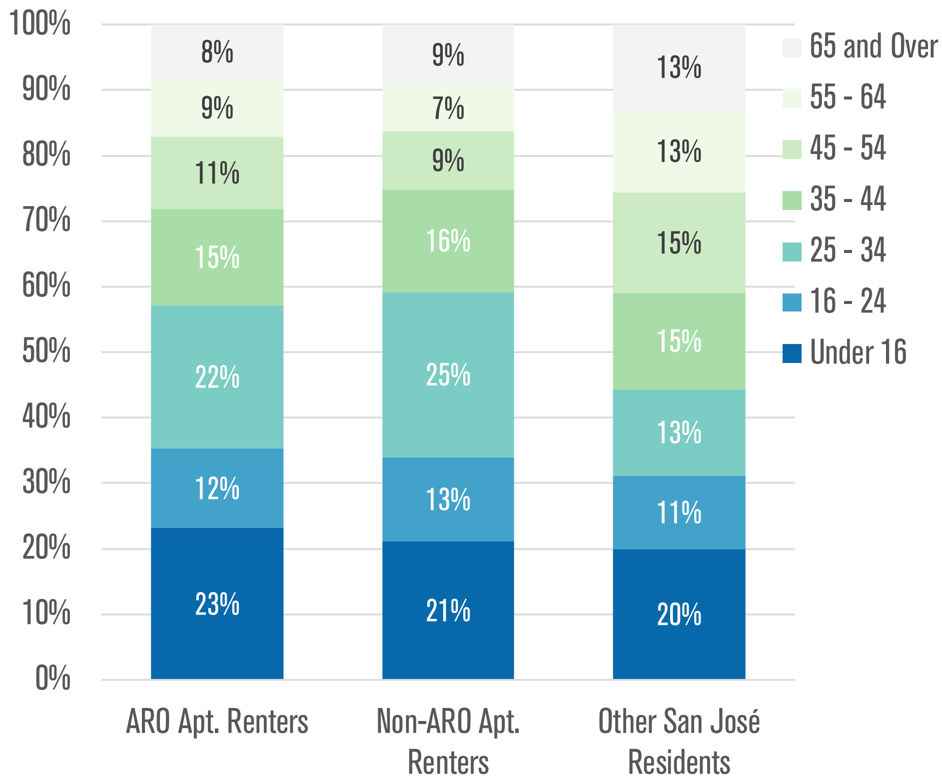
Sources: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Estimates (columns one and two); City of San José Multiple Housing Roster (column three). Universe: Occupants of rental housing, renter-occupied housing units.

2c. Age

ARO housing units are occupied by greater shares of working-age residents and their children.

Renters under the jurisdiction of San José's Apartment Rent Ordinance (ARO) are slightly younger than non-ARO renters, and significantly younger than San José's other residents (including those living in single-family houses, duplexes, condominiums and elsewhere) (Figure 2.1). ARO and non-ARO rental housing have greater shares of working-age residents and their children, while the City's other housing types are occupied by older residents 55 years of age or older (26 percent, compared to 17 and 16 percent for ARO and non-ARO renters, respectively).

Figure 2.1 – Age of ARO, non-ARO and other San José City Residents

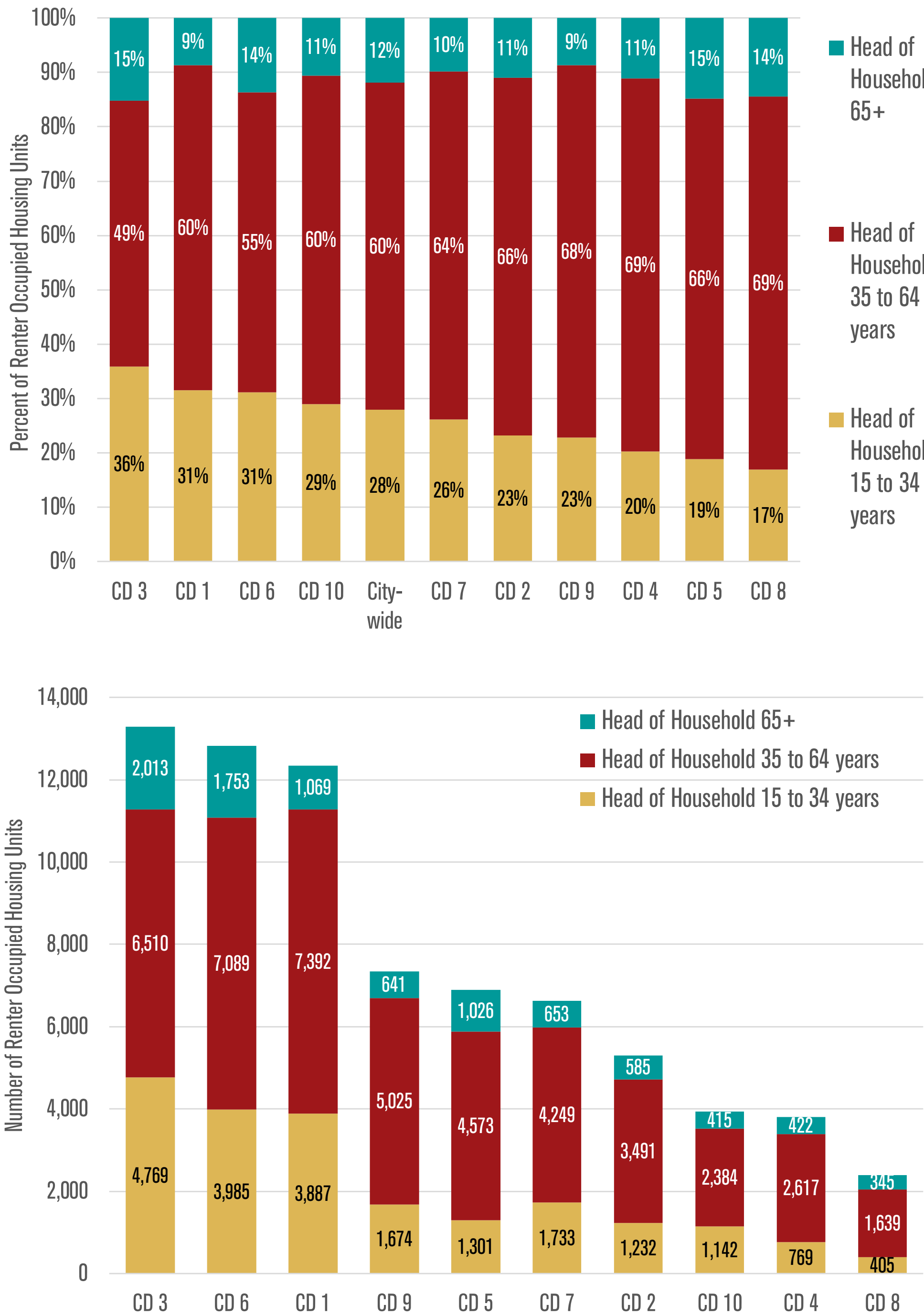


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). All household residents included. Data columns may not add up to 100 percent due to rounding.

Across the City of San José, the age of the heads of households[15] occupying rental housing units built before 1980 is similarly distributed (Figure 2.2). Citywide, 16 percent of pre-1980 rental housing units have a head of household age 34 or younger, 34 percent have a head of household age 35-64, and seven percent have a head of household age 65 or above. CD 9 and CD 1 both have 70 percent or more of their rental housing inventories built before 1980. CD 9, CD 1, and CD 5 have the largest shares of working-age renter householders occupying pre-1980 rental units – all over 40 percent. The approximate

Young renter households are 20 percent or more of CD 1, 6 & 3

Figure 2.2 – Renters of Pre-1980 Housing, by Head of Household's Age and Council District, City of San José, Shown in Percent (top) and Number (bottom)



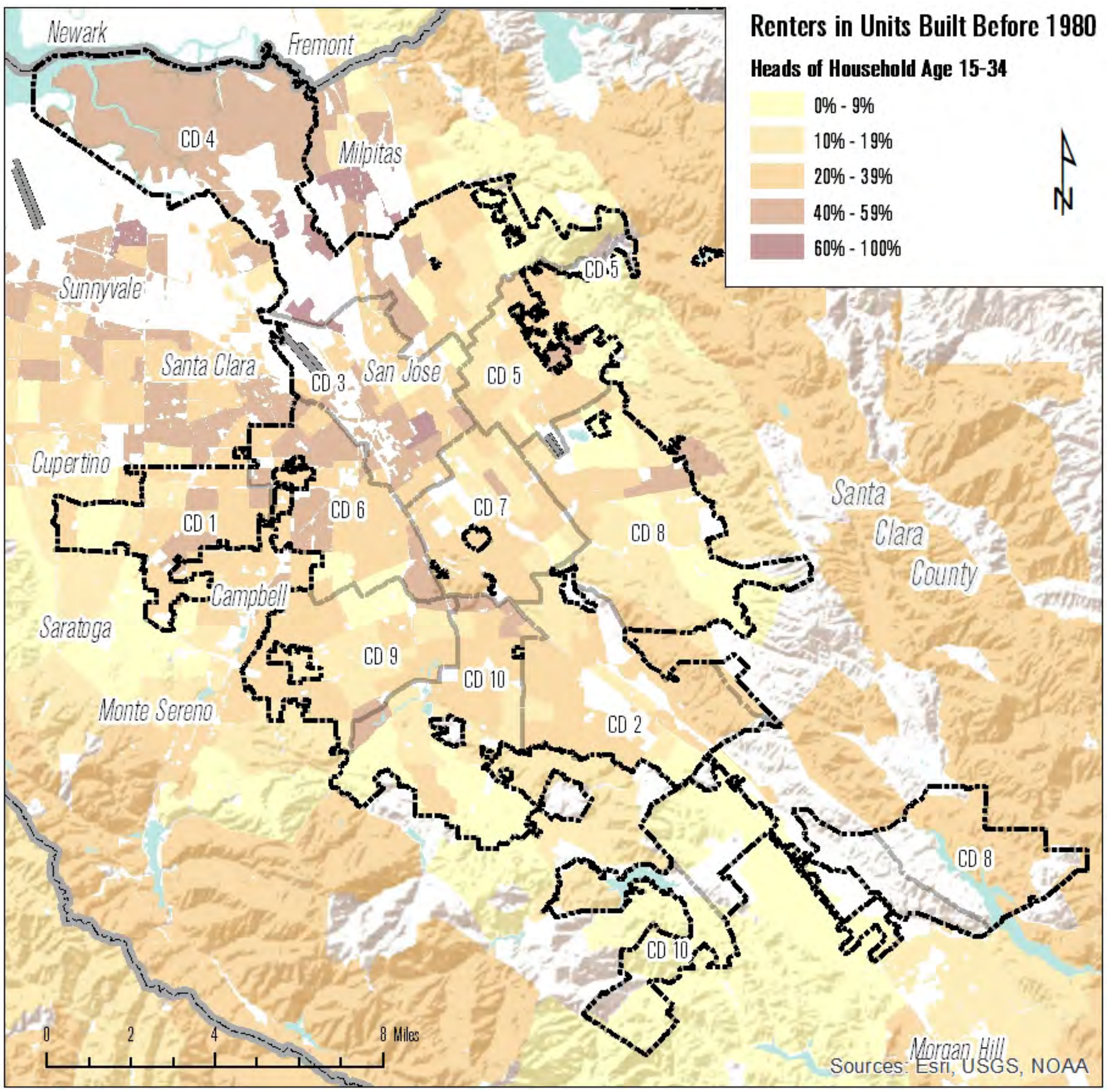
The greatest numbers of households headed by renters age 35 to 64 renter households are in CD 1, 6 & 3

Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25126, Tenure by Age of Householder by Year Structure Built. Universe: Renter occupied housing units. Notes: Bars in top chart highlight all rental housing built before 1980, including duplexes not under the ARO.

numbers of pre-1980 rental households by age of householder appears in the bottom half of Figure 2.2.

Maps of San José showing the geographic distribution of pre-1980 rental unit occupants start with Figure 2.3, which highlights heads of households less than 35 years of age. This captures young worker households as well as those occupied by college students (San José State University, plus the City's four community colleges: San José City College, Mission College, Evergreen Valley College and West Valley College). CD 1, CD 6, CD 3 and CD 9 all have a preponderance of neighborhoods where young renters account for far more than 20 percent of all renter households.

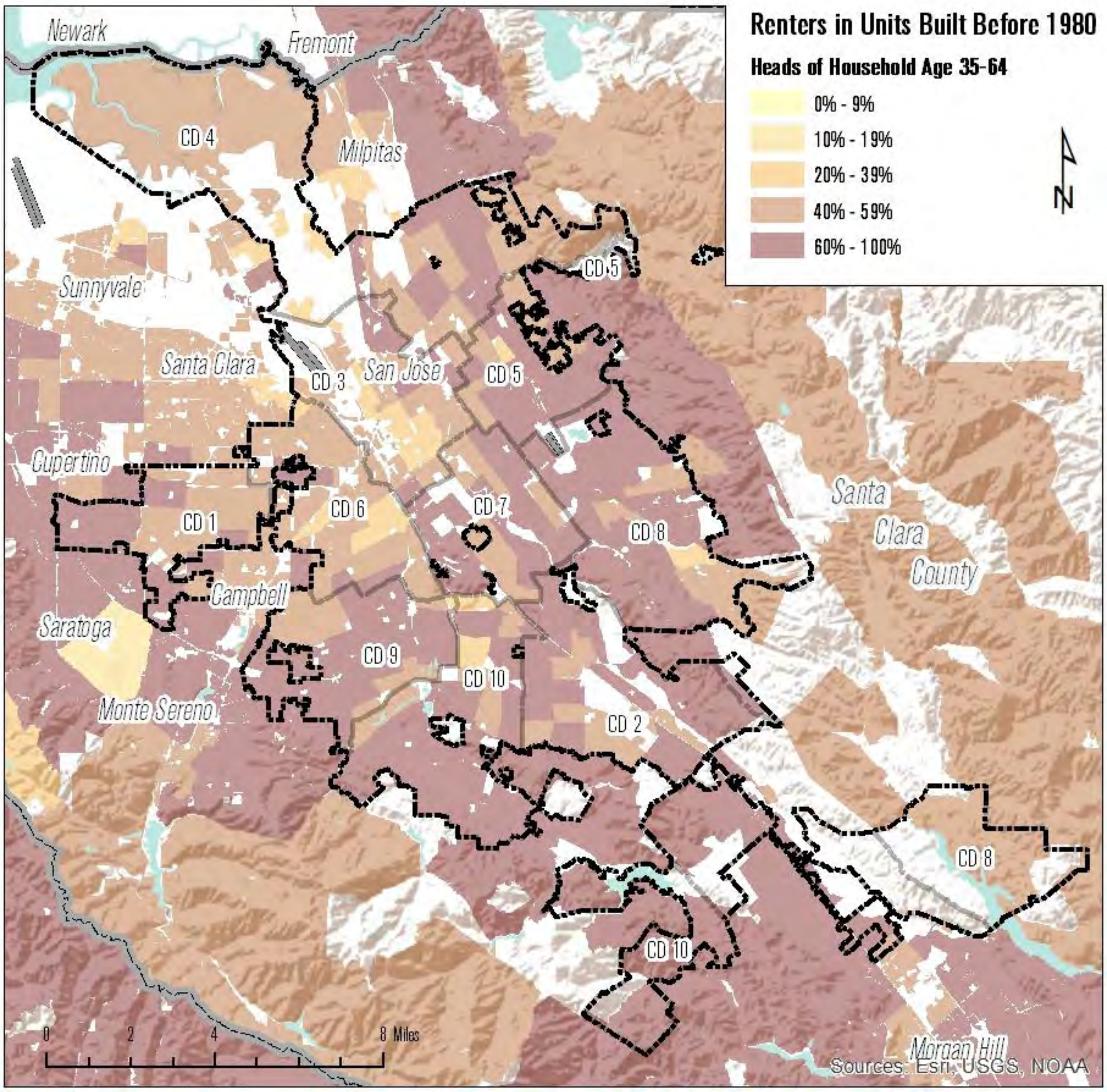
Figure 2.3 – Renter Households Living in Units Built before 1980 and Whose Head of Household is Age 15 to 34 Years, as a Percent of All Renter Households



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25126, Tenure by Age of Householder by Year Structure Built. Universe: Renter occupied housing units. Notes: Geographic units displayed are Census tracts, with Council District boundaries overlaid for reference. Data includes all pre-1980 rental housing, including ARO units, duplexes, rented condominiums and other rented housing units. Map areas filled white (no color) indicate that either no or too few pre-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.

The map highlighting heads of households who are age 35 to 64 years of age appears in Figure 2.4. This captures middle- to older-worker households. Neighborhoods in CD 9, CD 1 and CD 5 have the greatest shares of renter households led by working-age residents of pre-1980 units, while other pockets of these households are visible across the City.

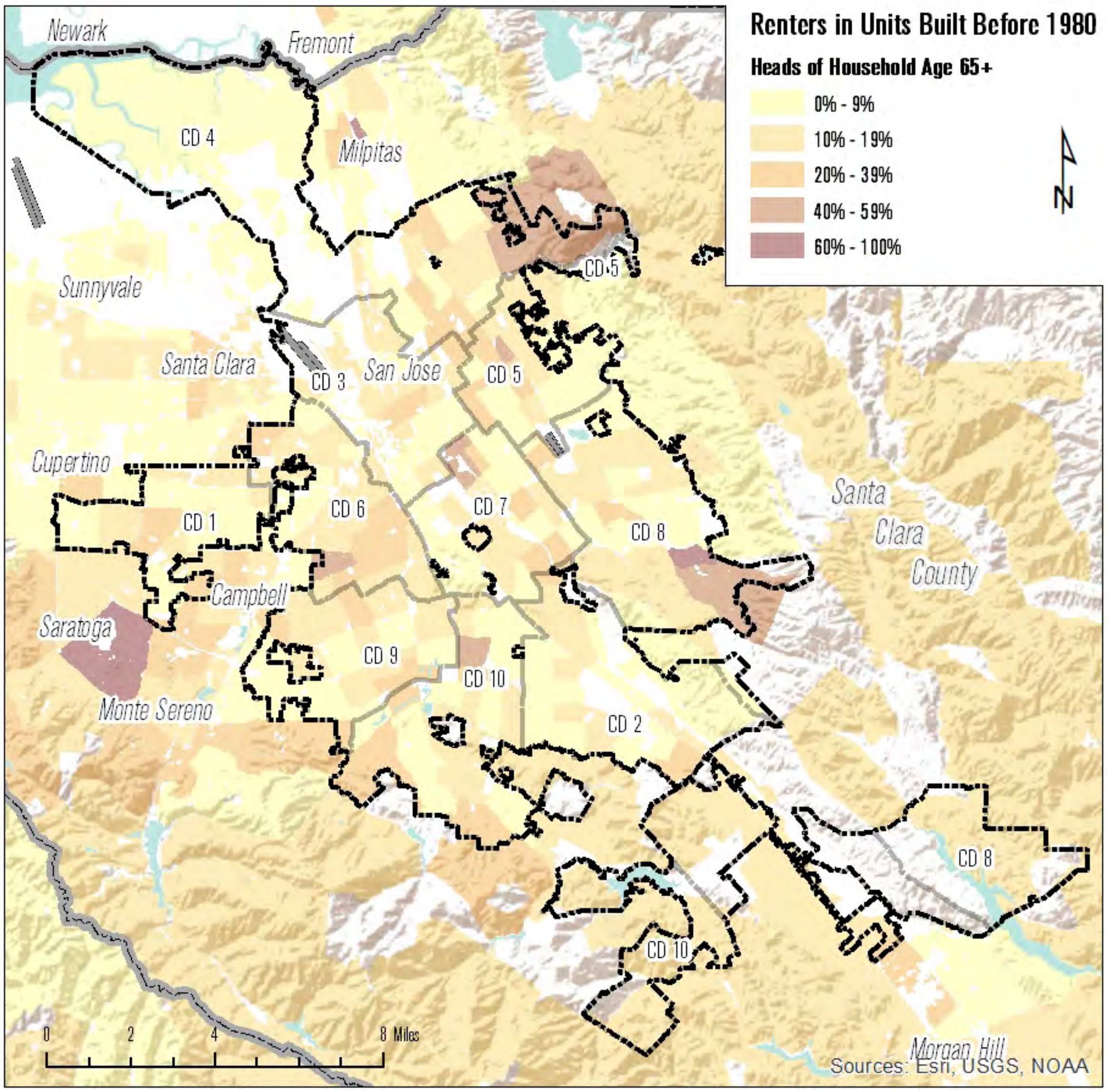
Figure 2.4 – Renter Households Living in Units Built before 1980 and Whose Head of Household is Age 35 to 64 Years, as a Percent of All Renter Households



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25126, Tenure by Age of Householder by Year Structure Built. Universe: Renter occupied housing units. Notes: Geographic units displayed are Census tracts, with Council District boundaries overlaid for reference. Data includes all pre-1980 rental housing, including ARO units, duplexes, rented condominiums and other rented housing units. Map areas filled white (no color) indicate that either no or too few pre-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.

The map highlighting heads of households who are age 65 or more years of age appears in Figure 2.5. This captures older-worker households, retiree households and those headed by the elderly. Neighborhoods in CD 6, CD 5, CD 7 and CD 3 have the greatest shares of renter households led by these older residents of pre-1980 units, although other pockets of these households are visible across the City.

Figure 2.5 – Renter Households Living in Units Built before 1980 and Whose Head of Household is Age 65 or More Years, as a Percent of All Renter Households



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25126, Tenure by Age of Householder by Year Structure Built. Universe: Renter occupied housing units. Notes: Geographic units displayed are Census tracts, with Council District boundaries overlaid for reference. Data includes all pre-1980 rental housing, including ARO units, duplexes, rented condominiums and other rented housing units. Map areas filled white (no color) indicate that either no or too few pre-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.

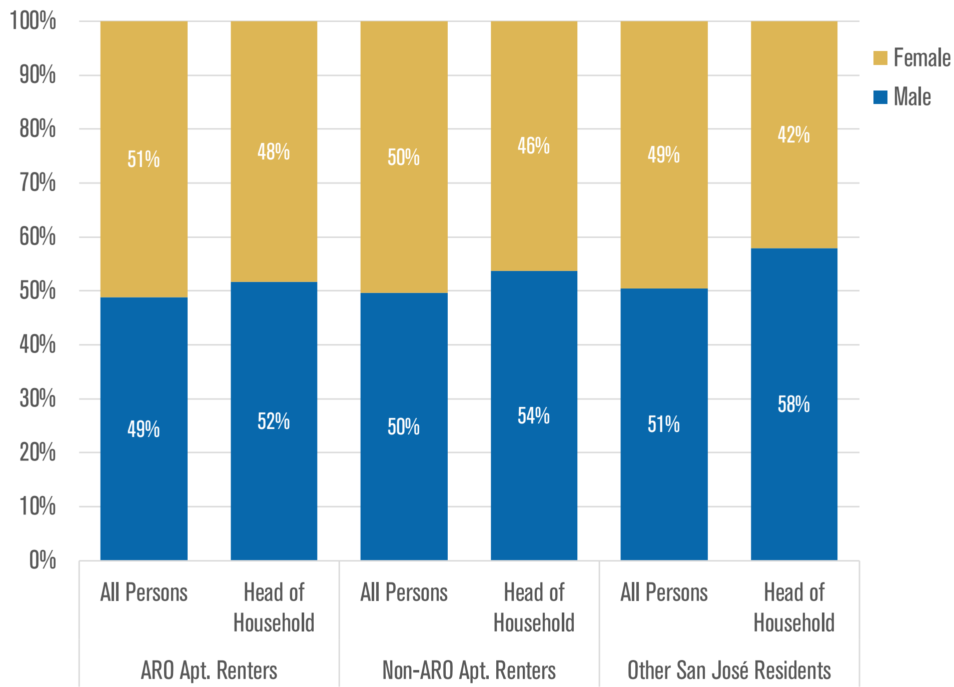
2d. Sex

The sex ratio of residents in the City of San José is roughly equal (Figure 2.6), including that of *all persons* living in ARO units (51 percent female), non-ARO units (50 percent female), and all other San José housing units (49 percent female). These ratios resemble those for Santa Clara County, the State of California, and the United States as a whole.[16]

The ratios vary when looking at the sex of the *head of household* (householder), the person (or one of the people) in whose name the housing unit is owned or rented.[17] In ARO units, female-headed renter households are 49 percent of the total, while they are lower in non-ARO units (46 percent female) and all other San José housing (42 percent female).

Women are a greater share of heads of household in ARO units, compared to non-ARO and other San José housing.

Figure 2.6 – Sex of San José Renter Residents and Heads of Households, by ARO status



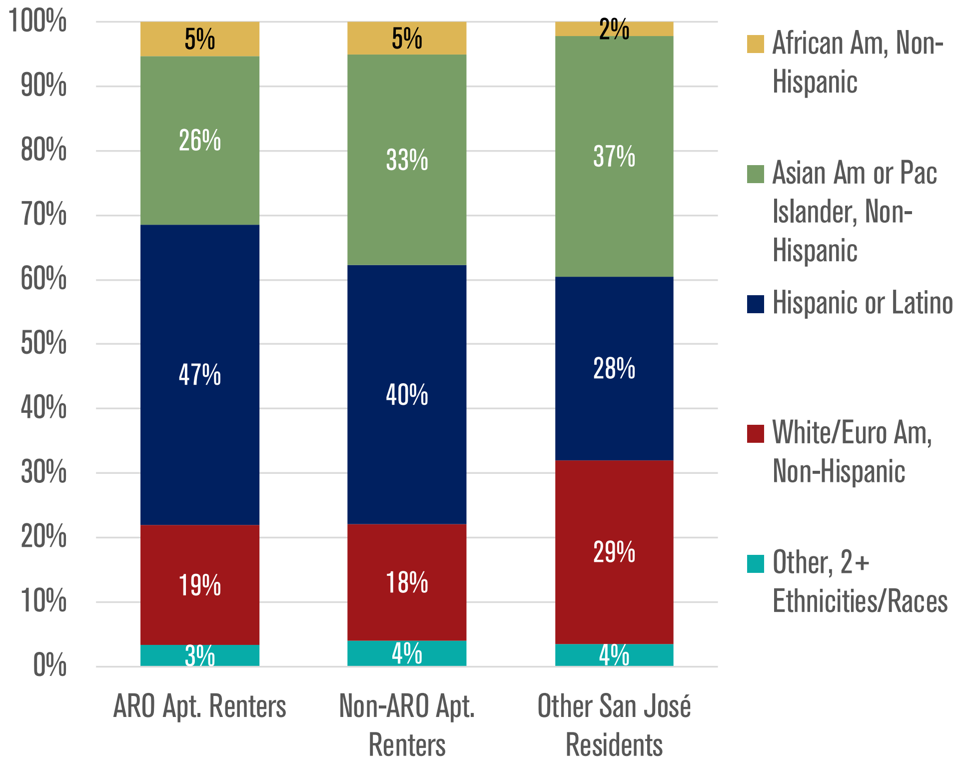
Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon the Sex variable, which has two response options: Male or Female. Data columns may not add up to 100 percent due to rounding.

47% of San José ARO units are occupied by Latino households, 26% by Asian American & Pacific Islanders, and 19% by Whites/European Americans

2e. Race-Ethnicity

The racial-ethnic profile of renters living in the City of San José is very diverse. The plurality of ARO unit renters are Latino households (47 percent), with Asian American and Pacific Islander households constituting another 26 percent, White/European American households 19 percent, African American households five percent, and the balance made up of other households (Figure 2.7). Interestingly, Asian American and Pacific Islander households are a larger share of non-ARO than ARO rental households (33 versus 26 percent), and a still larger percent of non-renter households (37 percent) in the City. The share of White/European American households is also higher among non-renter households (29 percent), while Latino and African American non-renter households are smaller when are compared to their shares of renters, and when non-ARO occupants are compared to ARO occupants.

Figure 2.7 – Race-Ethnicity of San José Renter Residents, by ARO status

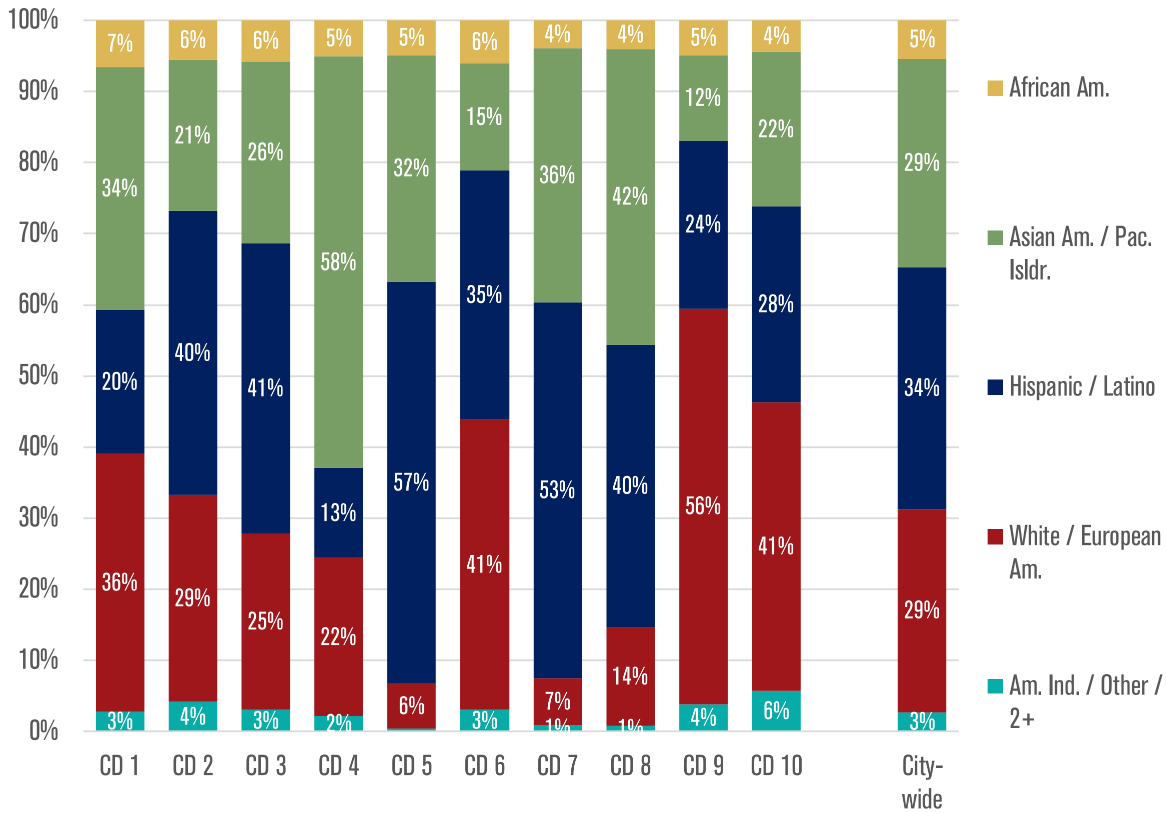


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of RAC1P and HISP variables. Data columns may not add up to 100 percent due to rounding.

The distribution of San José renter households by Council Districts, broken out by race and ethnicity, is illustrated in Figure 2.8. Only four Council Districts have more than 50 percent – an absolute majority – of renter residents in one racial-ethnic group: CD 4 has an estimated 58 percent Asian American or Native Hawaiian or Pacific Islander renters, CD 5 and CD 7 have an estimated five 57 and 53 percent Hispanic or Latino renters, respectively, while an estimated 56 percent of CD 9 renters are White or European American. While these three Districts are home to three different racial-ethnic group majorities, the balance of San José is extremely diverse. Only its African American renter population, ranging from three to eight percent per district, and its renter population of American Indians, "Other Races," and "Two or More Races" are relatively smaller.

Only 4 city council districts have >50% of renters belonging to any one racial-ethnic group

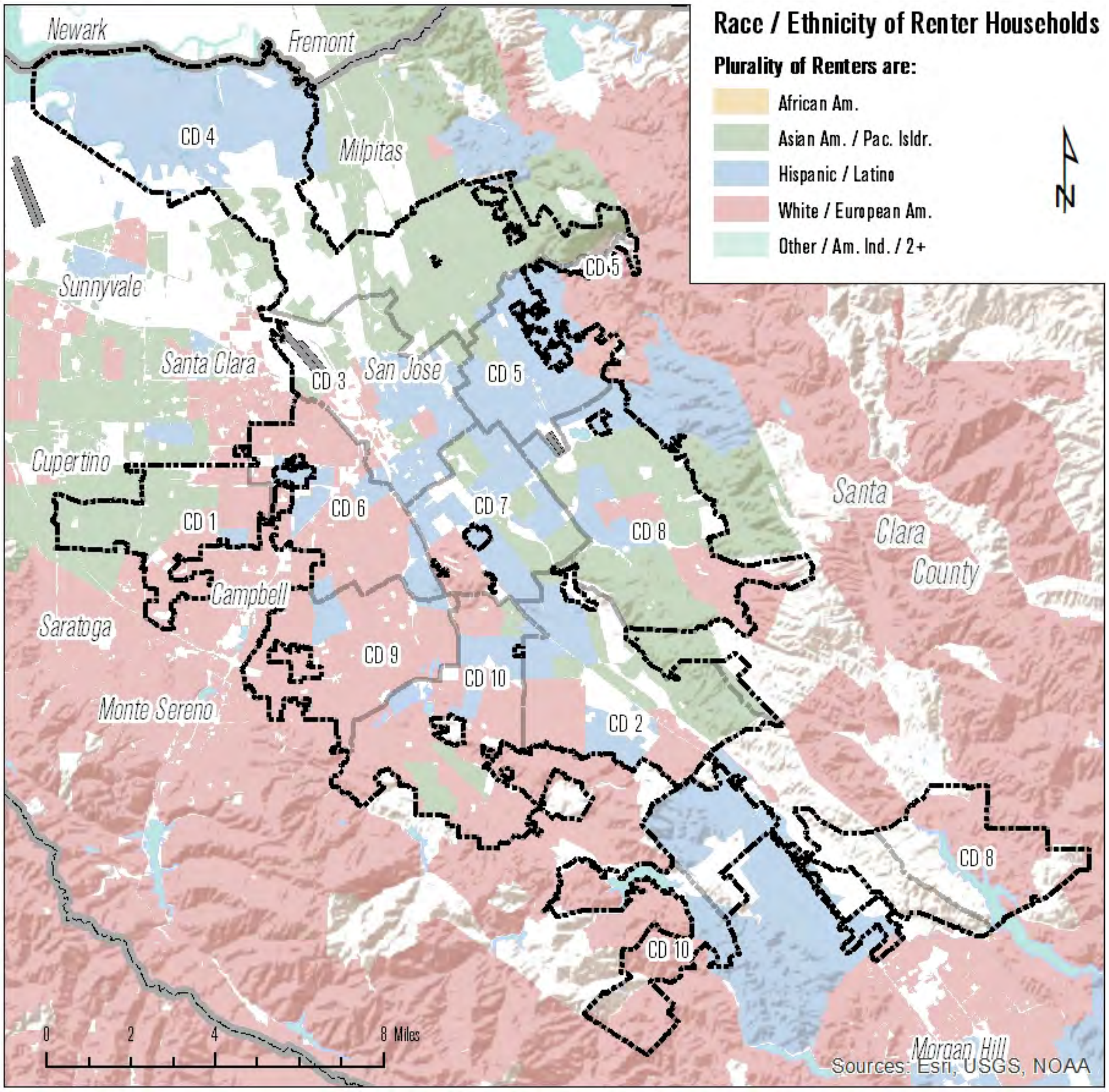
Figure 2.8 – Race-Ethnicity of San José Renter Residents, by Council District



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25003a Tenure (White Alone Householder), B25003b Tenure (Black or African American Alone Householder), B25003c Tenure (Am Indian and Al Native Alone Householder), B25003d Tenure (Asian Alone Householder), B25003e Tenure (Native Haw and Other PI Alone Householder), B25003f Tenure (Some Other Race Alone Householder), B25003g Tenure (Two or More Races Householder), B25003h Tenure (White Alone, Not Hispanic or Latino Householder), B25003i Tenure (Hispanic or Latino Householder).

The geographic distribution of San José renter households, broken out by race and ethnicity, is further illustrated in a series of maps, starting with Figure 2.9 showing the race and ethnicity categories selected by a plurality of renter residents in each Census tract. Hispanic or Latino renters, followed by White/European American renters and Asian American households are the plurality of most Census tracts across the City of San José.

Figure 2.9 – Race-Ethnicity of the plurality of San José Renter Residents, by Census Tract

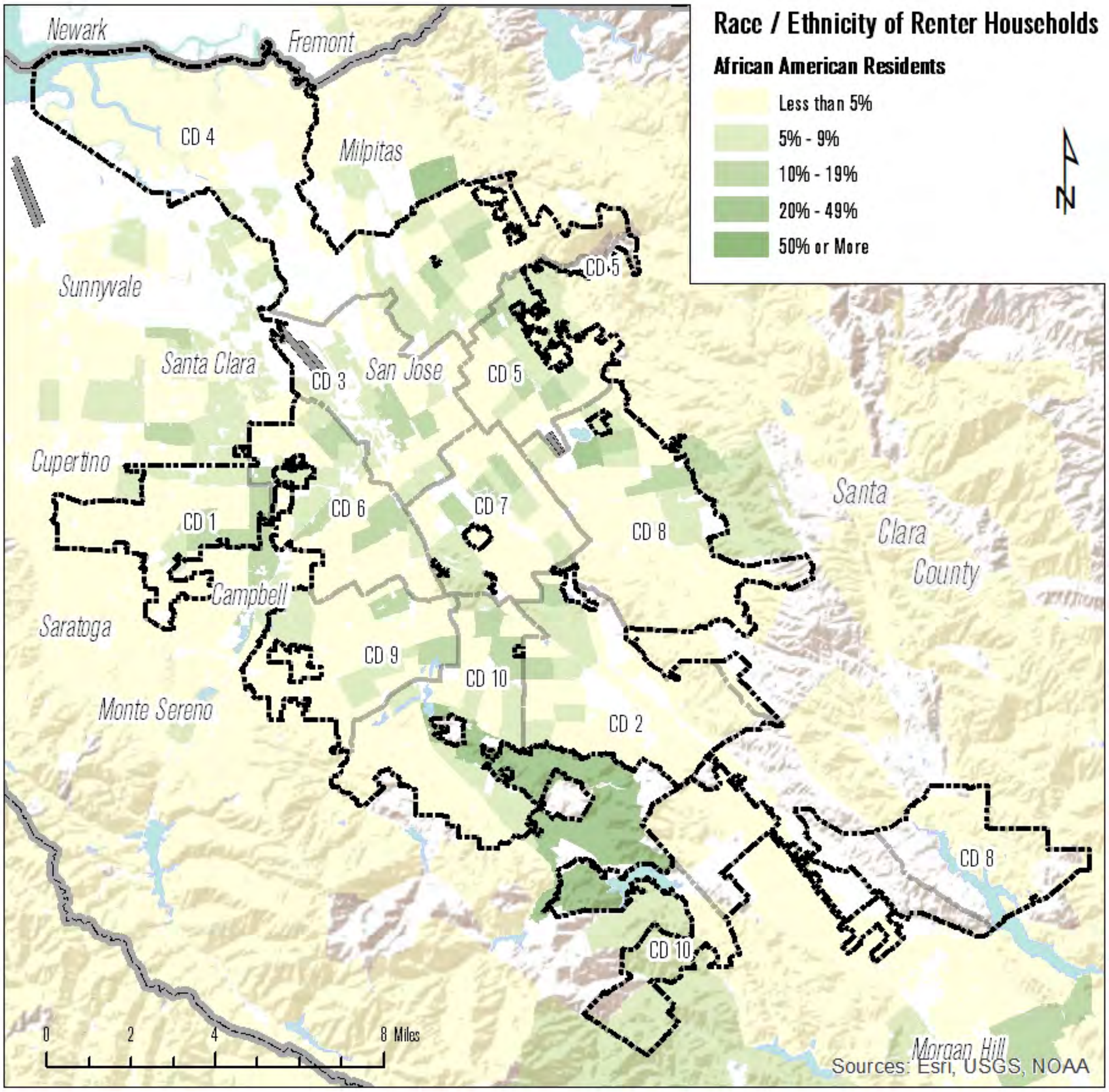


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25003a Tenure (White Alone Householder), B25003b Tenure (Black or African American Alone Householder), B25003c Tenure (Am Indian and Al Native Alone Householder), B25003d Tenure (Asian Alone Householder), B25003e Tenure (Native Haw and Other PI Alone Householder), B25003f Tenure (Some Other Race Alone Householder), B25003g Tenure (Two or More Races Householder), B25003h Tenure (White Alone, Not Hispanic or Latino Householder), B25003i Tenure (Hispanic or Latino Householder). Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

Individual maps follow this one showing the geographic sub-groups of San José renter households:

The geographic distribution of African American San José renter households appears in Figure 2.10, at the Census tract level. These are renter households that responded "No, not Spanish/Hispanic/Latino" and who reported "Black" or “African American” as their only entry in the American Community Survey’s race question.

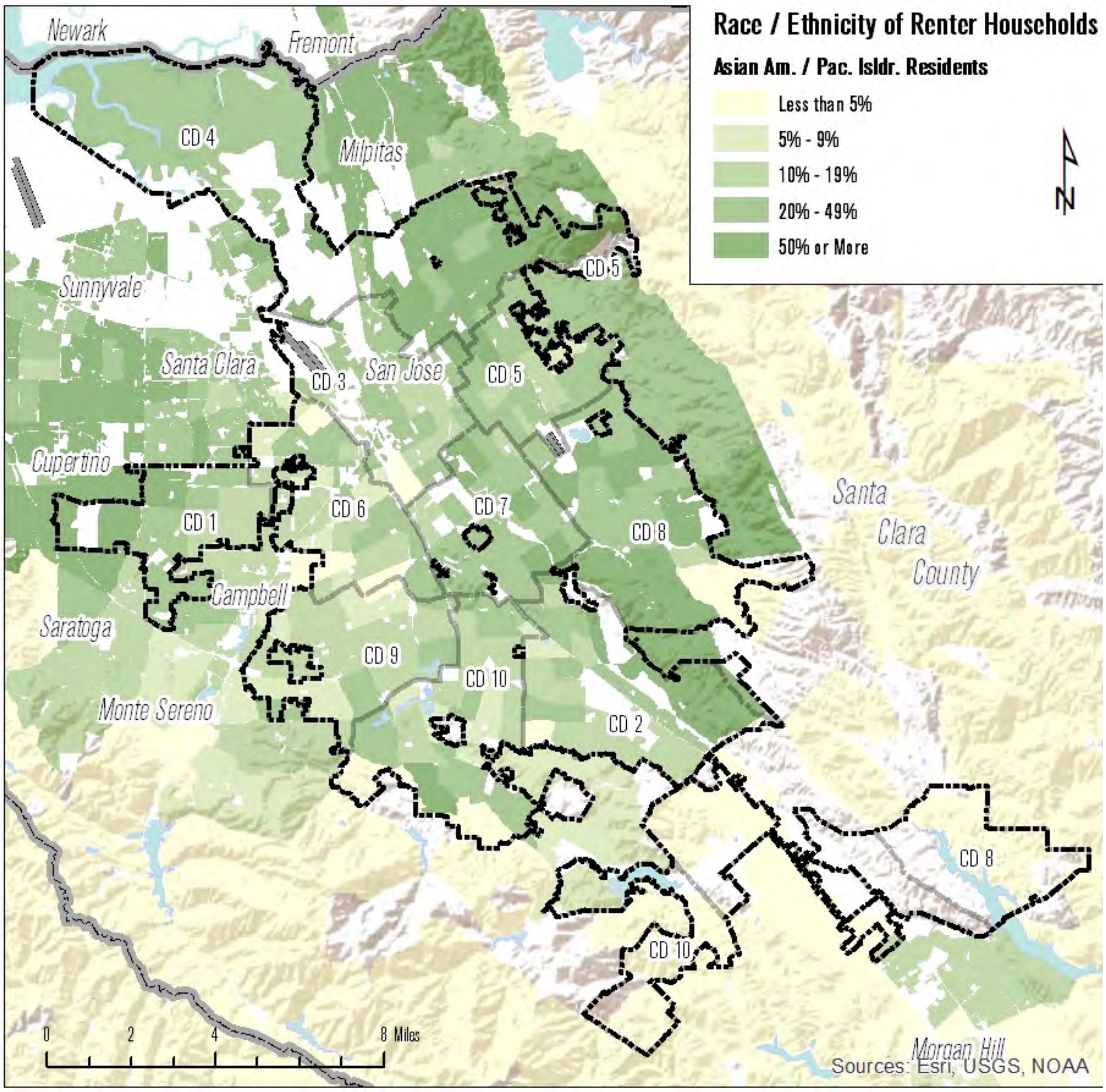
Figure 2.10 – African American Renter Households, as a Percent of All San José Renter Residents



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25036 Tenure by Year Built, B25003b Tenure (Black or African American Alone Householder). Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

The geographic distribution of Asian American and Pacific Islander San José renter households appears in Figure 2.11, at the Census tract level. These are renter households that responded "No, not Spanish/Hispanic/Latino" and who reported their race as "Asian American" or "Pacific Islander." Geographic origins of Asian American residents or their ancestors include South, Southeast and East Asia, while those of Pacific Islanders refers to those with ancestry in Polynesia, Melanesia, and Micronesia.

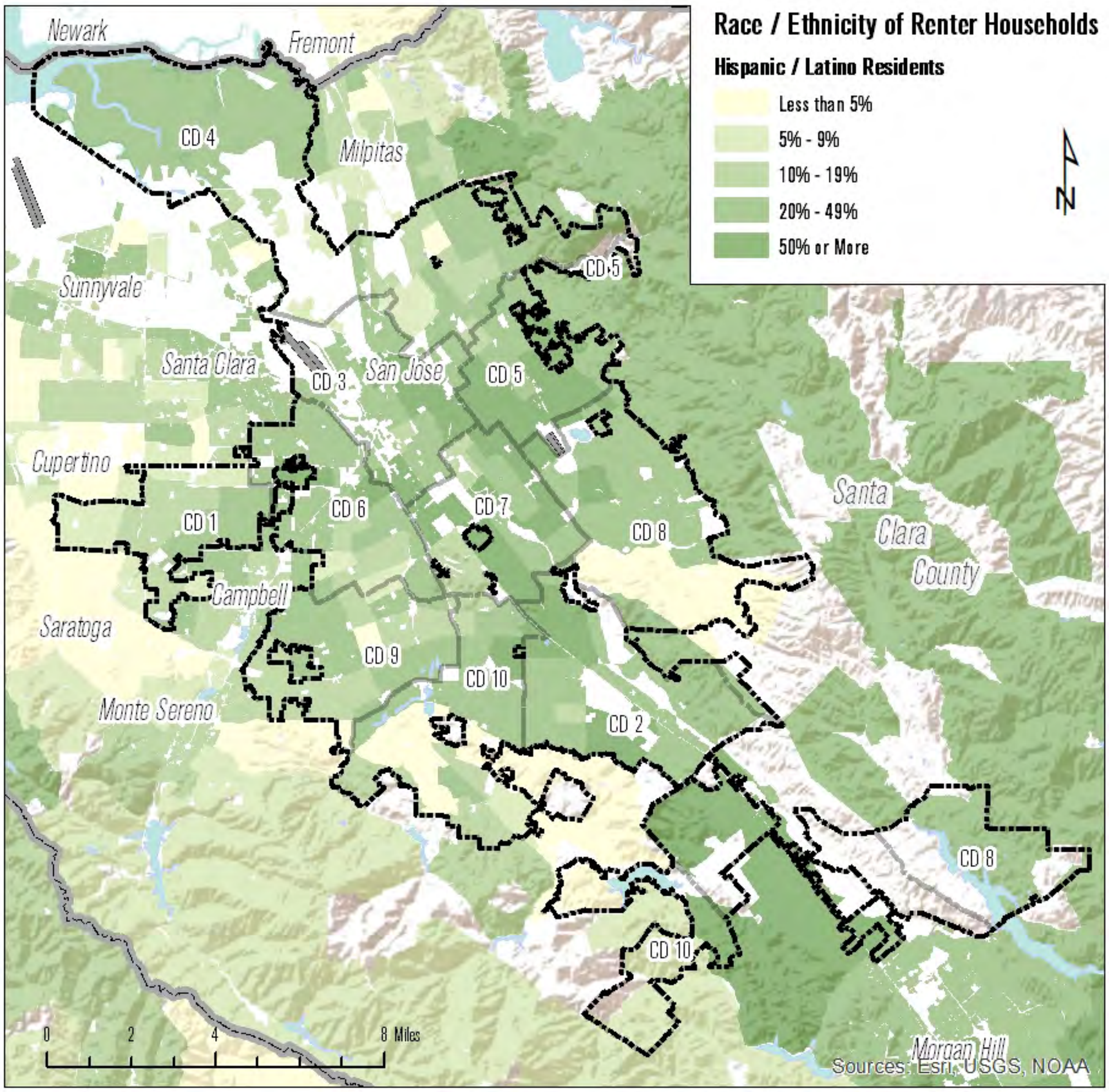
Figure 2.11 – Asian American and Pacific Islander Renter Households, as a Percent of All San José Renter Residents



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25036 Tenure by Year Built, B25003d Tenure (Asian Alone Householder). Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

The geographic distribution of Hispanic or Latino San José renter households appears in Figure 2.12, at the Census tract level. Hispanic or Latino origin can be the heritage, nationality, lineage, or country of birth of the person or the person's parents or ancestors before arriving in the United States. People who identify as Hispanic, Latino, or Spanish may be any race. Geographic origins can include Mexico, Puerto Rico, and Spanish-speaking countries of Central America, South America, or the Caribbean.

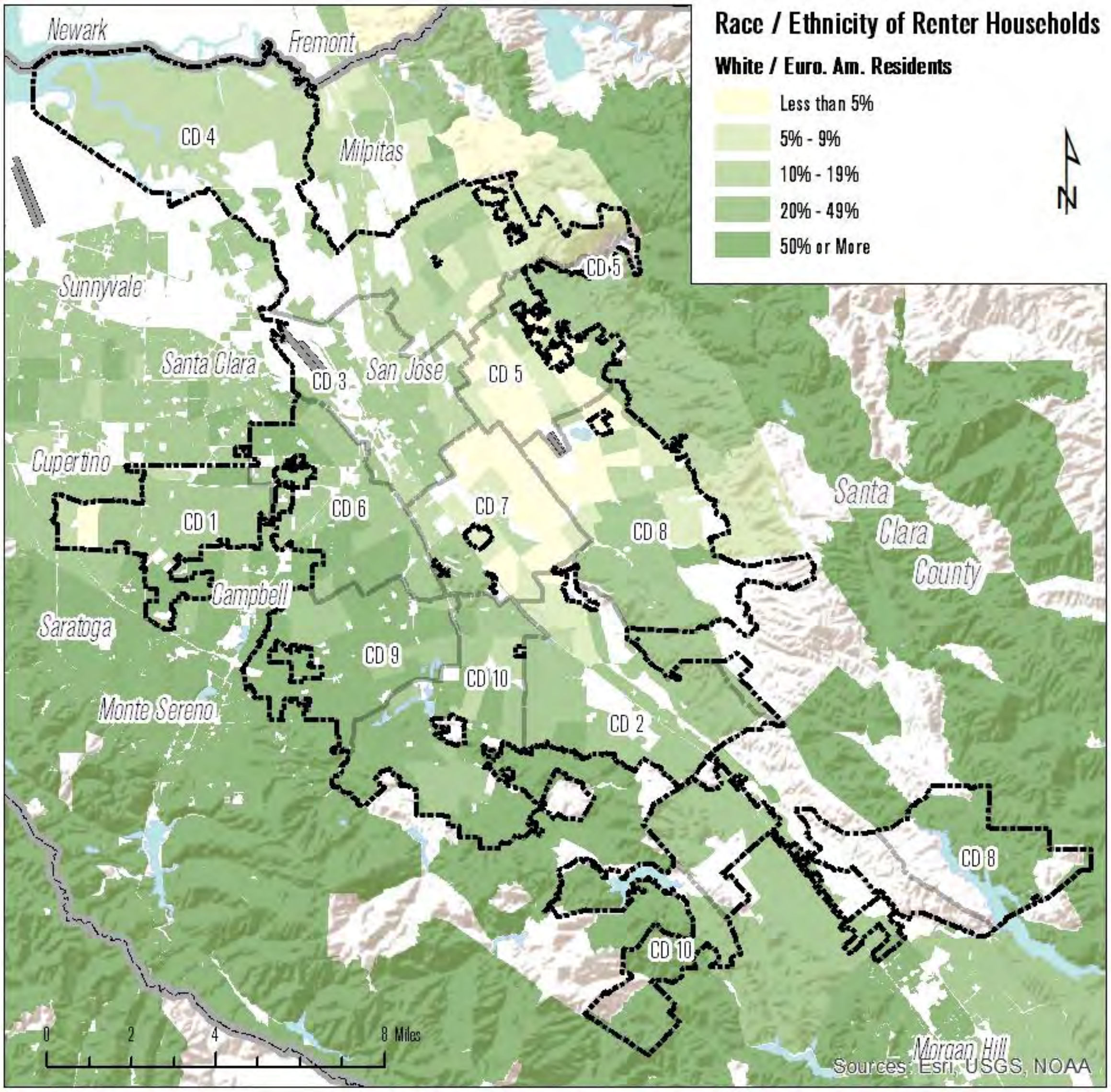
Figure 2.12 – Hispanic or Latino Renter Households, as a Percent of All San José Renter Residents



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25036 Tenure by Year Built, B25003i Tenure (Hispanic or Latino Householder). Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Map areas filled white (no color) indicate that either no or too few pre-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.

The geographic distribution of White or European American renter households in San José is shown in Figure 2.13, at the Census tract level. These are renter households who responded "*No, not Spanish/Hispanic/Latino*" and who reported "*White*" as their only entry to the race question. This includes renters or their ancestors with origins in Europe, the Middle East, or North Africa, such as Irish, German, Italian, Lebanese, Arab, or Moroccan.

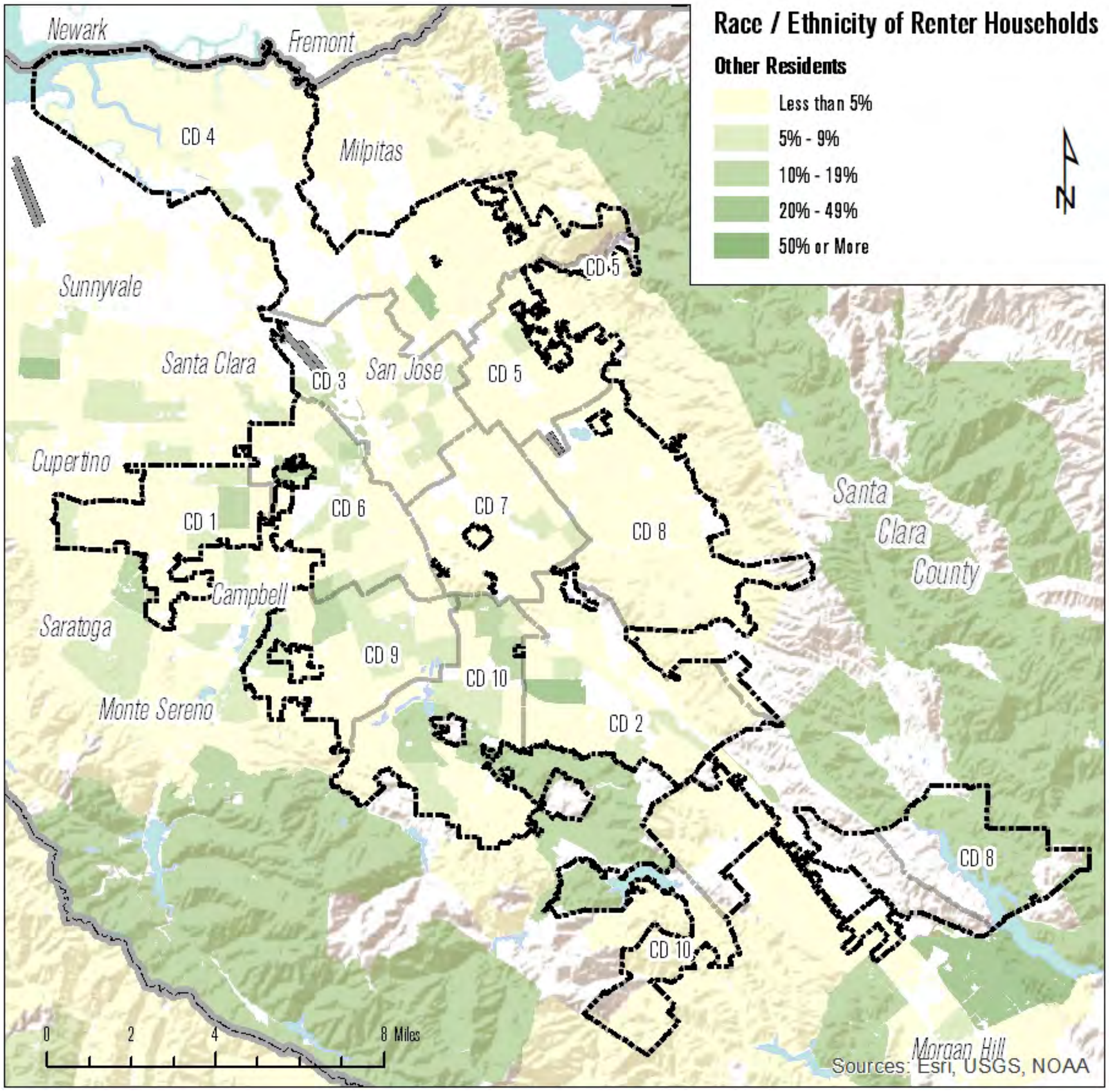
Figure 2.13 – White / European American Renter Households, as a Percent of All San José Renter Residents



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25003h Tenure (White Alone, Not Hispanic or Latino Householder). Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Map areas filled white (no color) indicate that either no or too few pre-1980 sample observations were available, or were unpopulated portions of Census tracts in 2010.

The geographic distribution of American Indian San José renter households appears in Figure 2.14, at the Census tract level. Renter households that identified as "Other Races" (non-Hispanic) and "Two or More Races" (non-Hispanic) are also counted in this map.

Figure 2.14 – Other Renter Households, as a Percent of All San José Renter Residents



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Tables B25003c Tenure (Am Indian and Al Native Alone Householder), B25003f Tenure (Some Other Race Alone Householder), B25003g Tenure (Two or More Races Householder). Notes: "Other Residents" in this figure are renter heads of households who identified as American Indian, Alaska Native, "some other race" or "two or more races." Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

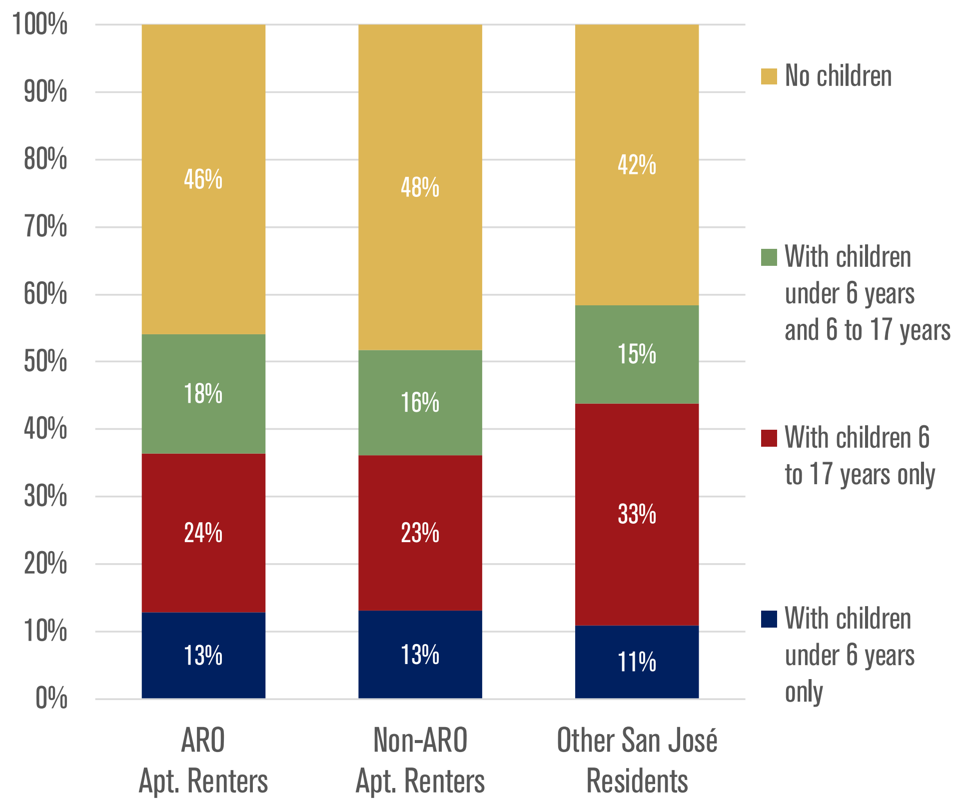
Taken altogether, the maps in Figures 3.8 through 3.13 reveal patterns of ethnic minorities live in more urban, central locations of the City of San José, while whites and others live more on the City's edges.

Over half of San José ARO renter households have children age <18

2f. Presence of School Aged Children and Household Structure

Just over half of renters living in the City of San José – both in ARO and non-ARO units – have children aged under 18 present in their households (Figure 2.15). For households occupying ARO units, 24 percent have school-aged children (age 6 to 17) right now; another 13 percent have children age five and under, preschoolers who will soon enter Kindergarten. Eighteen percent of ARO households have both school-aged children as well as kids under six years old. Other San José residents have the largest shares of households with children, 58 percent.

Figure 2.15 – Presence of Children of San José Renter Residents, by ARO status

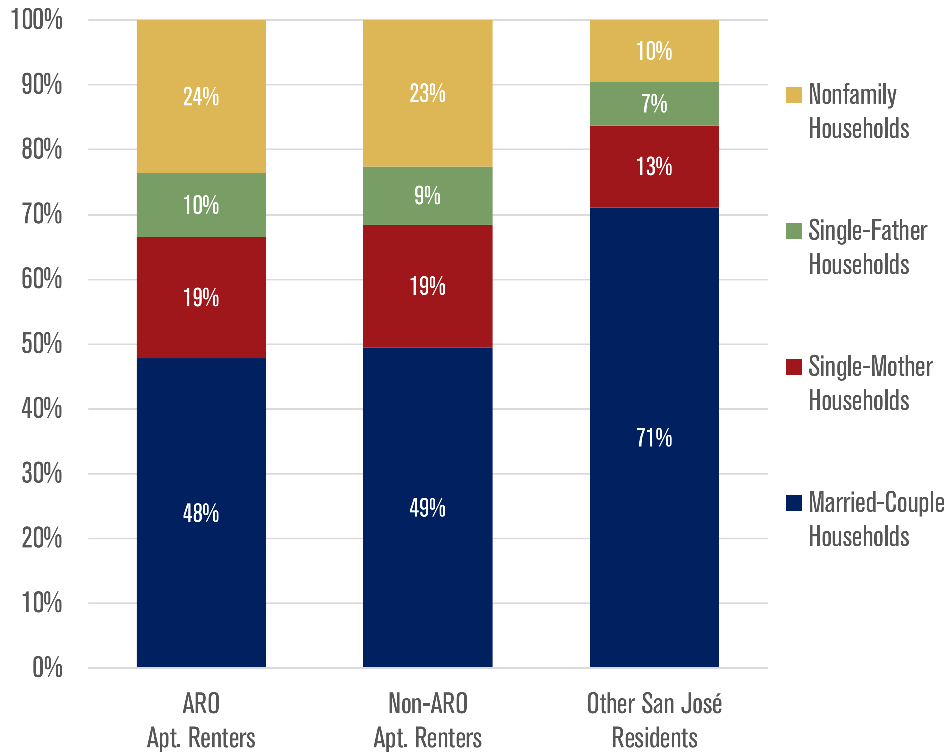


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the Presence and Age of Children HUPAC variable. Universe: Occupied housing units. Data columns may not add up to 100 percent due to rounding.

Married-couple families occupy just under half of renter households in the City of San José –in both ARO and non-ARO units (Figure 2.16), and single-parent families occupy another 29 percent of those rental units. Non-family households, consisting of people who live alone or who share their residence with unrelated individuals, occupy just under a quarter of both ARO and non-ARO units. In other San José households, married-couple families occupy 71 percent of those units, single-parent families another 20 percent, and non-family households comprise the remainder.

Just under half of San José ARO households are led by a married couple; another 29% are single-parent households

Figure 2.16 – Household/Family Types of San José Renter Residents, by ARO status



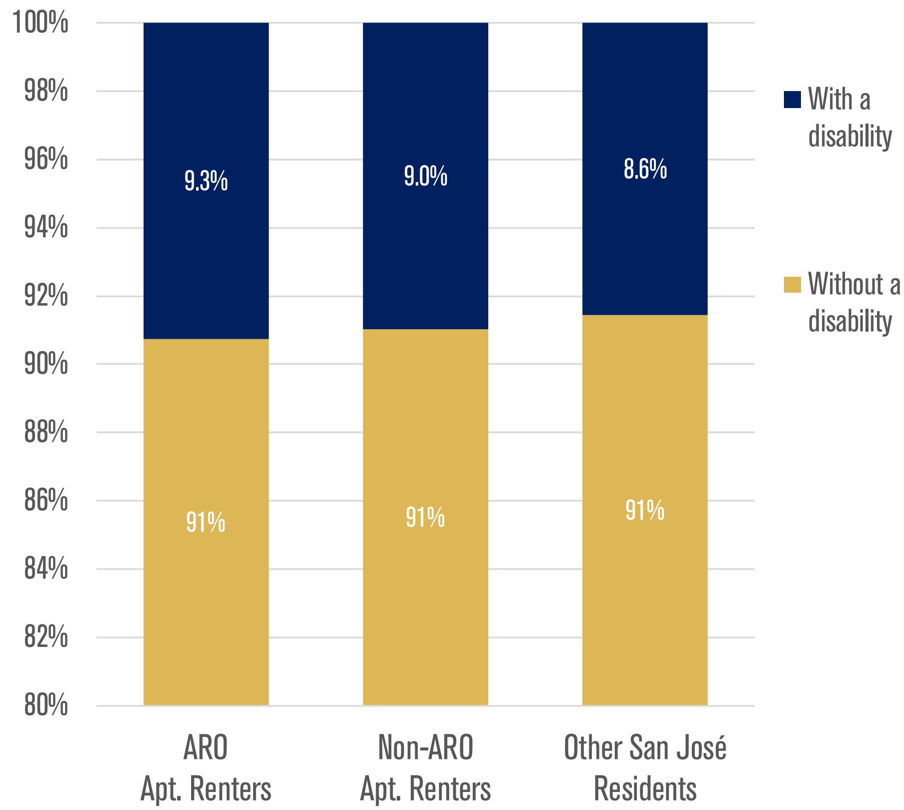
Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the Household/Family Type HHT variable. Universe: Occupied housing units. Data columns may not add up to 100 percent due to rounding.

Disability rates among San José residents is similar across all types of housing

2g. Disability Status and Health Insurance Coverage

The disability status of City of San José residents varies very little by whether they reside in ARO, non-ARO units, or in other San José housing units (Figure 2.17). Roughly, nine percent of all city residents live with a disability, which includes up to different types: hearing difficulty, vision difficulty, cognitive difficulty, ambulatory difficulty, self-care difficulty, and independent living difficulty.[18] This compares with 12.6 percent of the U.S. population, 10.6 percent of California residents, and 7.9 percent of all Santa Clara County residents.[19]

Figure 2.17 – Disability Status of San José Renter Residents, by ARO status

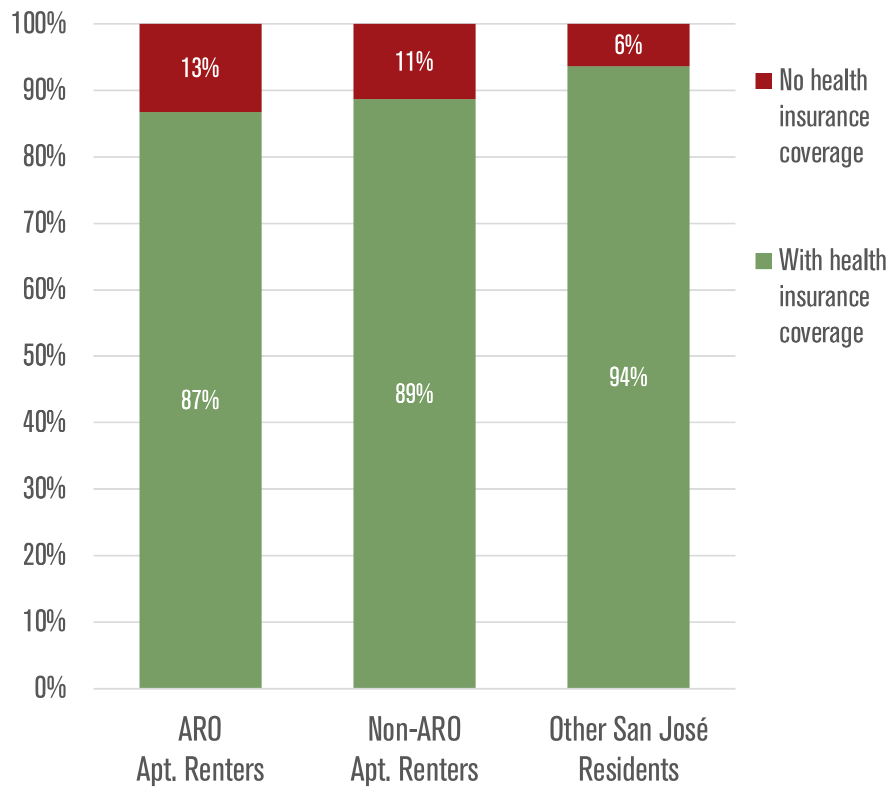


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon the Disability recode (DIS) variable. Universe: Civilian noninstitutionalized population. Data columns may not add up to 100 percent due to rounding. The vertical axis is cropped to highlight data

Health insurance coverage of City of San José residents varies by their type of housing (Figure 2.18), with 87 percent of ARO occupants having some form of coverage, 89 percent of non-ARO renter occupants covered, and 94 percent of all other San José residents covered. This compares with 86 percent of the U.S. population covered, 90 percent of California residents covered, and 94 percent of all Santa Clara County residents covered.[20] Health insurance coverage includes private plans (employment-based and direct-purchased) as well as government plans (Medicare, Medicaid and military health care).

Health insurance covers 87% of San José ARO residents, compared to 94% of all Santa Clara residents

Figure 2.18 – Health Insurance Status of San José Renter Residents, by ARO status



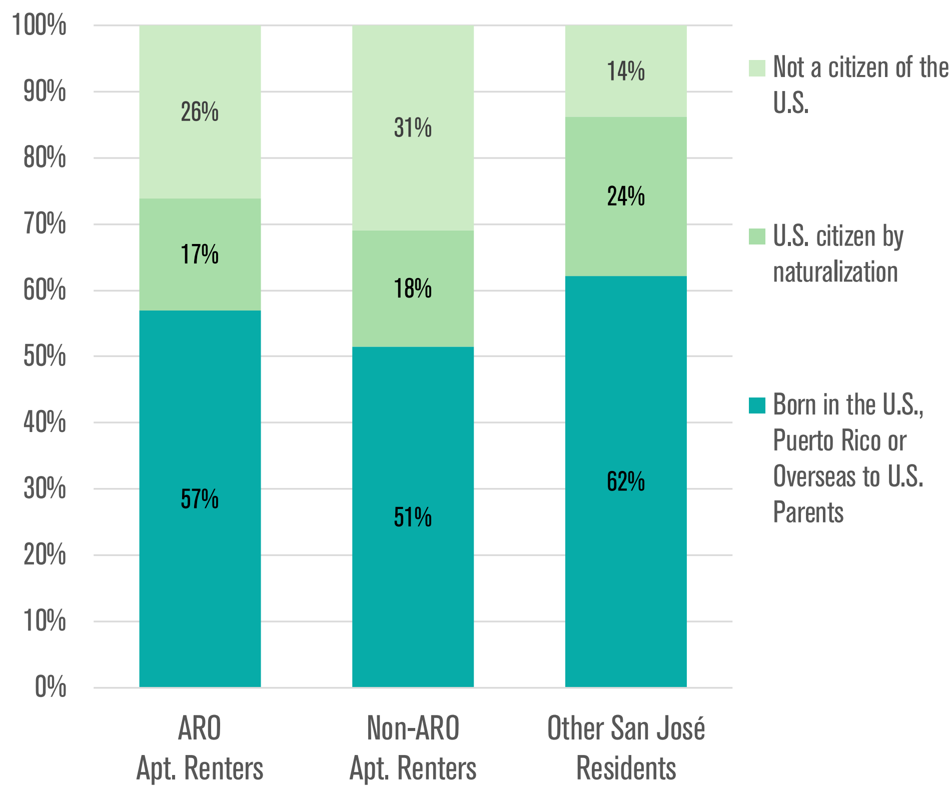
Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon the Health insurance coverage recode (HICOV) variable. Universe: Civilian noninstitutionalized population. Data columns may not add up to 100 percent due to rounding.

2h. Citizenship Status and Decade of Entry

Over half of renters living in the City of San José – both in ARO and non-ARO units – are citizens either born in the United States or Puerto Rico, or else were born overseas to U.S. parents (Figure 2.19). Another 17 to 18 percent are U.S. citizens by naturalization. The remaining 26 to 31 percent of renter residents are not yet citizens of the U.S. In contrast, the citizenship status of San José's other residents is somewhat different. A larger majority (62 percent) are U.S. citizens by birth, and a larger share (24 percent) are U.S. citizens by naturalization; only 14 percent are not citizens of the U.S. Non-citizens includes green card holders, persons with temporary visas for work, travel and education, undocumented residents, and any others surveyed by the Census who were not U.S. citizens.

Over half of San José ARO residents are citizens by birth; 17% are naturalized citizens

Figure 2.19 – Citizenship Status of San José Renter Residents, by ARO status

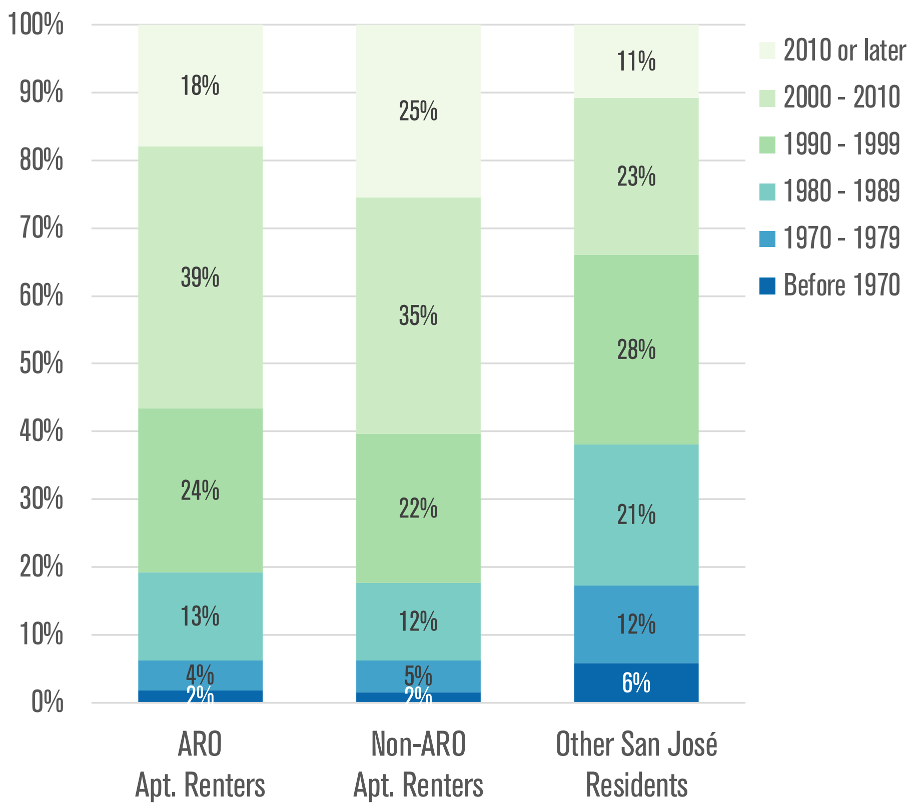


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the CIT (Citizenship Status) variable. Universe: Total population. Data columns may not add up to 100 percent due to rounding.

For those not born in the U.S., their year of entry is summarized in Figure 2. 20. As with citizenship status, ARO and non-ARO renter residents in San José are similar, with over half of non-U.S. born residents arriving in the year 2000 or later, and almost another 22 to 24 percent arriving in the U.S. during 1990s. Immigrants who now live in San José's other, non-rental housing are more established, with 18 percent arriving before 1980 and another 21 percent arriving during the 1980s.

Among non-U.S. born ARO residents, 57% arrived since 2000.

Figure 2.20 – Decade of Entry of Non-U.S. Born San José Renter Residents, by ARO status



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the DECADE (Decade of entry) variable. Universe: Total population not born in the U.S. Data columns may not add up to 100 percent due to rounding.

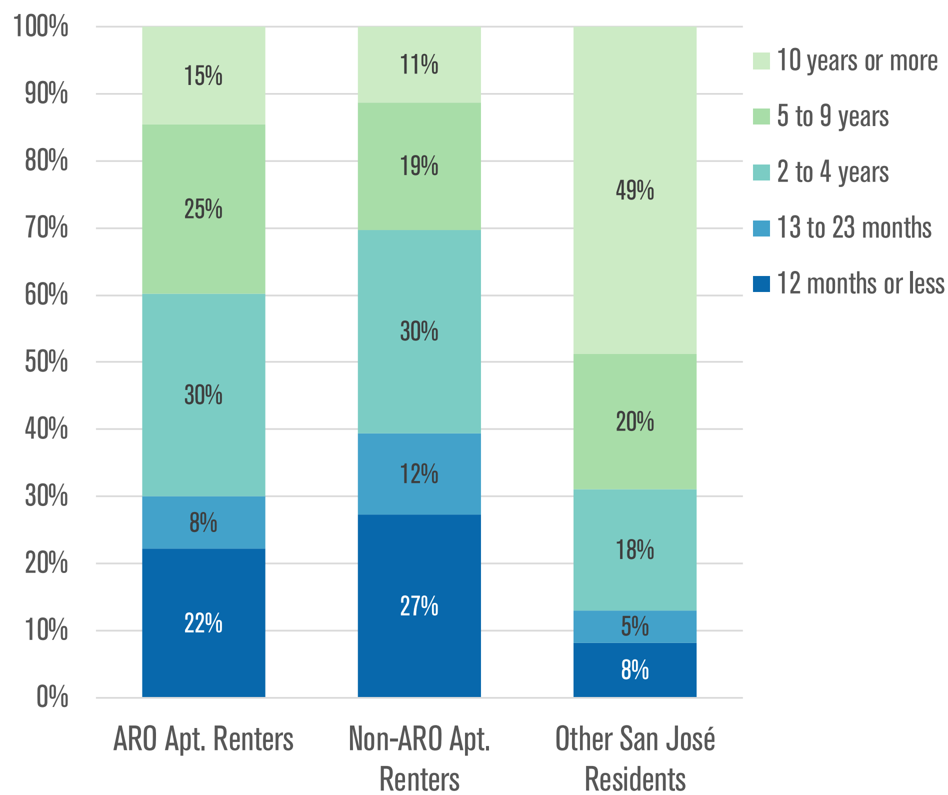
2i. When Moved Into Current Home

ARO renters stay longer in the same units than non-ARO renters.

San José renters currently living in ARO units have stayed in the same apartment somewhat longer than those in non-ARO units (Figure 2.21). Over two-thirds (70 percent) of those renting ARO units have stayed there two years or longer, while 41 percent of non-ARO occupants have stayed that long. Other San José residents are the most established, with over two thirds (69 percent) staying 5 years or more.

Given this point-in-time estimate of when ARO tenants moved in, we can infer the turnover rate for ARO units. If 22 percent of ARO tenants surveyed have lived in their units after 12 months or less, this includes two types of ARO tenants: 1) renters who are starting longer stays in apartments, but moved in only within the prior 12 months, and 2) renters who moved in within the prior 12 months and are hyper-mobile, meaning their pattern is to move to new apartment each year, such as college students, persons whose jobs change, or who cannot afford the last rent increase. The size of this second group is less than 22 percent in one year, but its cumulative size over several years may exceed 22 percent. How large this percentage may be is difficult to determine without longitudinal data that track the same renters over time, but Figure 2.21 may indicate higher turnover in ARO units than 22 percent.

Figure 2.21 – When San José Renter Residents Moved into Their Current Homes, by ARO status

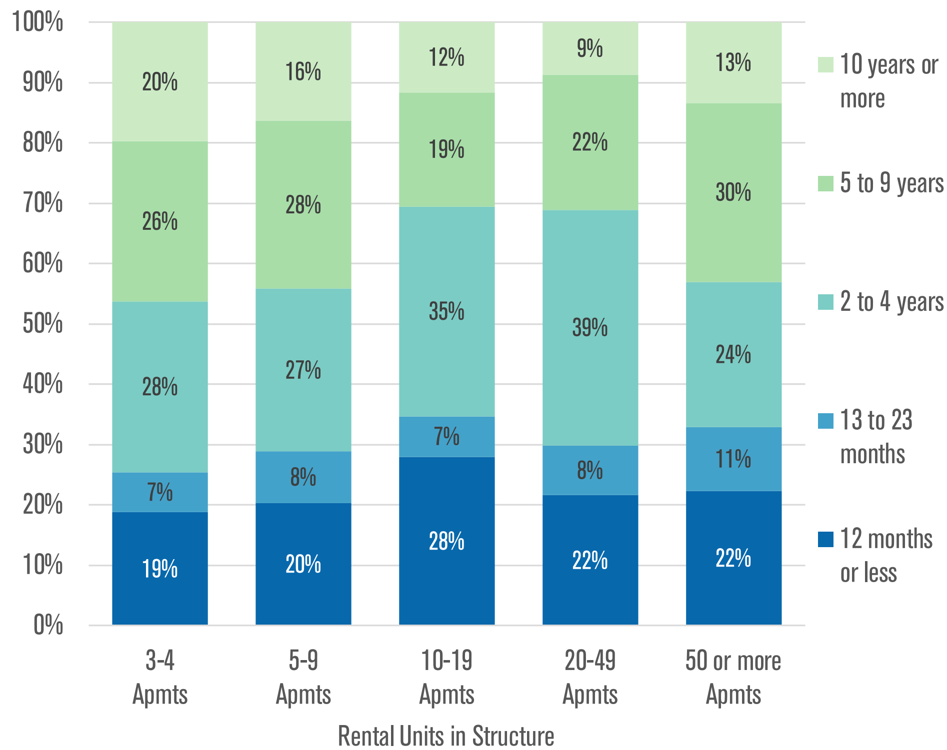


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the MV (When moved into this house or apartment). Universe: Total population not living in group quarters. Note: Data in this section and chart include tenants in apartment buildings with 3-4 total units, and thus may differ slightly from findings in later chapters where only apartment buildings with 5+ units are studied. Data columns may not add up to 100 percent due to rounding.

A break-out of when ARO tenants moved into their current units by building size shows those in smaller buildings (3-4 and 5-9 units) are nearly at the overall 22 percent annual turnover rate shown in the prior figure, and the rate for triplexes and fourplexes here is slightly lower than that for buildings with 50 or more ARO units (Figure 2.22). At the top ends of the bars, tenant households in smaller ARO buildings (3-4 and 5-9 units) tend to stay a little longer, as do tenants in very large buildings. Possible explanations for this might be that smaller, "mom-n-pop" ARO buildings are run in such a way that tenants want to stay longer on average, despite likely being older ARO buildings. The largest ARO buildings (50+ unit) are often newer, so despite being run by property management companies that may raise rents more regularly, their tenant households may have other amenities providing reasons to stay longer than mid-sized ARO buildings.

Small mom-n-pop & large, 50+ unit ARO buildings have the largest share of renters to stay 10 years or more.

Figure 2.22 – When San José ARO Renter Residents Moved into Their Current Homes, by Units in Structure

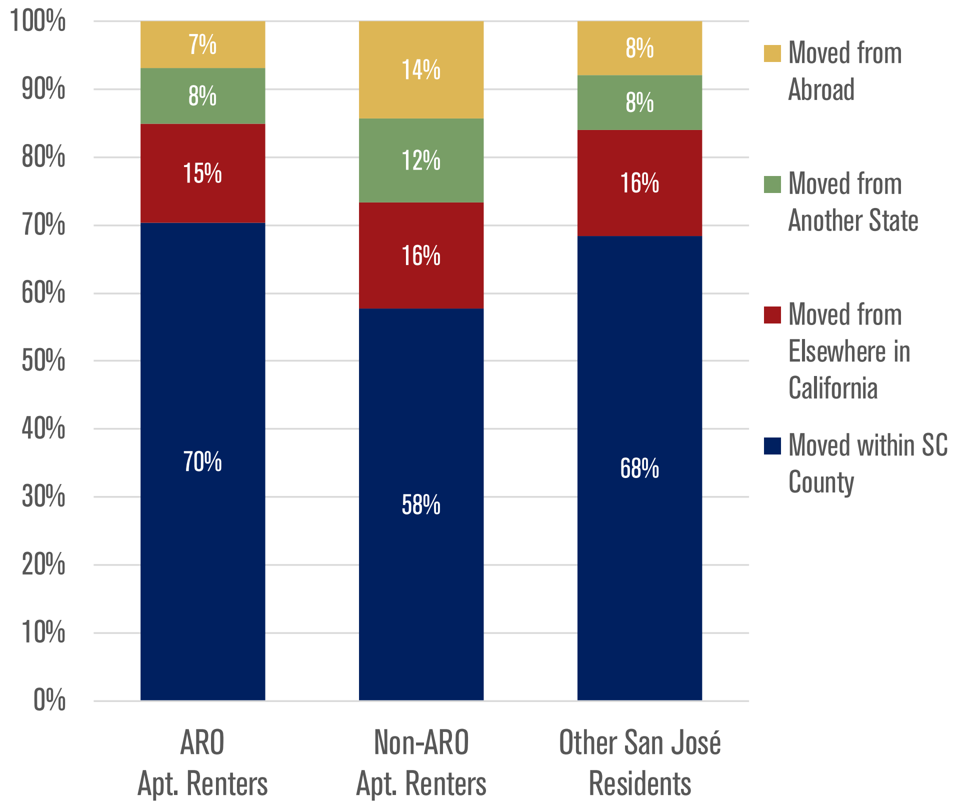


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the MV (When moved into this house or apartment). Universe: Total population in pre-1980 buildings with three or more units in structure, paying cash rent, not living in group quarters. Notes: This figure examines when tenant households currently in ARO units moved in, and excludes non-ARO renters and Other San José residents Data columns may not add up to 100 percent due to rounding.

2j. Residential Mobility: Where Moved From

For San José renter residents who have lived in their current housing for 12 months or less, most moved from prior housing elsewhere in Santa Clara County (Figure 2.23).

Figure 2.23 – Where Recently-Moved San José Renter Residents Lived One Year Ago, by ARO Status



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the MIG (Mobility status; where one lived here 1 year ago), MigPUMA (Migration PUMA) and MIGSP (Migration state or foreign country code) variables. Universe: Total population. Data columns may not add up to 100 percent due to rounding.

Table 2.2 – Mobility of Renter Households in the Past 12 Months, City of San José

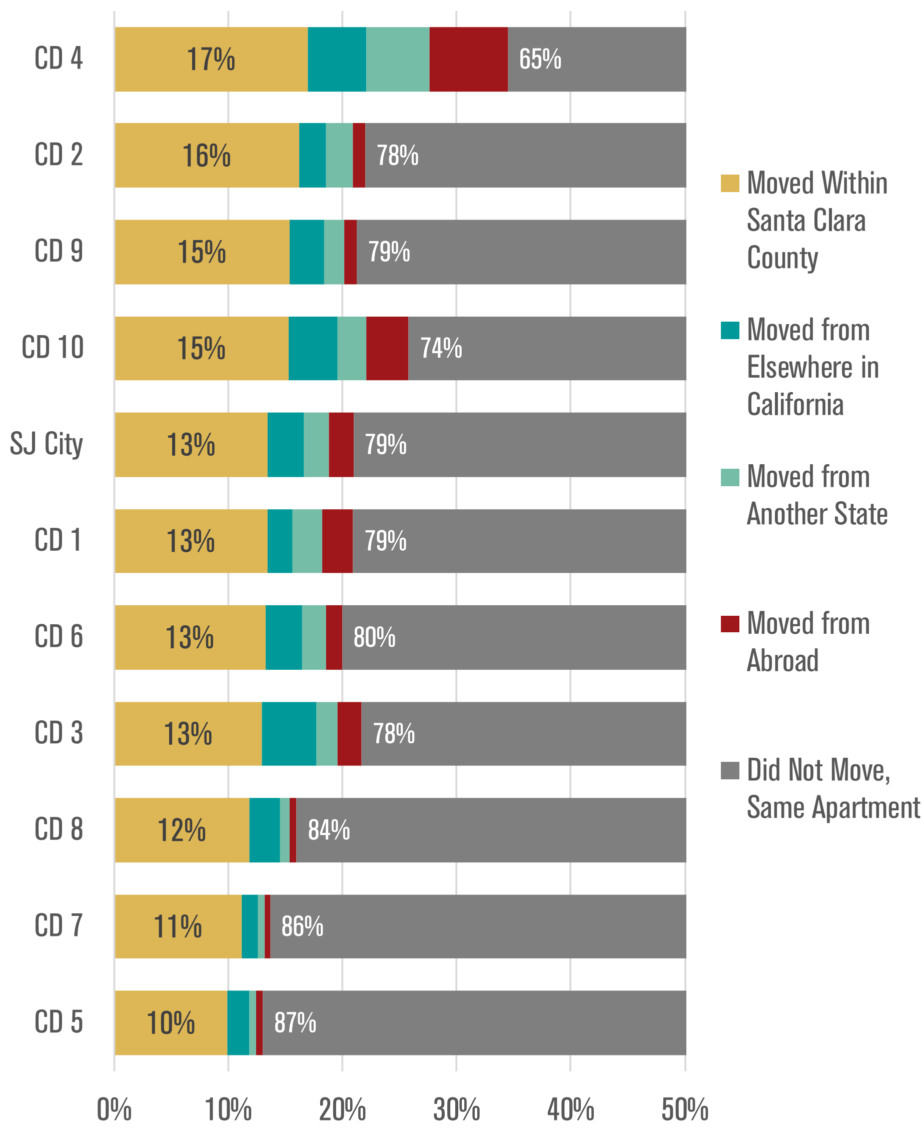
City Council District	Did Not Move, Same Apartment	Moved within Santa Clara Co.	Moved from Elsewhere in CA	Moved from Another State	Moved from Abroad	Council Dist. Total
CD 1	79%	13%	2%	3%	3%	100%
CD 2	78%	16%	2%	2%	1%	100%
CD 3	78%	13%	5%	2%	2%	100%
CD 4	65%	17%	5%	6%	7%	100%
CD 5	87%	10%	2%	1%	1%	100%
CD 6	80%	13%	3%	2%	1%	100%
CD 7	86%	11%	1%	1%	0%	100%
CD 8	84%	12%	3%	1%	1%	100%
CD 9	79%	15%	3%	2%	1%	100%
CD 10	74%	15%	4%	3%	4%	100%
City Total	79%	13%	3%	2%	2%	100%

Sources: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Estimates, B07013 Geographical Mobility in the Past Year by Tenure for Current Residence in the US. Universe: All renter-occupied housing units.

Those who moved into ARO units during the last year were more likely to have moved from elsewhere in the county, compared to those who moved into non-ARO units (70 to 58 percent, respectively). Renters who moved from another state or from abroad were more likely to have moved into non-ARO housing. Other San José residents were the most likely to have moved from within the county, and less likely to have moved in from out of state or abroad.

Breaking out mobility for all rental households by city council districts, there is variability, from 87 percent of renters who did not move in the prior 12 months in CD 5, to 65 percent in CD 4 (Table 2.2, Figure 2.24). CD 4 and CD 10 had the highest share of renters who recently moved from aboard (7 and 4 percent, respectively), while CD 4 had the greatest share of renter movers from elsewhere in the City or County (17 percent).

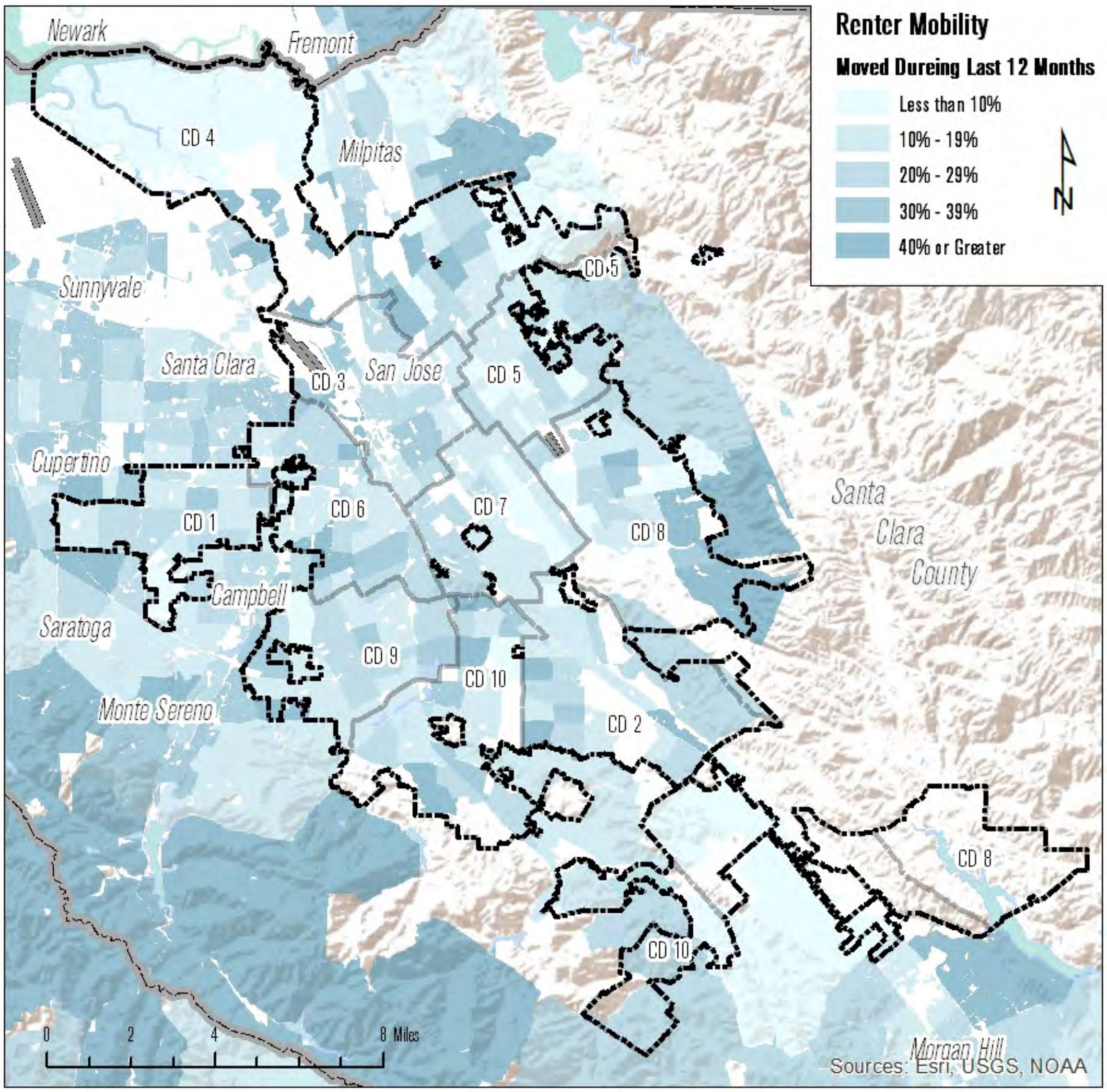
Figure 2.24 – Renter Household Mobility, by City Council District, City of San José



Source: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Estimates, B07013 Geographical Mobility in the Past Year by Tenure for Current Residence in the US. Data columns may not add up to 100 percent due to rounding.

Looking at all renters across San José citywide, the neighborhoods where the most renters had moved in during the last 12 months are scattered and are found in every Council District (Figure 2.25). Higher turnover is associated with proximity to colleges, newly constructed, large apartment buildings, or other land uses, but this map captures just one snapshot of the ongoing churning of renter residents' mobility. A snapshot from another time period may see other neighborhoods standout, while current neighborhoods with 30 percent or more renter mobility may recede to the background.

Figure 2.25 – Renters Moving in During the Past Year, as a Percent of All Renters



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B07013 Geographical Mobility in the Past Year by Tenure for Current Residence in the United States. Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

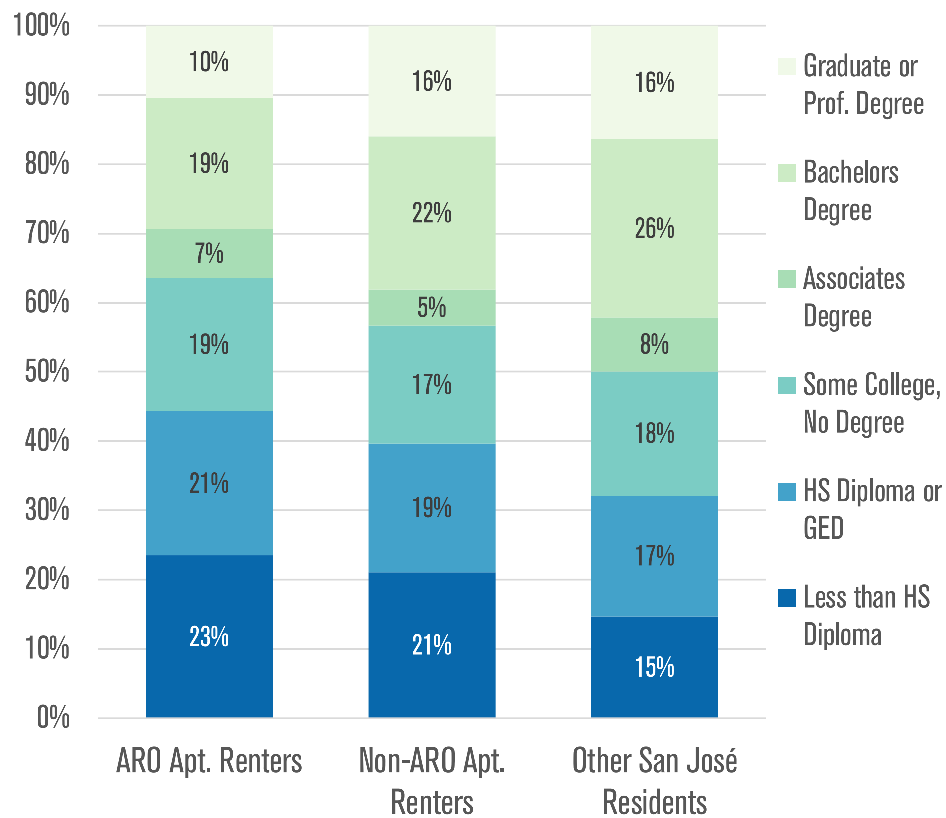
Overall, ARO renters are moving within Santa Clara County more than non-ARO renters, and this appears to happen in many San José neighborhoods, including Council Districts with the some of the largest numbers of ARO units (CD 6 and CD 3). This higher turnover within the rental housing market is by choice for some households, but indicates undesired housing instability for others.

2k. Educational Attainment

The level of education completed by San José residents varies noticeably between ARO renters, non-ARO renters, and other residents of the City (Figure 2.26). ARO renters have the largest share of residents with a high school diploma or less (44 percent). Non-ARO renters have the next largest share, 40 percent. Only 32 percent of other San José residents stopped their education short of college; conversely, 16 percent of these residents and non-ARO renters have a graduate degree, compared to ten percent of ARO renters.

ARO renters have the largest share of residents (44%) with just a high school diploma or less

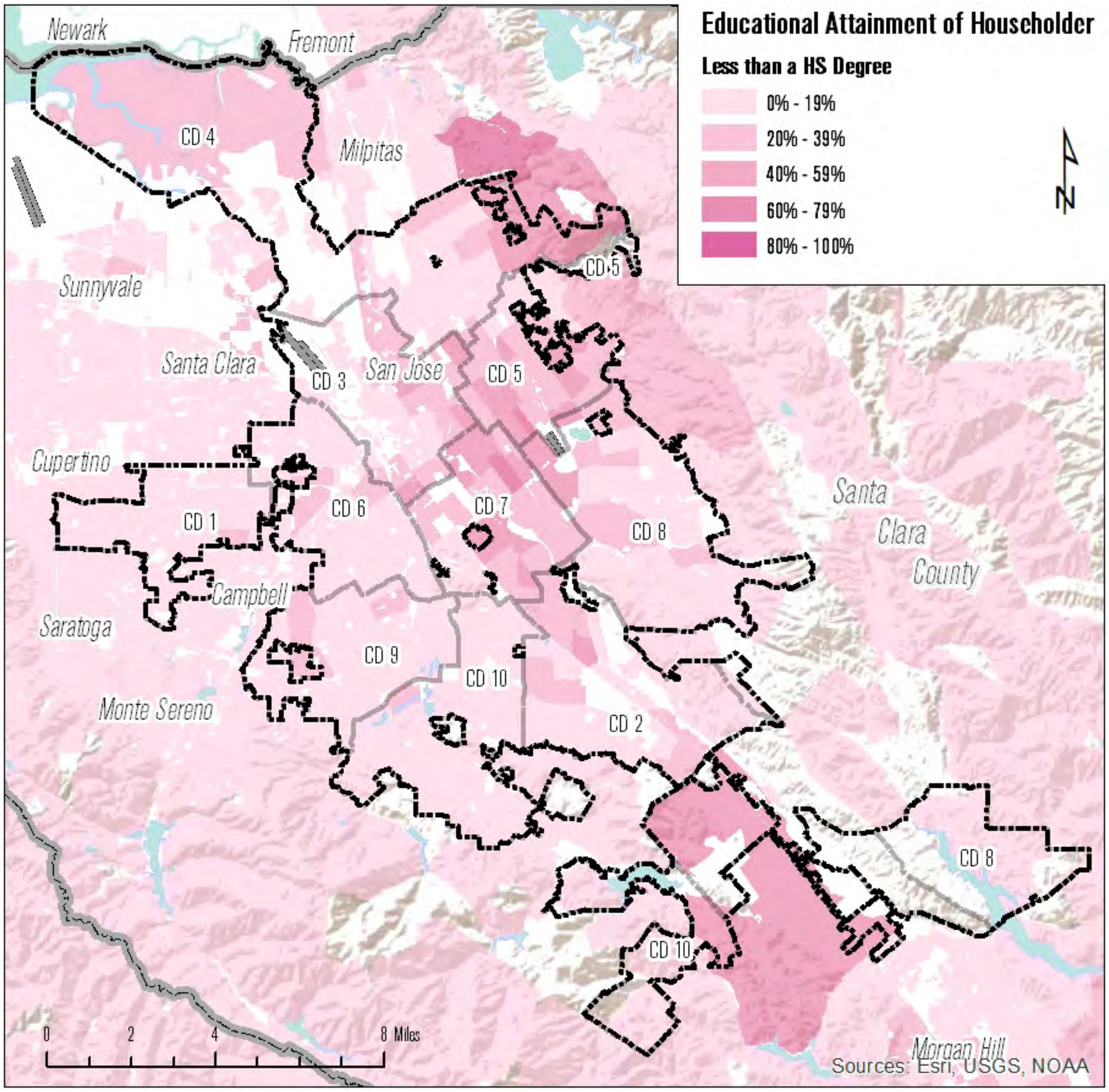
Figure 2.26 – Educational Attainment of San José Renters, by ARO Status



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the SCHL (Educational attainment) variable. Universe: Total population 25 years old or greater. Data columns may not add up to 100 percent due to rounding.

The geography of educational attainment is depicted in the next series of maps, the first highlighting the neighborhoods with the highest share of renter heads of household without a high school diploma (Figure 2.27). While found in every part of the City, the central and northeastern parts of San José have the highest concentrations. Citywide, 18 percent of renter heads of household are not high school graduates.

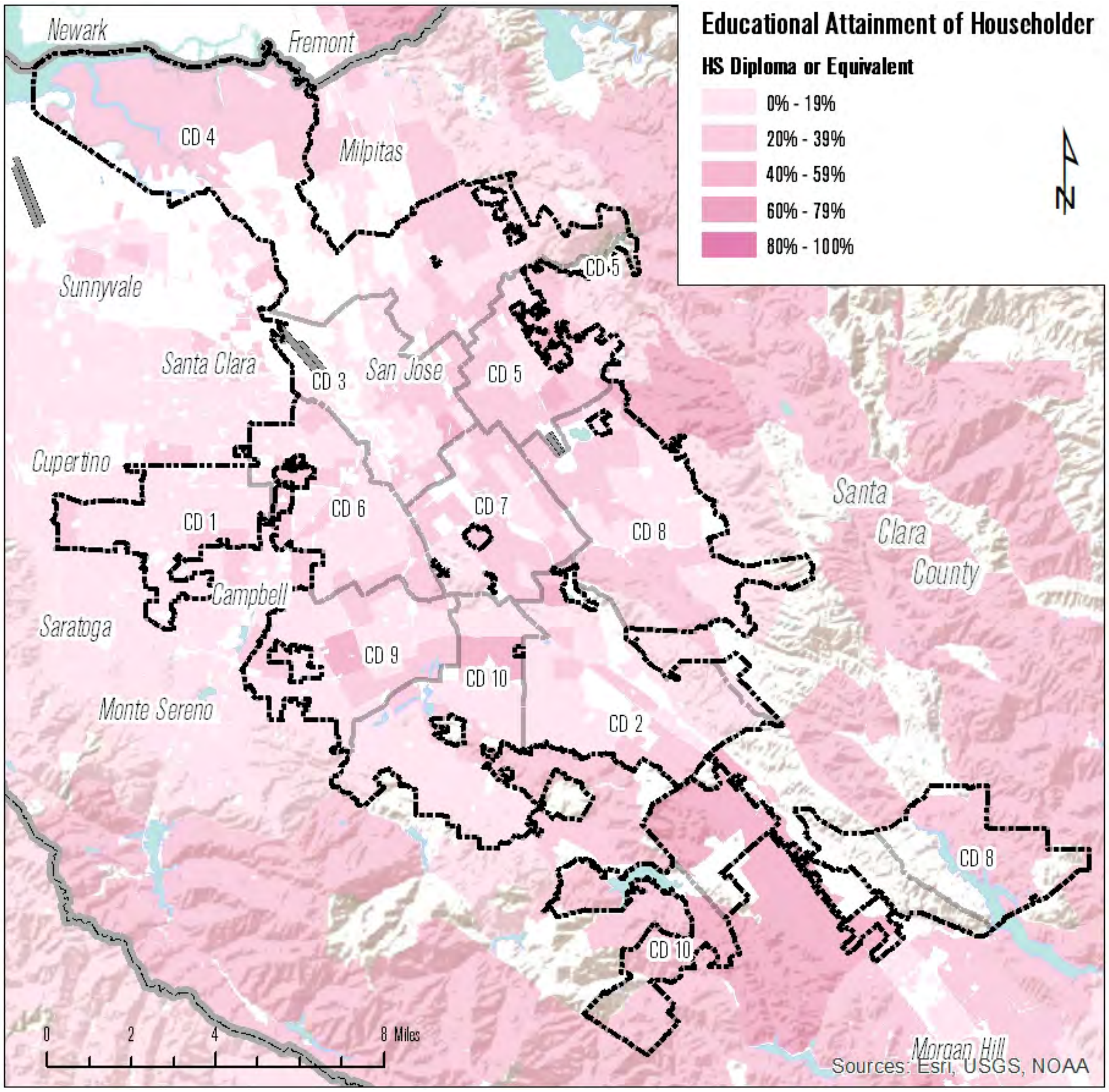
Figure 2.27 – San José Renters with Less than a High School Diploma, by Place of Residence



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25013 Tenure by Educational Attainment of Householder. Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Universe: Renter heads of household (householders). Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

The neighborhoods with the highest share of renter heads of household with a high school diploma or equivalent – but no college education – are shown in Figure 2.28. These renter households are found in pockets across all neighborhoods and Council Districts. Citywide, 18 percent of renter heads of household have graduated from high school.

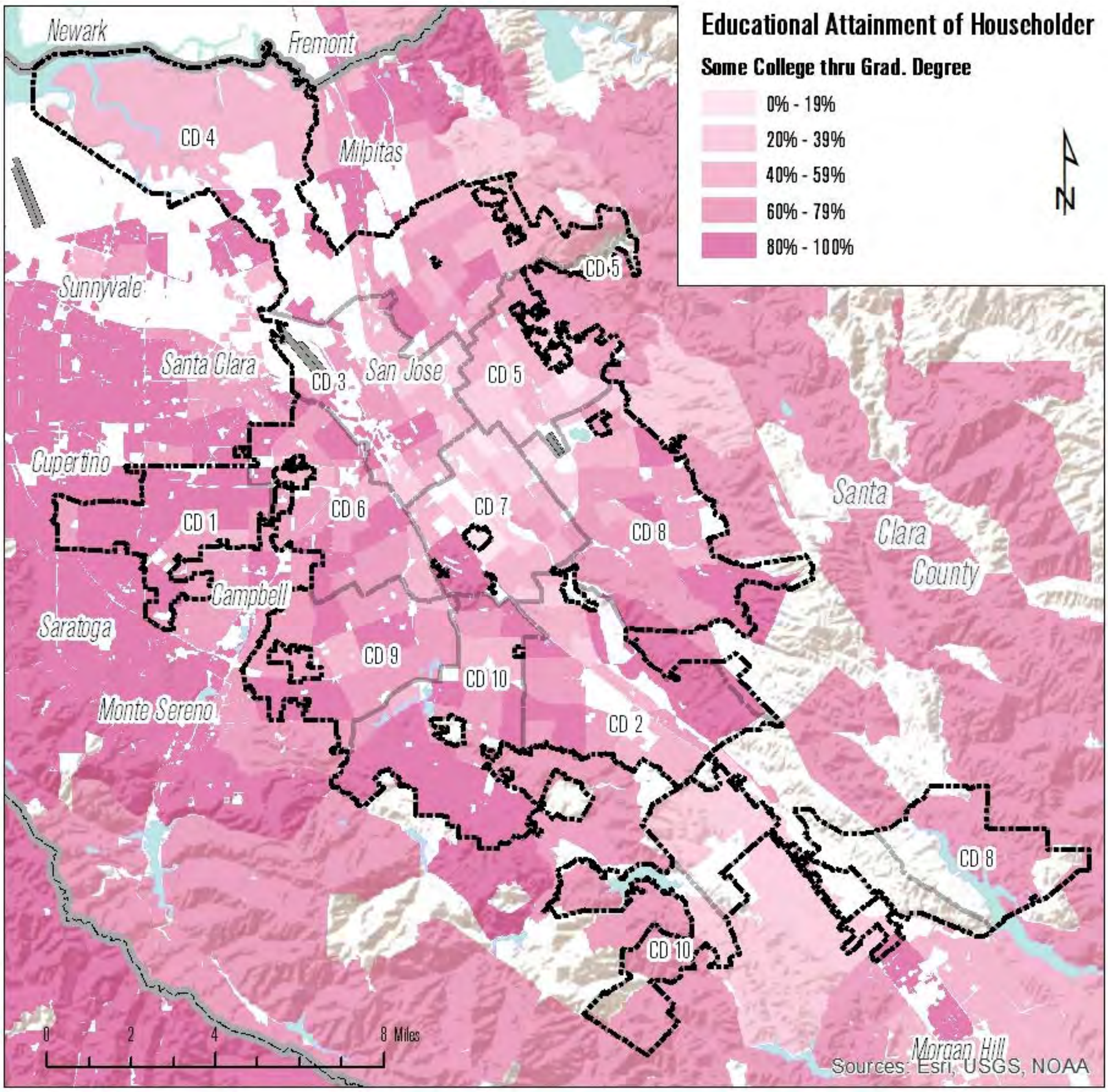
Figure 2.28 – San José Renters with a High School Diploma or Equivalent, but No College, by Place of Residence



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25013 Tenure by Educational Attainment of Householder. Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Universe: Renter heads of household (householders). Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

The neighborhoods with the highest share of renter heads of household with some college attended, an undergraduate, professional or graduate degree completed are depicted in Figure 2.29. The highest concentrations of these renters appear in the Western portions of San José, bordering other cities with high shares of residents with advanced educational attainment: Santa Clara, Los Altos, Cupertino Saratoga, and Monte Sereno. Citywide, 64 percent of renter heads of household have some level of college education.

Figure 2.29 – San José Renters with Some College Education, Undergraduate or Graduate Degrees, by Place of Residence

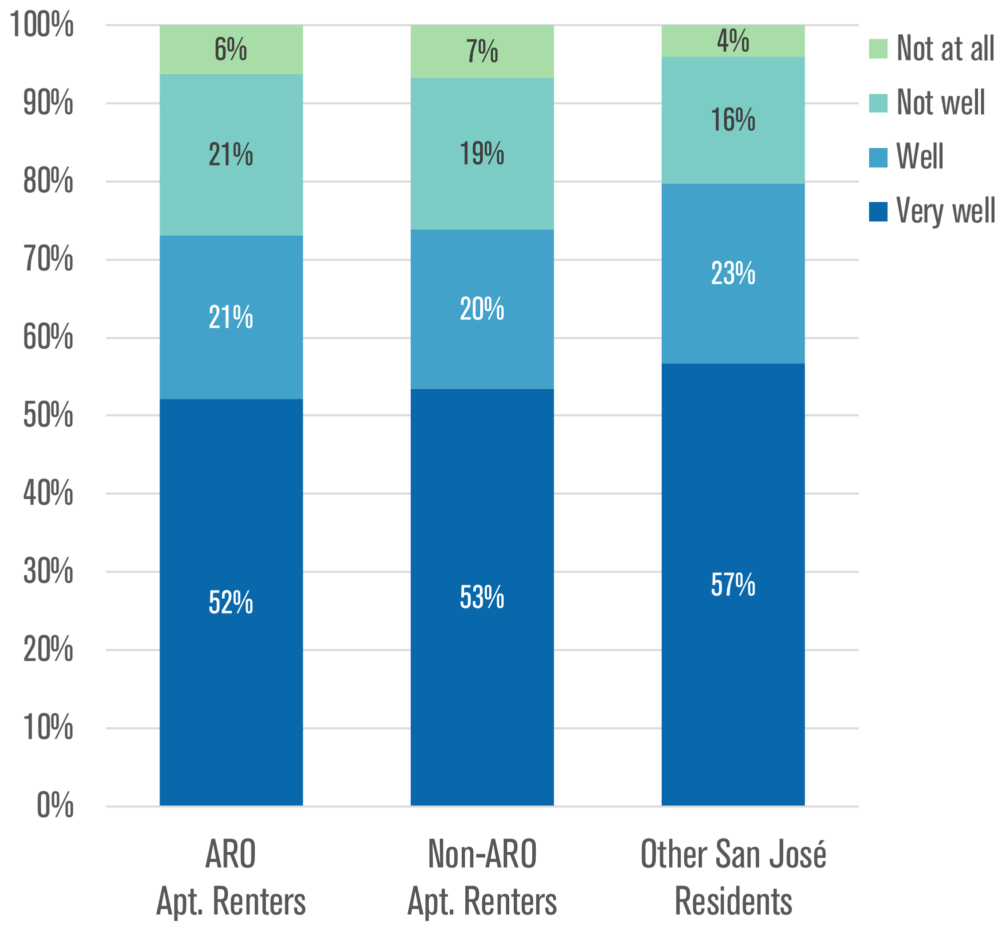


Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Estimates Table B25013 Tenure by Educational Attainment of Householder. Notes: Data includes renters in all types of rental units, ARO and non-ARO, plus duplexes. Geographic units are Census tracts. Universe: Renter heads of household (householders). Map areas filled white (no color) indicate that either no or too few renter household sample observations were available, or were unpopulated portions of Census tracts in 2010.

Proficiency in spoken English varies somewhat between ARO and non-ARO renters, and between them and all other San José residents (Figure 2.30). ARO renters have the largest share of residents who speak English "Not Well" or "Not at All" (27 percent). Non-ARO renters have the next largest share, 26 percent, while 20 percent of other San José residents of are in these combined categories.

ARO and non-ARO renters have lower levels of English proficiency than other San José residents.

Figure 2.30 – Spoken English Ability of San José Renters, by ARO Status



Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the SCHL (Educational attainment) variable. Universe: Total population 25 years old or greater. Data columns may not add up to 100 percent due to rounding.

Veterans make up 3% of ARO and non-ARO renters, 4.6% of other San José residents.

2I. Veteran Status

The percent of ARO renters and non-ARO renters who are veterans of the military is very similar, about three percent (Figure 2.31). This includes persons who were on active duty in the past, including in Reserves/National Guard, as well as a few who are now on active duty. Veterans are a slightly larger share of other San José residents, 4.6 percent.

Figure 2.31 – Veteran Status of San José Renters, by ARO Status

Source: Economic Roundtable analysis; U.S. Census Bureau, 2013-2017 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the MIL (Military service) variable. Universe: Total population 17 years old or greater. Data columns may not add up to 100 percent due to rounding or decimal places not shown.

Summary of Findings

- Just over 113,000 San José residents live in housing under the ARO jurisdiction. The council districts with the most ARO renters are CD 1 (33,009), CD 3 (23,917) and CD 6 (22,939).
- Renters under the jurisdiction of San José's Apartment Rent Ordinance (ARO) are slightly younger than non-ARO renters, and significantly younger than San José's other residents.
- Women are a greater share of heads of household in ARO units, compared to non-ARO and other San José housing.
- The racial-ethnic profile of renters living in the City of San José continues to be very diverse. The plurality of ARO unit renters are Latino households (47 percent), with Asian American and Pacific Islander households constituting another 26 percent, White/European American households constituting 19 percent, African American households constituting five percent, and the balance made up by renters identifying as other or two-or-more ethnicities.
- Over half of San José ARO renter households have children under 18 years of age.
- Married-couple households lead 48 percent of San José ARO households, and another 29 percent are single-parent households.
- Disability rates among San José residents is similar across all types of housing.
- Health insurance covers 87 percent of San José ARO residents, compared to 94% of all Santa Clara residents.
- Over half of renters living in the City of San José – both in ARO and non-ARO units – are citizens either born in the United States, or else were born overseas to U.S. parents. Another 17 to 18 percent are U.S. citizens by naturalization. The remaining 26 to 31 percent of renter residents are not currently citizens of the U.S., including green card holders, visa holders and undocumented residents.
- Well over half of San José ARO renters not born in the U.S arrived since the year 2000, and another 24 percent arrived in the U.S. during 1990s.
- ARO units have a significant amount of turnover, with 30 percent of renters residing in their current units for less than two years. Another 30 percent have resided in ARO units 2-4 years, and 40 percent have lived there 5 years or longer.
- Among ARO renters who moved within the past twelve months, 70 percent had moved from another address within Santa Clara County; 15 percent moved from elsewhere in in California. The remaining 15 percent moved from another state or from abroad.
- ARO renters have the largest share of residents with a high school diploma or less (44 percent) versus 40 percent for non-ARO renters.
- ARO and non-ARO renters have similar share of residents who speak English "Not Well" or "Not at All," 27 percent and 26 percent respectively.

About the Authors

Patrick Burns is senior researcher at the Economic Roundtable, since 2002. He earned his Master's Degree in Economic Geography at Kent State University.

Daniel Flaming is president of the Los Angeles Economic Roundtable, a nonprofit urban research organization that analyzes economic, social, and environmental conditions. He earned his Ph.D. from the University of Southern California.

End Notes

[1] Rent data in this report are actual gross rents reported by renters to the US Census Bureau, and not surveys of asking rents listed in newspaper or Craigslist ads. In the current American Community Survey program, respondents are asked "*What is the monthly rent for this house, apartment, or mobile home?*" The US Census Bureau defines Gross Rent as "*The amount of the contract rent plus the estimated average monthly cost of utilities (electricity, gas, and water and sewer) and fuels (oil, coal, kerosene, wood, etc.) if these are paid for by the renter (or paid for the renter by someone else). Gross rent is intended to eliminate differentials which result from varying practices with respect to the inclusion of utilities and fuels as part of the rental payment.*" Source: U.S. Census Bureau, *American Community Survey Design and Methodology Report* (January 2014), Version 2.0, January 30, 2014. See *Chapter 6. Survey Rules, Concepts and Definitions*. http://www.census.gov/programs-surveys/acs/methodology/design-and-methodology.html

[2] Kolko, Jed "All Those Vacant Homes" *Trulia Research Blog on Housing Policy*, November 6, 2013. Accessed at http://www.trulia.com/blog/trends/vacancy-rate/ on September 23, 2015. Table excerpted from the article, entitled "Metros with the Lowest Vacancy Rate" is as follows:

Rank	U.S. Metro	Vacancy rate, Oct 2013	Difference since Apr 2000
1	San José, CA	3.0%	0.3%
2	Ventura County, CA	3.4%	0.6%
3	Orange County, CA	3.9%	0.6%
4	Minneapolis–St. Paul, MN-WI	4.1%	1.5%
5	Denver, CO	4.4%	0.8%
6	San Francisco, CA	4.5%	0.6%
7	Middlesex County, MA	4.5%	1.7%
8	Bethesda-Rockville-Frederick, MD	4.7%	2.4%
9	Long Island, NY	4.7%	1.5%
10	Oakland, CA	5.1%	0.9%

[3] "*U.S. Business Cycle Expansions and Contractions*" National Bureau of Economic Research, http://www.nber.org/cycles.html

[4] In this chapter, the three comparison groups of San José residents are defined as follows:

ARO Apartment Renters:
- Live in San José, CA
- Live in buildings with 3+ units
- Pay cash rent for housing
- Live in buildings built 1979 or earlier

Non-ARO Apt. Renters:
- Live in San José, CA
- Live in buildings with 3+ units
- Pay cash rent for housing
- Live in buildings built 1980 or later

Note: Under City code, units that we categorize as "Non-ARO" are legally subject to Part 7 of the ARO, *Evictions from Certain Units Built after the Effective Date of this Chapter.*

Other San José Residents:
- Live in San José, CA
- Live in all other types of buildings, including single-family houses, duplexes, mobile homes or trailers, RVs or vans, etc. with 3+ units Mobile home or trailer
- Own their housing, occupy it without payment of rent, or are pay cash rent for housing (such as units in duplexes), but are not included in the prior two groups.
- Live in buildings built in any year, but are not included in the prior two groups.

[5] In our original study of the Apartment Rent Ordinance, other data sources (such as RealFacts) showed significantly higher median rent levels in the City of San José than the

US Census American Community Survey. Some of the reasons for this are that data sources differ due to different methodologies, sample sizes, and frequencies of data collection. In the case of median rents, the Census Bureau surveys renters while RealFacts surveys property owners. In this instance, the data from the US Census American Community Survey offers a more conservative estimate.

[6] These time series data are drawn from the 2005-2017 1-Year *American Community Survey*, Public Use Microdata Set (PUMS): Median Gross Rent by Year Structure Built, Tenure and Units in Structure. All data adjusted to first-half 2015 dollars using the CPI-U for San Francisco-Oakland-San José, California. Custom tables using PUMS data are required for comparing ARO to non-ARO rental housing due to the specific types of units under the jurisdiction of the Apartment Rent Ordinance: Rental properties built and occupied prior to September 7, 1979, with three or more units.

[7] California's early- to mid-1990s recession was due to a combination of a national recession (July 1990 to March 1991) and cutbacks in national defense contracting that hit the local aerospace industry extremely hard. The subsequent mid-1990s period of stagnation strongly affected rental housing markets across the state, where vacancies rates soared and rent prices fell. See Flaming, Daniel et al. 1992. *Los Angeles County Economic Adjustment Strategy for Defense Reductions*, Economic Roundtable, April 1992. See also Myers, Dowell. 2007. "*Immigrants and Boomers: Forging a New Social Contract for the Future of America*" Russell Sage Foundation.

[8] Source: Economic Roundtable analysis; U.S. Census 2013-2017 American Community Survey 5-Year Estimates, Table B25070: Gross Rent as a Percentage of Household Income in the Past 12 Months. Universe: All Renter-occupied housing units.

[9] Econometrica, Inc. (2007), Measuring Overcrowding in Housing, prepared for the U.S. Department of Housing and Urban Development Office of Policy Development and Research.

[10] We utilize the HUD *Persons-Per-Room (PPR)* measure of overcrowding in this study. See the following review of overcrowding measures: Bethesda, Maryland (Econometrica, Inc.), Kevin S. Blake, Rebecca L. Kellerson, Aleksandra Simic (ICF International). 2007. "Measuring Overcrowding in Housing," Prepared for: U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

[11] The three categories of occupants per room presented in section are:

- Not Crowded: A rental housing unit is considered adequate or not crowded when the number of rooms per unit corresponds with or exceeds the number of people in the household (≤ 1.0 persons /room).
- Overcrowded: A rental housing unit is considered crowded when the number of people in the household corresponds with or exceeds the number of rooms per unit (1.01 - 1.50 persons/room). A 5-person household that occupies a 1-bedroom apartment with a living room and kitchen (3 rooms) is considered to be living in overcrowded conditions.
- Severely Overcrowded: This is a further threshold of overcrowding, comparable to having 3 or more occupants living in a studio apartment with a kitchen (2 rooms) and 5 or more occupants in 1-bedroom apartment with a living room and kitchen (3 rooms) (> 1.5 persons /room). A 6-person household that occupies a 1-bedroom apartment with a living room and kitchen (3 rooms) is living in severely overcrowded conditions.
- All Overcrowded: This is the sum of the prior two categories, when the number of people in the household corresponds with or exceeds the number of rooms per unit (> 1.01 persons/room).

[12] U.S. Census Bureau, 2013-2017 5-Year American Community Survey, American FactFinder Estimates by Place, Table B25014 Tenure by Occupants per Room.

[13] "The American Community Survey is the premier source of statistics about the socioeconomic and housing characteristics of our nation. Together with population data from the once-a-decade census, ACS data help determine how more than $400 billion in federal funds are distributed to state and local areas each year." (U.S. Census Bureau. 2010. "American Community Survey – Key Facts"). The U.S. Census American Community Survey 5-year sample size for the City of San José is approximately 5 percent, and a 1 percent sample for the 1-year data. The data are released nine to 13 months after the end of each collection year. Topics include:

People:

- Basic Count/Estimate
- Age & Sex
- Age Group
- Disability
- Education
- Employment
- Income & Earnings
- Insurance Coverage
- Language
- Marital & Fertility Status
- Origins
- Population Change
- Poverty
- Relationship
- Veterans

Housing:

- Basic Count/Estimate
- Financial Characteristic
- Occupancy Characteristic
- Physical Characteristic
- Health and Safety Characteristic

"The American Community Survey is the premier source of statistics about the socioeconomic and housing characteristics of our nation. Together with population data from the once-a-decade census, ACS data help determine how more than $400 billion in federal funds are distributed to state and local areas each year." Source: U.S. Census. 2010. "American Community Survey: Key Facts" https://www.census.gov/content/dam/Census/programs-surveys/acs/news/10ACS_keyfacts.pdf

[14] In this chapter, the three comparison groups of San José residents are defined as follows:

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- Live in buildings built 1980 or later

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Other San José Residents:

- Live in San José, CA
- Live in all other types of buildings, including single-family houses, duplexes, mobile homes or trailers, RVs or vans, etc. with 3+ units Mobile home or trailer
- Own their housing, occupy it without payment of rent, or are pay cash rent for housing (such as units in duplexes), but are not included in the prior two groups.
- Live in buildings built in any year, but are

not included in the
prior two groups.

[15] As defined by the U.S. Census Bureau, the Householder is "The householder refers to the person (or one of the people) in whose name the housing unit is owned or rented (maintained) or, if there is no such person, any adult member, excluding roomers, boarders, or paid employees. If the house is owned or rented jointly by a married couple, the householder may be either the husband or the wife.

"Head of Household versus householder. Beginning with the 1980 CPS, the Bureau of the Census discontinued the use of the terms "head of household" and "head of family." Instead, the terms "householder" and "family householder" are used. Recent social changes have resulted in greater sharing of household responsibilities among the adult members and, therefore, have made the term "head" increasingly inappropriate in the analysis of household and family data. Specifically, beginning in 1980, the Census Bureau discontinued its longtime practice of always classifying the husband as the reference person (head) when he and his wife are living together."

Source: U.S. Census Bureau, "Current Population Survey (CPS) Subject Definitions" https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html#householder

[16] The U.S. Census Bureau's most recent sex ratios for the total population of these geographies is as follows:

	Total	Male	Female
Santa Clara County	1,937,570 (100%)	980,868 (51%)	956,702 (49%)
California	39,557,045 (100%)	19,663,577 (50%)	19,893,468 (50%)
United States	327,167,434 (100%)	161,128,679 (49%)	166,038,755 (51%)

Source: Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties: July 1, 2018. U.S. Census Bureau, Population Division.

[17] See endnote 15 for information on Head of Household versus householder. Source: U.S. Census Bureau, "Current Population Survey (CPS) Subject Definitions" https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html#householder

[18] Source: U.S. Census Bureau, "How Disability Data are Collected from The American Community Survey," https://www.census.gov/topics/health/disability/guidance/data-collection-acs.html

[19] Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates: S1810 Disability Characteristics for the United States, California and Santa Clara County.

[20] Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates: S1810 Disability Characteristics for the United States, California and Santa Clara County.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Housing and Community Development Commission

March 28, 2019

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

RE: Recommended City Council Amendments to the Ellis Act Ordinance

Members of the City Council,

We, the members of the Housing and Community Development Commission, strongly urge you to vote against any changes to the Ellis Act Ordinance at this time.

The Ellis Act Ordinance in its current form was enacted only ten months ago, and only after extensive community engagement and public comment was conducted. The process for crafting the current Ellis Act Ordinance took two years and gathered input from hundreds of stakeholders, including developers, lenders, residents and owners of rent-stabilized units. When contrasted with the rushed push by the City Council to amend the Ellis Act Ordinance now, the Commission is left questioning whether the Council truly wants a deliberative process.

The Ellis Act Ordinance, as it stands, was enacted on April 24, 2018 as a means of ensuring that housing units governed by the Apartment Rent Ordinance (ARO) would not undergo conversion to get around the rent-stabilization program that was adopted therein. The simple premise behind the Ellis Act Ordinance is to ensure that affordable housing rental units could not be torn down without being rebuilt if more rental units were to be created. The way this works is that buildings with rent-stabilized apartments could not be taken off the market and replaced by newer apartments unless fifty percent (50%) of the rental units of the new building, or an equal number of rental units that were lost, whichever is greater, were rent-stabilized. Alternatively, the developer could choose to dedicate twenty percent (20%) of the new units to income restrictions, meaning that those units could only be rented to those who met the lower-income requirements.

The current Ordinance provides developers with some flexibility in building high-density housing while contributing to the supply of affordable housing in San Jose. It was also a compromise from the original Ellis Act Ordinance, which required 100% of new rental units to be rent-stabilized if they were built to replace buildings that were subject to rent stabilization. The long and transparent process that produced this compromise was the culmination of a vast amount of effort invested by the Housing Department and by this Commission, including twenty separate community engagement sessions with stakeholders and four HCDC meetings.

The present direction to re-evaluate the Ordinance was prompted by purely anecdotal incidents, as acknowledged in Mayor Liccardo's Feb 1, 2019 memo. At the March 7, 2019 HCDC meeting, the Housing Department presented two redevelopments which have proceeded under the current Ordinance, and no evidence of developments which have stalled because of the Ordinance. Furthermore, the 2019 report on the Housing Element of San Jose's General Plan makes clear that the City of San Jose is ahead of its market-rate development goals while falling further behind in meeting its affordable housing goals.

The public engagement process for the Google/Diridon Station Area made very clear that the people of San Jose are actively concerned about displacement in San Jose. In voting to re-examine the Ellis Act Ordinance has given the Housing Department less than two months and this Commission only one week to review. This hasty push by the Council to weaken the tenant protections of the Ellis Act Ordinance is particularly troubling in light of the stated goals of Mayor Liccardo to improve transparency around development in San Jose.

We as the HCDC cannot endorse any changes to the Ellis Act Ordinance under these circumstances. This process is rushed and flawed. The care and study that went into creating the current ordinance is being tossed out by the hastiness displayed in the Council's current decision. If this policy is to be revisited, HCDC needs more than anecdotal evidence to support changes. Adequate data, including third-party data, cannot be gathered by the Housing Department without adequate time and preparation.

We thank you for the opportunity to serve our city as citizen commissioners and we appreciate you hearing our concerns. We care deeply about housing issues and are fortunate to have the opportunity to work on them with you and city staff. If you have any follow up questions about our position, we are happy to hear them. Please feel free to contact me at HCDC6@sanjoseca.gov.

Sincerely,

/s/
Andrea Wheeler
Commission Chair

The silicon valley organization

April 4, 2019

Honorable Mayor Sam Liccardo and City Council
City of San José
200 East Santa Clara Street
San José, CA 95113

Re: Ellis Act Re-Control Provisions

Dear Mayor Liccardo and City Council:

On behalf of The Silicon Valley Organization (The SVO), I am writing to urge the Council to adopt a 1-for-1 replacement policy of rent-controlled units for new residential projects under the Ellis Act. By way of background, The SVO is the Silicon Valley's premier business advocacy organization representing nearly 1,200 companies that employ over 300,000 workers, and we represent our membership as the region's largest Chamber of Commerce.

Any revisions to the Ellis Act re-control rules should preserve the existing supply of rent-controlled housing units, while avoiding unnecessary policies that would make residential projects infeasible for redevelopment opportunities. The city's existing 50% re-control rules on new construction projects makes it extremely difficult for housing developers to obtain adequate financing to increase the city's housing stock. The key to solving the housing crisis is to significantly accelerate housing production at all income levels – we must do everything we can to remove impediments to housing and the Council must not impose a 50% re-control rule that would be counterproductive to the city's housing production goals.

According to a recent staff report on the Housing Crisis Work Plan, an average of 2,800 residential units were built between 2010 and 2017. There simply is not enough housing production to tackle the housing affordability crisis head-on. Furthermore, we are aware that the Housing Department is floating a proposal to exempt the 50% re-control provisions, but only for new residential projects that generate at least 7 times the number of original units on the existing site. Many small sites will be unable to meet this density requirement and this policy proposal essentially supports the status quo by denying redevelopment opportunities. By amending the Ellis Act re-control provisions to strictly a 1-for-1 replacement rule, we can remove obstacles to construction and start encouraging residential development that will address housing affordability in the region.

In closing, we strongly urge the Council to exempt new residential construction from the Ellis Act 50% re-control provisions. If you have any questions about The SVO's position on this issue, please contact Eddie Truong, Director of Government and Community Relations, at [redacted].

Sincerely,

[redacted]

Matthew R. Mahood
President & CEO

BUILDING INDUSTRY ASSOCIATION

April 5, 2019

Mayor Sam Liccardo
San Jose City Council
Via email submittal

RE: San Jose CC Meeting 4.9.19 Ellis Act Recontrol Provisions

Dear Mayor Liccardo and San Jose City Council,

BIA Bay Area urges the City Council to eliminate the 50% re-control provisions under the Ellis Act and adopt a 1-for-1 replacement policy of rent-controlled units for new residential projects. Any revisions to the Ellis Act re-control rules must eschew counterproductive policies from current housing law that make residential redevelopment opportunities infeasible.

The city's existing 50% re-control rules on new construction projects effectively kills the potential of any redevelopment project on older rent controlled properties. The City should be working to achieve housing goals by removing impediments to new development. The Ellis Act 50% re-control rule is yet another obstacle to achieving the city's housing production goals vital to improving housing availability at all income levels.

According to a recent staff report on the Housing Crisis Work Plan, an average of 2,800 residential units were built between 2010 and 2017. There simply is not enough housing production to tackle the housing affordability crisis head-on. By amending the Ellis Act re-control provisions to strictly a 1-for-1 replacement rule, we can remove obstacles to construction and start encouraging residential development that will address housing affordability in the region.

California's high housing cost and lack of housing supply compromise the ability to access opportunity (jobs, health, stability) for families and individuals, including working families. Homeownership rates are the lowest since the 1940s and the State has not met its projected need for housing in the last 15 years. Housing supply needs are of vital importance and the highest priority.

In conclusion, BIA Bay Area strongly urges the Council to eliminate the Ellis Act 50% re-control provisions on new residential construction. BIA remains ready to work with the City to assist in any way we are able. Please feel free to contact me at dmartin@biabayarea.org.

Yours truly,

Dennis Martin
BIA BAY AREA

SANTA CLARA COUNTY
Association of REALTORS®
ESTABLISHED 1896
1651 North First Street, San Jose, CA 95112
[redacted] • www.sccaor.com

Honorable Mayor Sam Liccardo and City Council
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113
Re: Ellis Act RE-Control Provisions

Dear Mayor Liccardo and City Council:

On behalf of the Santa Clara County Association of REALTORS® (SCCAOR), and the 6,500 Real Estate Professionals we represent, I am writing to you to express support for revising the existing Ellis Act ordinance to reduce the re-control requirement to a 1-to-1 ratio.

SCCAOR is committed to the defense of private property rights and to taking action on policy issues that support the expansion of our housing supply at all levels. A reduction in the re-control requirement of the Ellis Act is a step in the right direction – and indicates a commitment to expedient action as is necessary when addressing a crisis.

As is evident by the stagnation of applications for redevelopment projects being done under the Ellis Act, it is clear that the Ellis Act is not supporting the Mayor's vision to build 25,000 units of housing. According to the Housing Department's memorandum dated February 28, 2019 and submitted to HCDC on March 3, 2019, "to date, two properties have issued a notice to withdraw" under the Ellis Act. This is clear indication that investment confidence in these type of redevelopment projects is low under the status-quo of the Ellis Act.

Lowering the re-control provision to 1-to-1 is a necessary step to reduce the reluctance of investors. Redevelopment of properties under the Ellis Act have so many net-benefits to our community that are being prevented under the existing ordinance: Dramatically increased supply (two projects have set to build 529 units, imagine how many more that could be), safety (new units will be up to code), higher quality units, and stronger communities.

It is our hope that you will act with a crisis mindset in the best interest of affordability and housing supply and amend the Ellis Act re-control provision to be 1-to-1.

Thank you for your service to our community and for considering SCCAOR's position on this issue.

Regards,

[redacted]

Gustavo Gonzalez, President
Santa Clara County Association of REALTORS®

ELLIS ACT ORDINANCE COMMUNITY MEETING

WHEN: March 20, 2019
WHERE: Seven Trees Community Center

NOTES:
Rent Control vs. Affordable

- I think that the 100%-50% subject to re-control was a move to encourage new developments. Too many restrictions will deter development.
- Rent Stabilization is preferable to an income-restricted property because AMI may grow rapidly with new developments/changing composition of region.
- 1 Re-control
- Must replace existing units or meet 15% inclusionary standard
- If a rent-controlled complex is removed from the market and processed as Ellis, we are essentially losing affordable housing, because the re-control aspect doesn't matter when rents are reset to market rates.
- Can we income-restrict properties for longer than 55 years?

Rent Control Solutions

- Idea, poll developers to understand why they are not moving forward.
- Should be tied to AMI/CPI
- Fair Housing Act concerns with allowing off-site affordable option (or in lieu fee) (disproportionate impact on POC). On-site requirements for all re-control or those that qualify for 7Xs exemption would help.
- 1:1 with new unit being affordable rather than rent stabilized
- Affordable period be limited to 10 years creating an incentive

Smaller Development Considerations:

- Allow projects replacing same # of units some flexibility

Barriers to Development

- Ellis Act Ordinance is about preventing displacement, not promoting development. We don't know if last change (April 2018) has made an impact
- Concern regarding displacement of low income people in the Diridon Area. In this case the affordable option is better
- Concerns about displacement and its disproportionate effects on low-income minority populations.
- 55 years of income-restrictions are too long, should be 10 years plus % increase allowed

KT URBAN

March 28, 2019

Jacky Morales-Ferrand
Director, Housing Department
City of San Jose
200 E Santa Clara Street
San Jose, CA 95113

Dear Jacky,

I am currently the CFO for KT Urban. I have been a Chief Financial Officer for the past 16 years for several real estate companies including a publicly traded company (NYSE: UCP) based in San Jose, which completed an IPO in 2013 and raised approximately $200 MM in construction financing, as well as over $275 MM of other debt and equity proceeds in the capital markets. Prior to my experience in the real estate industry, I spent many years working at international banks such as BNP and Deutsche Bank that provided various forms of financing for several technology companies here in the Bay Area (Sun Microsystems, 3Com, Informix, Sybase) totaling some $2 billion.

I understand that you are considering matters pertaining to the City San Jose's Ellis Act Ordinance and its re-control provisions impact on the ability of projects to obtain equity and construction financing in the capital markets. I would like to, respectfully, offer a few observations for your consideration:

1. ***Rent controlled projects increase risk*** as rent controlled projects recover more slowly from market downturns. In Table 1 of the David Paul Rosen & Associates report, the market rents for that sampling of projects declined 8.7% in 2009 and it took over 2 years for the market to recover. If a 5% rent cap were in place, it would have taken the markets rents nearly 4 years to recover. The capital markets (institutional investors and the debt market) study long term cycles carefully and the reduced ability to recover from inevitable market downturns increases risk. Projects with higher risk require higher returns which, in turn, reduces the number of viable projects and investors while at the same time increasing the need for equity investment as higher risk projects are not able to borrow as much.

2. ***Rent controlled projects are less valuable***, of course, because of reduced revenue and cash flow. Again, using the Dave Paul Rosen data and applying the 5% cap, the 11-year average annual rent growth would have been less than 2.5%. Separate but in addition to the risk issue discussed above, less valuable projects attract fewer investors and require

[redacted]

more equity as the borrowing capacity of the project is reduced. If we factor in reduced annual growth rate and the increased risk and apply this data to a large multifamily project we are currently working on located in San Jose, we estimate the pretax profit of the project would be reduced by approximately $50 MM.

3. From a capital markets standpoint, ***addressing the housing crisis in the Bay Area requires large scale institutional investors and debt***. For the reasons cited above, institutional investors will shy away from and in some cases be precluded, as a matter of policy, from investing projects that have rent control or other limitations.

4. Over $30 billion was invested in US in value-add multifamily projects in 2018. In this category of investment ***private equity and debt funds specifically target under-utilized, neglected or under-performing urban, infill properties with the primary goal of redeveloping the property at higher densities and increasing rents at above market rates***. By definition, this type of significant investment, while usually being welcomed in the community, would be significantly diminished under the proposed Ellis Act ordinance.

5. ***It is widely understood by economists that rent control often results in having the opposite effect than intended***. In a recent study from Stanford University on this topic, which I am sure you are aware, the authors concluded that rent control reduces housing supply and drives up rent.

Having lived my whole life in the Bay Area, most of which living or working in Santa Clara Valley, I am very excited to see the development of Downtown San Jose over the past 10+ years. Downtown San Jose is emerging as the social and cultural hub of Silicon Valley. Very significant large-scale investment seems to be on the near-term horizon, but the Ellis Act's re-control provision will discourage investment activity. I am very hopeful that the City of San Jose will continue to work hard to encourage this continued investment.

Sincerely,

[redacted]

William J. La Herran
Chief Financial Officer
KT Urban

Nguyen, Viviane

From: VanderVeen, Rachel
Sent: Thursday, April 11, 2019 7:03 PM
To: Nguyen, Viviane
Subject: FW: Ellis Act
Attachments: ARO-Ellis 4.9.19 Reflections.docx

Public comment

Rachel VanderVeen
Deputy Director
Housing Department
[redacted]

From: David Eisbach [redacted]
Sent: Thursday, April 11, 2019 10:08 AM
To: VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>
Subject: Fw: Ellis Act

Sent: Thursday, April 11, 2019, 9:54:03 AM PDT
Subject: Ellis Act

He Rachel

I believe that the Ellis Act, works so far as protecting and relocating tenants, but it serves as a stumbling block for owners, who are considering expanding their properties. I make some suggestions, that may be helpful in expanding the affordable and the market rents in San Jose.

I hope you will read the attached and put it on the record.

Regards
David Eisbach

ARO-Ellis Act, 4.9.10 Reflections

A February 7, 2019 article in the San Jose Mercury News, "San Jose to Review Rent Control" quoted Housing Director, Jacky Morales-Ferrand The Ellis Act… "is designed to make developers think Twice."

If she is referring to protecting tenants by charging up to $15,000 per family to relocate them and allowing up to a year notice, then I would say I understand the intent even though both are excessive.

If she is referring to an owner who wishes to expand his five unit apartment to ten but realizes that once the units are ready five of the new units must be placed under the ARO, he decides that the numbers do not work. He Thought Twice!

I have read some lines that stated that negotiations could allow 20% be placed under the ARO, i.e. 2 units. I also read that the new empty units would allow the owner to set rents and then be bound to the annual 5%. I fear that the original thought is new units would reflect the original rents plus 5% for each year passed.

I think there are current owners who might have contiguous plots large enough to physically expand their units by two to three times. These are owners, not developers, who are into large properties. They are not financial giants.

It is clear that the City must build housing. What we see is a black and white non-negotiable piece of legislation. We wonder why owners are not building? Do we not see that all the costs of expanding rental stock is borne by the owner along with the promise of reduced income in the end product. Here are some suggestions:

1. If the owner's old units were under market, and the new units would reduce the annual income by a considerable amount, Independent Agents could adjust the new rates.
2. The Planning, Permits, Code Enforcement costs be reduced by 15%; the projects should be given assistance and priority.
3. The property will be reassessed; the City could waive 10% and convince the County to do the same. (Make the adjustment in the property assessment).

4. The Ellis eviction timing is a mine field; If there are seniors, or school age tenants then the timing could be extended up to a year. If the owner just says in one year you all must be out, and three leave right away that leaves two, that's a lot of lost rent because of this notice period. If there is an unforeseen loss, it should be considered in costs somewhere else.
5. The owner is responsible for construction and labor. Delays cost money, the City should be accommodating.
6. If the City can pay $600,000 to develop one Cargo Bin into a living unit, it can certainly apply a lot less in the expansion of more existing housing.

Instead of using the Ellis Act to dissuade owners, steps could be taken to aid in the process. If we could stop viewing owners as greedy, lawless trolls and listen to each other, we might find room for negotiation. Who knows if some or all of the above suggestions were followed, the City could gain five lower cost units under ARO and Five market properties.

David Eisbach, Broker, Property Manager, Owner

[redacted]

[redacted]

Law Foundation OF SILICON VALLEY

Advancing Justice
Housing | Health | Children & Youth

April 16, 2019

City of San José Housing Department
200 E. Santa Clara St.
San José, CA 95113

RE: Item 4.2 – Ellis Act Ordinance Re-Control Provisions

Dear Director Morales-Ferrand:

We write to strongly urge the Housing Department to recommend no changes to the current Ellis Act Ordinance. The Ellis Act Ordinance (the "Ordinance") was originally passed in April of 2017 as part of a package of protections against displacement for San José tenants and measures to preserve San José's supply of affordable housing, including San José's Apartment Rent Ordinance. These protections were passed as hundreds of tenants were losing their rent-controlled units, including over 670 tenants at the Reserve Apartments, and with broad community support following extended public comment highlighting the need to better preserve San José's stock of affordable housing and prevent the displacement of low-income tenants.

Despite this need, the Ellis Act Ordinance was rolled back just last year to allow developers to recontrol fewer of the affordable units they demolish and to seek exemption from the recontrol requirement altogether under certain circumstances. In the midst of an unprecedented housing crisis causing massive dispossession of homes and displacement of people, it would be reckless and pernicious to further weaken this important tool for preserving affordable housing. Furthermore, such an action would likely have a disparate impact on people of color and perpetuate segregation in violation of the federal Fair Housing Act (FHA) and California Fair Housing and Employment Act (FEHA) as the City has utterly failed to evaluate the effect of such a rollback on low-income communities of color.

Efforts to prioritize the production of affordable housing that undoubtedly will lead to the displacement of low-income families of color, including rolling back the Ellis Act Ordinance, ignore the long history of discriminatory housing policy in San José and the vulnerability of the city's existing affordable housing stock. While we agree that we need to develop more affordable housing, such development should not be to the detriment of our low-income communities of color, who disproportionately live in rent-stabilized units. Anecdotal evidence from developers regarding their motivations should not, as a matter of sound and equitable policy making, outweigh tangible community needs especially given the failure to evaluate the effect of the loss of rent-controlled buildings both before and after the passage of the Ellis Act.

The City should instead ask the Housing Department to track how the demolishing of rent-controlled buildings have affected the displacement of low-income families out of San Jose. Why has the City not pushed the Housing Department to find out the fates of the more than 670 tenants displaced from the Reserve Apartments? Such data, rather than anecdotal data from developers, will be telling of the importance and necessity of the Ellis Act to keep low-income families in San Jose.

1. The Failure to Preserve Naturally Occurring Affordable Housing Units Has Driven Displacement and the Affordable Housing Crisis in San José

Recent studies on the scale and scope of displacement in the Bay Area have found that San José residents have been hit particularly hard by displacement and gentrification in the past ten years. The Urban Displacement Project found that every census tract within and surrounding downtown San José has seen or is currently experiencing either ongoing gentrification and displacement or advanced gentrification and displacement.[1]

Efforts to produce new affordable units have not kept up with the community's needs for affordability and created a massive gap in San José's housing supply. The City of San José's General Plan Housing Element found that the City issued permits to build less than 22% of needed low-, very low-, and extremely low-income deed-restricted affordable housing units from 2007 to 2013.[2]

Meanwhile, the need for affordable units is only expected to grow. The City's need for housing units affordable to renters with very low incomes alone is nearly 20% greater, an increase of over 1400 units, for the 2014–2022 planning period.[3] The 2018 Annual Element Plan Update reports that San José is already falling behind in meeting this goal, even while exceeding its needs for market rate housing.[4] As the Housing and Community Development Commission emphasizes in their letter, **the City has presented no evidence that this shortfall in production is linked to incentives under the Ellis Act Ordinance.**

In light of this massive shortfall in the *production* of new affordable units, the failure to *preserve* existing affordable housing has been a key driver of displacement. This failure compounds a long history of racially discriminatory residential policy that has denied fair

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[1] *See Mapping Displacement and Gentrification in the San Francisco Bay Area*, URBAN DISPLACEMENT PROJ. (2018), http://www.urbandisplacement.org/map/sf.
[2] CITY OF SAN JOSÉ, HOUSING ELEMENT VIII-4 (2015).
[3] *Id.* at III-3.
[4] SAN JOSÉ HOUS. DEP'T, ANNUAL ELEMENT PLAN UPDATE 2018, at 6 (2019), http://www.sanjoseca.gov/DocumentCenter/View/83510.

[redacted]

housing choice and made it difficult for people of color to remain stably housed in decent, affordable homes.

Beginning in the 1930's and continuing until 1976, the federal government engaged in a practice known as "redlining," whereby the federal government assigned ratings to neighborhoods to guide public and private investment. As a rule, neighborhoods where people of color lived received the lowest possible investment grade, often merely because people of color lived there.[5] These explicitly discriminatory investment grades precluded private investment in these redlined areas, prevented residents from securing federally-insured loans to buy homes, and all but guaranteed that these neighborhoods would fall into disrepair and dilapidation.

Redlined neighborhoods, because of the economic depression and urban blight that years of *de jure* discrimination and total disinvestment created, were then targeted for redevelopment by the San José Redevelopment Authority (SJRA) in the 1980's, and '90's. Unfortunately, the SJRA's efforts to create "a thriving urban center, offering an amalgamation of cultural, professional, and residential amenities,"[6] displaced many of the people of color that had been forced to settle in these redlined areas.

In a case study of the Diridon Station Area, for example, the U.C. Berkeley Center for Community Innovation found that "development activities, including a significant loss of housing units in the 1980s, may have primed this area for the gentrification it is experiencing today."[7] During this period, the SJRA merged redevelopment revenues generated from neighborhoods across the city to focus development downtown.[8] This strategy allowed the SJRA to carry out massive projects such as the Guadalupe corridor transportation project, a widening of the Guadalupe River channel, and the construction of what is now the SAP Center. Together, these projects directly displaced a significant number of Hispanic households and spurred gentrification that has driven continued home loss.[9]

Indeed, the National Community Reinvestment Coalition found that between 2000 and 2013, census tract 5003 (which covers the Diridon Station Area and the tract of land bordering Guadalupe Creek to the west between Interstate 880 and Park Ave), saw significant displacement of Hispanic residents.[10] Perhaps unsurprisingly, census tract 5003 includes two sizeable

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[5] *Redlining and Gentrification*, URBAN DISPLACEMENT PROJ. (2018), https://www.urbandisplacement.org/redlining.

[6] *Downtown San José*, SAN JOSÉ REDEVELOPMENT ASSOC., http://www.sjredevelopment.org/downtown.htm (last visited April 3, 2019).

[7] U.C. BERKELEY CTR. COMM. INNOVATION, DIRIDON STATION CASE STUDY 8 (2015), http://www.urbandisplacement.org/sites/default/files/san_jose_final.pdf.

[8] *See id.* at 9.

[9] *See id.*

[10] *Shifting Neighborhoods*, NAT'L COMM. REINVESTMENT COALITION (2019), http://maps.ncrc.org/gentrificationreport/index.html?bookmark=Map.

[redacted]

neighborhoods that were redlined by the federal government throughout most of the twentieth century.[11]

By specifically targeting communities of color for disinvestment, redlining created severe poverty in these neighborhoods that has incentivized developers to demolish and replace them with more profitable properties. The economic impact of redlining also has created obstacles for the residents of these ostracized neighborhoods in resisting changes to their community.

The result is that the low-income people of color who were cut-off and denied investment for much of the last century because they were told their very presence made these neighborhoods undesirable are now being pushed out so that their neighborhoods can be redeveloped to be desirable to other, richer, and perhaps newer, residents of San José.

This history demands a renewed emphasis on preserving affordable housing units, like rent-stabilized units, because, unlike production, preservation maintains existing tenancies and conserves the cultural identity of the neighborhoods in which it takes place. Focusing only on production of new units through redevelopment will perpetuate a long history of inequity in housing policy in San José, and all but guarantee that low-income tenants will once again be excluded from the economic growth that City policy seeks to stimulate.

2. The Ellis Act Ordinance Must be Retained in its Current Form in Order to Fulfill its Purpose to Preserve Naturally Occurring Rent-Stabilized Units

In addition to being counter-productive to promoting equitable housing policy, efforts to prioritize the production of affordable housing that inhibit the City's ability to preserve affordable units are also self-defeating. Strong measures to preserve San José's existing affordable housing stock are needed to mitigate economic pressures that have already caused severe displacement in our community. Although not all ARO-covered units remain affordable due the vacancy decontrol requirement of the Costa Hawkins Rental Housing Act, rent-stabilized units remain an important and significant source of naturally-occurring affordable housing. The legislative history of the Ellis Act Ordinance shows that its primary purpose is to preserve rent-controlled units and prevent the displacement of low-income tenants.

City Council initially directed Housing Department staff to formulate the ordinance in May 2016 in order to address concerns about the demolition of affordable apartments covered by San José's Apartment Rent Ordinance (ARO) and displacement of tenants residing in ARO-covered properties.[12] Following extended public outreach, Housing Staff returned in April of 2017 with an ordinance that sought to prevent displacement by requiring landlords who want to remove a building from the rental market to provide to tenants certain notices, relocation services

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[11] *See Redlining and Gentrification*, *supra*, note 5.
[12] *See* Synopsis of May 10, 2016 City Council Meeting at 8, SAN JOSÉ CITY COUNCIL (2016), http://www.sanjoseca.gov/DocumentCenter/View/56624.

[redacted]

and benefits, and a right to return and/or recontrol of new units under certain circumstances. The ordinance was passed after several hours of public comments, many of which focused on the need to preserve San José's supply of affordable housing units.

Indeed, San José needs its Ellis Act Ordinance to remain as strong as possible in order to preserve its stock of affordable housing. As the Housing Department's memorandum explains, there are many reasons why rent-controlled units never return to the rental market following an Ellis Act conversion, but the most common are that building is replaced with a commercial use or for-sale housing instead of rental housing and that developers fail to return to the building within five years as required under the Ellis Act's recontrol provisions.[13]

Thus, even in jurisdictions that require 100% of new rental units to be recontroled, the demolition of buildings with rent-controlled units under the Ellis Act consistently results in an overall loss of affordable units. San Francisco, for example, requires 100% recontrol, but still suffered a loss of 1,257 affordable units due to Ellis Act conversions alone between 2008 and 2018.[14] San José can count on similar losses to its affordable housing stock, and allowing developers who do not find a way to skirt the Ellis Act Ordinance's recontrol requirement to recontrol fewer units will only make these losses more severe.

Strong measures to preserve San José's affordable housing stock are urgently needed, particularly given that "nearly 14% of the City's deed-restricted housing stock is at risk of conversion within the next ten years."[15] Specifically, the Ellis Act Ordinance's protection for rent-controlled units in buildings with a potential for redevelopment must remain in place because of San José's affordable housing units, over 40% "are owned by profit-motivated companies and are thus at greater risk of conversion in the next ten years."[16]

3. Further Limiting the Recontrol Requirements of the Ellis Act Ordinance Without Studying the Effects Such Policies May Have on Communities of Color Likely Violates the Fair Housing Act and California Fair Housing and Employment Act and the City's Responsibility to Affirmatively Further Fair Housing

Further rolling back the recontrol requirements of the Ellis Act Ordinance would likely have a disparate impact on people of color in violation of the Federal Fair Housing Act[17] and

[13] *See* Memorandum from San José Housing Department to City Council RE: Item 4.2 – Ellis Act Ordinance Recontrol Provisions, at 5 (Apr. 9, 2019).
[14] S.F. Planning Dep't, Housing Balance Report No. 7, at 10 (2018), http://default.sfplanning.org/publications_reports/20180920_HousingBalance7CPC.pdf.
[15] City of San José, Housing Element VI-6 (2015).
[16] *Id.* at VII-4.
[17] *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

[redacted]

California FEHA,[18] as well as the City's Obligation to Affirmatively Further Fair Housing.[19] As explained above, modifying the Ellis Act Ordinance to allow developers to recontrol fewer of the rent-stabilized units they demolish or more easily seek exemption from the ordinance altogether will cause the loss of affordable units. This loss will have a disparate impact on tenants who are people of color and female heads of households because these residents are the most highly-rent-burdened and frequently-evicted for not being able to afford the rent or for no cause.[20]

While the City absolutely has an ethical obligation to mitigate the impact of displacement by providing alternative housing, it is unlikely that providing housing elsewhere would absolve the City of all liability under the FHA and FEHA if it were to weaken the recontrol provision of the Ellis Act Ordinance. This is because alternative housing must be "truly comparable" to the housing denied, which "is not simply a question of price and model, but also of the factors that determine the desirability of particular locations—factors such as similarly or better performing schools, comparable infrastructure, convenience of public transportation, availability of amenities such as public parks and community athletic facilities, access to grocery or drug stores, as well as equal or lower crime levels."[21]

The Ellis Act Ordinance already provides a compliance option for developers to meet their recontrol obligation through payment of a fee to the City to develop affordable housing offsite.[22] Expanding the offsite compliance option will make it particularly difficult for the City to show that its policy provides for truly comparable housing to displaced tenants because throughout the Bay Area, tenants who are forced to move consistently end up in more highly rent-burdened units.[23]

It is also unlikely that any affordable units actually produced through the off-site options are truly comparable to those demolished because so many of the factors affecting whether the units are truly comparable to those denied rely on the neighborhood in which the units are located. Moreover, those tenants displaced during construction may never be financially able to remain and return to San Jose. Therefore, even under the convenient and misleading fiction that the people whose rent-controlled units are demolished for redevelopment are the people who are

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[18] *See Yazdinian v. Las Virgenes Vill. Cmty. Ass'n*, 2012 U.S. Dist. LEXIS 191221, *14 (C.D. Cal. 2012) ("Plaintiffs must demonstrate that the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole." (citing *Charleston Hous. Auth. v. USDA*, 419 F.3d 729, 740-741 (8th Cir. 2005))).
[19] *See* Cal. Gov't Code § 65583.
[20] Silicon Valley Rising, Cashing in on Renters 1, 2 (Apr. 2017), https://www.siliconvalleyrising.org/files/CashingInOnRenters.pdf.
[21] *Ave. 6E Invs., Ltd. Liab. Co. v. City of Yuma*, 818 F.3d 493, 512 (9th Cir. 2016).
[22] *See*
[23] U.C. Berkeley Urban Displacement Proj. and The Cal. Hous. P'ship, Rising Housing Costs and Re-Segregation in the San Francisco Bay Area 16 (2019), http://www.urbandisplacement.org/sites/default/files/images/bay_area_re-segregation_rising_housing_costs_report_2019.pdf.

[redacted]

actually able to occupy newly-developed units,[24] off-site compliance options still create barriers to fair housing choice. This is especially true in an era of transit-oriented and mixed-use development that add neighborhood amenities and enhance community livability while increasing the number of residential units.

Although renters of all racial backgrounds typically see a rent hike when moving, low-income renters who are people of color frequently end up in highly segregated, high-poverty regions while low-income white renters are able to access more resource-rich areas.[25] Therefore, weakening the Ellis Act Ordinance's recontrol provisions will perpetuate residential segregation in San José, which is already highly divided by race and income.

The City of San José's Housing Element for 2014–2023 observes that "certain race/ethnic groups tend to concentrate in specific parts of the City."[26] Hispanic residents live in higher numbers "on the east side of San José (Central, Alum Rock, and Alviso areas) where traditionally lower income neighborhoods exist, while Asians and Whites are the majority group in the northern, southern, and western parts (Berryessa, Evergreen, Willow Glen, West Valley, Cambrian, and Almaden areas) where traditionally higher income neighborhoods are found."[27]

As explained above, this distribution originated in the explicitly discriminatory and intentionally segregative practice of redlining that existed for much of the twentieth century. Not surprisingly, the majority of aging properties with rent-controlled units that are being considered for Ellis Act conversion are located in these predominately Hispanic, low-income neighborhoods.[28] Thus, redevelopment of these buildings and surrounding neighborhoods will not only disproportionately displace Hispanic tenants, it will do so just before these neighborhoods become some of the City's newest, most desirable places to live. The City should be studying the segregative effects of the loss of such rent-controlled units, not accelerating their redevelopment.

After decades of targeted and intentional disinvestment of communities of color followed by a concerted effort to gentrify the same neighborhoods through redevelopment, the City has an obligation to invest in preserving and improving the affordable units that still exist in these

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[24] Displaced tenants typically cannot access affordable units constructed off-site because tenants in rent-controlled apartments are displaced prior to their building's demolition, but fees for off-site affordable housing development are not collected until the certificate of occupancy is issued.
[25] *Id.* at 15.
[26] City of San José, Housing Element II-9 (2015).
[27] *Id.* at II-9.
[28] *See* Attachment A to Memorandum from San José Housing Department to City Council RE: Item 4.2 – Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance) (Mar. 15, 2018), https://sanjose.legistar.com/View.ashx?M=F&ID=6190894&GUID=12094E01-AB81-4478-B7BD-7759773FE62B (providing the location of properties up for conversion under the Ellis Act).

[redacted]

neighborhoods. The notion that a policy change that will make it more profitable for developers to flip ARO-covered buildings will somehow lead to a net benefit for low-income renters sometime after the actual occupants of those buildings are displaced is totally backwards. This logic shows a callous disregard for the history of oppression that San José's people of color have suffered due to housing policy and promises to reproduce the existing segregation that such policy created.

4. Conclusion

Reflecting on the long history of discriminatory housing policy in San José and those of our neighbors who have been forced out of their homes following the demolition of their building under the Ellis Act, we urge you to recommend that City Council abstain from further rolling back the Ellis Act Ordinance for the second time within a year. We would be happy to meet with you to discuss this matter further. You can reach me at [redacted]

Sincerely,

[redacted]

Nadia Aziz, Supervising Attorney
Michael Trujillo, Staff Attorney

CC:
San José City Council
Rick Doyle, City Attorney
David Sykes, City Manager

[redacted]

Law Foundation of Silicon Valley

Advancing Justice
Housing | Health | Children & Youth

April 16, 2019

City of San José Housing Department
200 E. Santa Clara St.
San José, CA 95113

RE: Item 4.2 – Ellis Act Ordinance Re-Control Provisions

Dear Director Morales-Ferrand:

We write to strongly urge the Housing Department to recommend no changes to the current Ellis Act Ordinance. The Ellis Act Ordinance (the "Ordinance") was originally passed in April of 2017 as part of a package of protections against displacement for San José tenants and measures to preserve San José's supply of affordable housing, including San José's Apartment Rent Ordinance. These protections were passed as hundreds of tenants were losing their rent-controlled units, including over 670 tenants at the Reserve Apartments, and with broad community support following extended public comment highlighting the need to better preserve San José's stock of affordable housing and prevent the displacement of low-income tenants.

Despite this need, the Ellis Act Ordinance was rolled back just last year to allow developers to recontrol fewer of the affordable units they demolish and to seek exemption from the recontrol requirement altogether under certain circumstances. In the midst of an unprecedented housing crisis causing massive dispossession of homes and displacement of people, it would be reckless and pernicious to further weaken this important tool for preserving affordable housing. Furthermore, such an action would likely have a disparate impact on people of color and perpetuate segregation in violation of the federal Fair Housing Act (FHA) and California Fair Housing and Employment Act (FEHA) as the City has utterly failed to evaluate the effect of such a rollback on low-income communities of color.

Efforts to prioritize the production of affordable housing that undoubtedly will lead to the displacement of low-income families of color, including rolling back the Ellis Act Ordinance, ignore the long history of discriminatory housing policy in San José and the vulnerability of the city's existing affordable housing stock. While we agree that we need to develop more affordable housing, such development should not be to the detriment of our low-income communities of color, who disproportionately live in rent-stabilized units. Anecdotal evidence from developers regarding their motivations should not, as a matter of sound and equitable policy making, outweigh tangible community needs especially given the failure to evaluate the effect of the loss of rent-controlled buildings both before and after the passage of the Ellis Act.

The City should instead ask the Housing Department to track how the demolishing of rent-controlled buildings have affected the displacement of low-income families out of San Jose. Why has the City not pushed the Housing Department to find out the fates of the more than 670 tenants displaced from the Reserve Apartments? Such data, rather than anecdotal data from developers, will be telling of the importance and necessity of the Ellis Act to keep low-income families in San Jose.

1. The Failure to Preserve Naturally Occurring Affordable Housing Units Has Driven Displacement and the Affordable Housing Crisis in San José

Recent studies on the scale and scope of displacement in the Bay Area have found that San José residents have been hit particularly hard by displacement and gentrification in the past ten years. The Urban Displacement Project found that every census tract within and surrounding downtown San José has seen or is currently experiencing either ongoing gentrification and displacement or advanced gentrification and displacement.[1]

Efforts to produce new affordable units have not kept up with the community's needs for affordability and created a massive gap in San José's housing supply. The City of San José's General Plan Housing Element found that the City issued permits to build less than 22% of needed low-, very low-, and extremely low-income deed-restricted affordable housing units from 2007 to 2013.[2]

Meanwhile, the need for affordable units is only expected to grow. The City's need for housing units affordable to renters with very low incomes alone is nearly 20% greater, an increase of over 1400 units, for the 2014–2022 planning period.[3] The 2018 Annual Element Plan Update reports that San José is already falling behind in meeting this goal, even while exceeding its needs for market rate housing.[4] As the Housing and Community Development Commission emphasizes in their letter, **the City has presented no evidence that this shortfall in production is linked to incentives under the Ellis Act Ordinance.**

In light of this massive shortfall in the *production* of new affordable units, the failure to *preserve* existing affordable housing has been a key driver of displacement. This failure compounds a long history of racially discriminatory residential policy that has denied fair

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[1] *See Mapping Displacement and Gentrification in the San Francisco Bay Area*, URBAN DISPLACEMENT PROJ. (2018), http://www.urbandisplacement.org/map/sf.
[2] CITY OF SAN JOSÉ, HOUSING ELEMENT VIII-4 (2015).
[3] *Id.* at III-3.
[4] SAN JOSÉ HOUS. DEP'T, ANNUAL ELEMENT PLAN UPDATE 2018, at 6 (2019), http://www.sanjoseca.gov/DocumentCenter/View/83510.

housing choice and made it difficult for people of color to remain stably housed in decent, affordable homes.

Beginning in the 1930's and continuing until 1976, the federal government engaged in a practice known as "redlining," whereby the federal government assigned ratings to neighborhoods to guide public and private investment. As a rule, neighborhoods where people of color lived received the lowest possible investment grade, often merely because people of color lived there.[5] These explicitly discriminatory investment grades precluded private investment in these redlined areas, prevented residents from securing federally-insured loans to buy homes, and all but guaranteed that these neighborhoods would fall into disrepair and dilapidation.

Redlined neighborhoods, because of the economic depression and urban blight that years of *de jure* discrimination and total disinvestment created, were then targeted for redevelopment by the San José Redevelopment Authority (SJRA) in the 1980's, and '90's. Unfortunately, the SJRA's efforts to create "a thriving urban center, offering an amalgamation of cultural, professional, and residential amenities,"[6] displaced many of the people of color that had been forced to settle in these redlined areas.

In a case study of the Diridon Station Area, for example, the U.C. Berkeley Center for Community Innovation found that "development activities, including a significant loss of housing units in the 1980s, may have primed this area for the gentrification it is experiencing today."[7] During this period, the SJRA merged redevelopment revenues generated from neighborhoods across the city to focus development downtown.[8] This strategy allowed the SJRA to carry out massive projects such as the Guadalupe corridor transportation project, a widening of the Guadalupe River channel, and the construction of what is now the SAP Center. Together, these projects directly displaced a significant number of Hispanic households and spurred gentrification that has driven continued home loss.[9]

Indeed, the National Community Reinvestment Coalition found that between 2000 and 2013, census tract 5003 (which covers the Diridon Station Area and the tract of land bordering Guadalupe Creek to the west between Interstate 880 and Park Ave), saw significant displacement of Hispanic residents.[10] Perhaps unsurprisingly, census tract 5003 includes two sizeable

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[5] *Redlining and Gentrification*, URBAN DISPLACEMENT PROJ. (2018), https://www.urbandisplacement.org/redlining.
[6] *Downtown San José*, SAN JOSÉ REDEVELOPMENT ASSOC., http://www.sjredevelopment.org/downtown.htm (last visited April 3, 2019).
[7] U.C. BERKELEY CTR. COMM. INNOVATION, DIRIDON STATION CASE STUDY 8 (2015), http://www.urbandisplacement.org/sites/default/files/san_jose_final.pdf.
[8] *See id.* at 9.
[9] *See id.*
[10] *Shifting Neighborhoods*, NAT'L COMM. REINVESTMENT COALITION (2019), http://maps.ncrc.org/gentrificationreport/index.html?bookmark=Map.

[redacted]

neighborhoods that were redlined by the federal government throughout most of the twentieth century.[11]

By specifically targeting communities of color for disinvestment, redlining created severe poverty in these neighborhoods that has incentivized developers to demolish and replace them with more profitable properties. The economic impact of redlining also has created obstacles for the residents of these ostracized neighborhoods in resisting changes to their community.

The result is that the low-income people of color who were cut-off and denied investment for much of the last century because they were told their very presence made these neighborhoods undesirable are now being pushed out so that their neighborhoods can be redeveloped to be desirable to other, richer, and perhaps newer, residents of San José.

This history demands a renewed emphasis on preserving affordable housing units, like rent-stabilized units, because, unlike production, preservation maintains existing tenancies and conserves the cultural identity of the neighborhoods in which it takes place. Focusing only on production of new units through redevelopment will perpetuate a long history of inequity in housing policy in San José, and all but guarantee that low-income tenants will once again be excluded from the economic growth that City policy seeks to stimulate.

2. The Ellis Act Ordinance Must be Retained in its Current Form in Order to Fulfill its Purpose to Preserve Naturally Occurring Rent-Stabilized Units

In addition to being counter-productive to promoting equitable housing policy, efforts to prioritize the production of affordable housing that inhibit the City's ability to preserve affordable units are also self-defeating. Strong measures to preserve San José's existing affordable housing stock are needed to mitigate economic pressures that have already caused severe displacement in our community. Although not all ARO-covered units remain affordable due the vacancy decontrol requirement of the Costa Hawkins Rental Housing Act, rent-stabilized units remain an important and significant source of naturally-occurring affordable housing. The legislative history of the Ellis Act Ordinance shows that its primary purpose is to preserve rent-controlled units and prevent the displacement of low-income tenants.

City Council initially directed Housing Department staff to formulate the ordinance in May 2016 in order to address concerns about the demolition of affordable apartments covered by San José's Apartment Rent Ordinance (ARO) and displacement of tenants residing in ARO-covered properties.[12] Following extended public outreach, Housing Staff returned in April of 2017 with an ordinance that sought to prevent displacement by requiring landlords who want to remove a building from the rental market to provide to tenants certain notices, relocation services

[11] *See Redlining and Gentrification*, *supra*, note 5.
[12] *See* Synopsis of May 10, 2016 City Council Meeting at 8, San José City Council (2016), http://www.sanjoseca.gov/DocumentCenter/View/56624.

[redacted]

and benefits, and a right to return and/or recontrol of new units under certain circumstances. The ordinance was passed after several hours of public comments, many of which focused on the need to preserve San José's supply of affordable housing units.

Indeed, San José needs its Ellis Act Ordinance to remain as strong as possible in order to preserve its stock of affordable housing. As the Housing Department's memorandum explains, there are many reasons why rent-controlled units never return to the rental market following an Ellis Act conversion, but the most common are that building is replaced with a commercial use or for-sale housing instead of rental housing and that developers fail to return to the building within five years as required under the Ellis Act's recontrol provisions.[13]

Thus, even in jurisdictions that require 100% of new rental units to be recontroled, the demolition of buildings with rent-controlled units under the Ellis Act consistently results in an overall loss of affordable units. San Francisco, for example, requires 100% recontrol, but still suffered a loss of 1,257 affordable units due to Ellis Act conversions alone between 2008 and 2018.[14] San José can count on similar losses to its affordable housing stock, and allowing developers who do not find a way to skirt the Ellis Act Ordinance's recontrol requirement to recontrol fewer units will only make these losses more severe.

Strong measures to preserve San José's affordable housing stock are urgently needed, particularly given that "nearly 14% of the City's deed-restricted housing stock is at risk of conversion within the next ten years."[15] Specifically, the Ellis Act Ordinance's protection for rent-controlled units in buildings with a potential for redevelopment must remain in place because of San José's affordable housing units, over 40% "are owned by profit-motivated companies and are thus at greater risk of conversion in the next ten years."[16]

3. Further Limiting the Recontrol Requirements of the Ellis Act Ordinance Without Studying the Effects Such Policies May Have on Communities of Color Likely Violates the Fair Housing Act and California Fair Housing and Employment Act and the City's Responsibility to Affirmatively Further Fair Housing

Further rolling back the recontrol requirements of the Ellis Act Ordinance would likely have a disparate impact on people of color in violation of the Federal Fair Housing Act[17] and

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[13] *See* Memorandum from San José Housing Department to City Council RE: Item 4.2 – Ellis Act Ordinance Recontrol Provisions, at 5 (Apr. 9, 2019).

[14] S.F. Planning Dep't, Housing Balance Report No. 7, at 10 (2018), http://default.sfplanning.org/publications_reports/20180920_HousingBalance7CPC.pdf.

[15] City of San José, Housing Element VI-6 (2015).

[16] *Id.* at VII-4.

[17] *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

California FEHA,[18] as well as the City's Obligation to Affirmatively Further Fair Housing.[19] As explained above, modifying the Ellis Act Ordinance to allow developers to recontrol fewer of the rent-stabilized units they demolish or more easily seek exemption from the ordinance altogether will cause the loss of affordable units. This loss will have a disparate impact on tenants who are people of color and female heads of households because these residents are the most highly-rent-burdened and frequently-evicted for not being able to afford the rent or for no cause.[20]

While the City absolutely has an ethical obligation to mitigate the impact of displacement by providing alternative housing, it is unlikely that providing housing elsewhere would absolve the City of all liability under the FHA and FEHA if it were to weaken the recontrol provision of the Ellis Act Ordinance. This is because alternative housing must be "truly comparable" to the housing denied, which "is not simply a question of price and model, but also of the factors that determine the desirability of particular locations—factors such as similarly or better performing schools, comparable infrastructure, convenience of public transportation, availability of amenities such as public parks and community athletic facilities, access to grocery or drug stores, as well as equal or lower crime levels."[21]

The Ellis Act Ordinance already provides a compliance option for developers to meet their recontrol obligation through payment of a fee to the City to develop affordable housing offsite.[22] Expanding the offsite compliance option will make it particularly difficult for the City to show that its policy provides for truly comparable housing to displaced tenants because throughout the Bay Area, tenants who are forced to move consistently end up in more highly rent-burdened units.[23]

It is also unlikely that any affordable units actually produced through the off-site options are truly comparable to those demolished because so many of the factors affecting whether the units are truly comparable to those denied rely on the neighborhood in which the units are located. Moreover, those tenants displaced during construction may never be financially able to remain and return to San Jose. Therefore, even under the convenient and misleading fiction that the people whose rent-controlled units are demolished for redevelopment are the people who are

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[18] *See Yazdinian v. Las Virgenes Vill. Cmty. Ass'n*, 2012 U.S. Dist. LEXIS 191221, *14 (C.D. Cal. 2012) ("Plaintiffs must demonstrate that the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole." (citing *Charleston Hous. Auth. v. USDA*, 419 F.3d 729, 740-741 (8th Cir. 2005))).
[19] *See* Cal. Gov't Code § 65583.
[20] Silicon Valley Rising, Cashing in on Renters 1, 2 (Apr. 2017), https://www.siliconvalleyrising.org/files/CashingInOnRenters.pdf.
[21] *Ave. 6E Invs., Ltd. Liab. Co. v. City of Yuma*, 818 F.3d 493, 512 (9th Cir. 2016).
[22] *See*
[23] U.C. Berkeley Urban Displacement Proj. and The Cal. Hous. P'ship, Rising Housing Costs and Re-Segregation in the San Francisco Bay Area 16 (2019), http://www.urbandisplacement.org/sites/default/files/images/bay_area_re-segregation_rising_housing_costs_report_2019.pdf.

[redacted]

actually able to occupy newly-developed units,[24] off-site compliance options still create barriers to fair housing choice. This is especially true in an era of transit-oriented and mixed-use development that add neighborhood amenities and enhance community livability while increasing the number of residential units.

Although renters of all racial backgrounds typically see a rent hike when moving, low-income renters who are people of color frequently end up in highly segregated, high-poverty regions while low-income white renters are able to access more resource-rich areas.[25] Therefore, weakening the Ellis Act Ordinance's recontrol provisions will perpetuate residential segregation in San José, which is already highly divided by race and income.

The City of San José's Housing Element for 2014–2023 observes that "certain race/ethnic groups tend to concentrate in specific parts of the City."[26] Hispanic residents live in higher numbers "on the east side of San José (Central, Alum Rock, and Alviso areas) where traditionally lower income neighborhoods exist, while Asians and Whites are the majority group in the northern, southern, and western parts (Berryessa, Evergreen, Willow Glen, West Valley, Cambrian, and Almaden areas) where traditionally higher income neighborhoods are found."[27]

As explained above, this distribution originated in the explicitly discriminatory and intentionally segregative practice of redlining that existed for much of the twentieth century. Not surprisingly, the majority of aging properties with rent-controlled units that are being considered for Ellis Act conversion are located in these predominately Hispanic, low-income neighborhoods.[28] Thus, redevelopment of these buildings and surrounding neighborhoods will not only disproportionately displace Hispanic tenants, it will do so just before these neighborhoods become some of the City's newest, most desirable places to live. The City should be studying the segregative effects of the loss of such rent-controlled units, not accelerating their redevelopment.

After decades of targeted and intentional disinvestment of communities of color followed by a concerted effort to gentrify the same neighborhoods through redevelopment, the City has an obligation to invest in preserving and improving the affordable units that still exist in these

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[26] City of San José, Housing Element II-9 (2015).
[27] *Id.* at II-9.
[28] *See* Attachment A to Memorandum from San José Housing Department to City Council RE: Item 4.2 – Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance) (Mar. 15, 2018), https://sanjose.legistar.com/View.ashx?M=F&ID=6190894&GUID=12094E01-AB81-4478-B7BD-7759773FE62B (providing the location of properties up for conversion under the Ellis Act).

[redacted]

neighborhoods. The notion that a policy change that will make it more profitable for developers to flip ARO-covered buildings will somehow lead to a net benefit for low-income renters sometime after the actual occupants of those buildings are displaced is totally backwards. This logic shows a callous disregard for the history of oppression that San José's people of color have suffered due to housing policy and promises to reproduce the existing segregation that such policy created.

4. Conclusion

Reflecting on the long history of discriminatory housing policy in San José and those of our neighbors who have been forced out of their homes following the demolition of their building under the Ellis Act, we urge you to recommend that City Council abstain from further rolling back the Ellis Act Ordinance for the second time within a year. We would be happy to meet with you to discuss this matter further. You can reach me at [redacted]

Sincerely,

[redacted]

Nadia Aziz, Supervising Attorney
Michael Trujillo, Staff Attorney

CC:
San José City Council
Rick Doyle, City Attorney
David Sykes, City Manager

[redacted]

From: Jeffrey Buchanan < >
Sent: Tuesday, April 23, 2019 9:56 AM
To: City Clerk; The Office of Mayor Sam Liccardo; District7; Khamis, Johnny; Jimenez, Sergio; Diep, Lan; Peralez, Raul; Jones, Chappie; Carrasco, Magdalena; Davis, Dev; Arenas, Sylvia; Foley, Pam
Cc: Quintero, Andres; Sandoval, Vanessa; Ramos, Christina M; Herbert, Frances; McGarrity, Patrick; Gomez, David
Subject: Item 4.4: Jimenez Memo 4/22 (SUPPORT)

Greetings:

On behalf of Working Partnerships USA, I encourage the Council to support the 4/22 memo from Councilmember Jimenez on item 4.4 (the Ellis Act Ordinance) as the Council gives direction on deferring this item to a later date. The memo adds to the list of additional information requested from staff for when the item comes back to Council within Mayor Liccardo's 4/19 memo. Specifically, the memo encourages staff to bring back information on the San Jose families and seniors who live in homes governed by the Apartment Rental Ordinance which are subject to current recontrol provisions under the Ellis Act Ordinance. These families depend on ARO units as naturally occurring affordable housing and would be put at greater risk of eviction and displacement if changes are made to the ordinance, impacts that will be important for Council to consider as it weighs any policy changes.

In order to have a fuller discussion about the impacts of these policies, it will be important to not only review the surveys with bankers and developers who have inquired about Ellis Act redevelopments but the debate could benefit from a presentation of how this policy may impact access to housing and personal finances of San Jose's communities of color, seniors, families with school-aged children, single parent households, veterans, low-income, disabled tenants, and other vulnerable populations that either depend disproportionately on ARO housing or are at greater risk of experiencing impacts. We believe City staff should be able to do this building on previous work, including the City's 2016 comprehensive report by the Economic Roundtable on the Apartment Rental Ordinance which included extensive data on these topics.

Thank you for your consideration.

Best,
Jeffrey

Jeffrey Buchanan, Director of Public Policy
Working Partnerships USA

GOLDEN STATE MANUFACTURED-HOME OWNERS LEAGUE

GSMOL www.gsmol.org 1 (800) 888-1727 GSMOL Superchapter 0018 - Pepper Tree- and 0018A - Colonial Mobile Manor

April 23, 2019

TO: Mayor and Council

FROM: Glenna Howcroft, President [redacted]

Martha O'Connell, Secretary [redacted]

RE: Ellis Act Ordinance Recontrol Provisions
Council agenda 4-23-19 item 4.4

GSMOL Superchapter 00018/0018A joins with the City's Housing and Community Development Commission, the Law Foundation of Silicon valley, Working Partnerships USA, the Affordable Housing Network, PACT, Debug, and other community leaders who oppose any changes to the current recontrol provisions of the Ellis Act.

We understand that affordable housing is an extensive matrix which is why we support all affordable housing and not just that inherent in mobilehomes.

We also support the 4-22-19 letter submitted by Councilperson Sergio Jimenez.

Nguyen, Viviane

From: Nguyen, Viviane
Sent: Tuesday, August 27, 2019 3:43 PM
To: Nguyen, Viviane
Subject: FW: Upcoming Ellis Act Ordinance Community Meetings

Importance: High

From: Duli Mao
Sent: Tuesday, August 27, 2019 3:31 PM
To: Malloy, Maria <maria.malloy@sanjoseca.gov>
Subject: RE: Upcoming Ellis Act Ordinance Community Meetings

Hi,

I won't be able attend the community meeting. Here is my input:

The 50% seems too high and may hurt both developers and future tenants. Since the rent-regulated units are subsidized by the market-rate units, more rent-regulated unit means higher rent for the market-rate units. Even highly paid engineers are feeling the pressure of high rent cost. The market rate unit rent cannot just keep increasing. Many cities have restrictions on Ellis Act, but I am not aware of any city going to this high percentage requirement. The developers also have the option to build for sale, not for rent. If the percentage required is too high, it may push developers to build for sale.

Thanks.

Duli.

Nguyen, Viviane

From:	Nguyen, Viviane
Sent:	Wednesday, August 28, 2019 12:30 PM
To:	Nguyen, Viviane
Subject:	FW: Upcoming Ellis Act Ordinance Community Meetings

From: David Low
Date: August 28, 2019 at 12:27:43 PM PDT
To: "Morales-Ferrand, Jacky" <jacky.morales-ferrand@sanjoseca.gov>, "VanderVeen, Rachel" <Rachel.VanderVeen@sanjoseca.gov>
Cc: Ray Bramson <ray@destinationhomesv.org>
Subject: Re: Upcoming Ellis Act Ordinance Community Meetings

Hi Jacky & Rachel,

Thanks for sending this reminder and including us in these discussions.

Unfortunately, I have a conflicting meeting tomorrow morning, but I wanted to send along one comment on the Ellis Act recommendations (which had been raised at a previous stakeholder meeting):

We support the provisions that encourage on-site development of deed-restricted units, but we believe that the 3-to-1 credit ratio should be revisited now that we're considering changes to the type of units required by the Inclusionary Ordinance. While the 3-to-1 ratio may be right for VLI (or even LI) units, it doesn't seem like a MOD unit provides nearly the same value. So, I'd recommend looking into having a different replacement credit value depending on the AMI level of the unit.

Thanks in advance for your consideration. If it would be particularly helpful to you all to have a DH rep at tomorrow's meeting to speak to this (or any other issues), I'll ask one of my colleagues to attend on my behalf.

Thx!
DL

David Low
DESTINATION: HOME
Director of Policy and Communications

Ellis Act Conundrum San Jose, 8.12.2019

I've opposed rent control expansion in San Jose since Jacky Morales-Ferrand, Head of the Housing Department began nearly four years ago. San Jose Mercury News, her side-kick, printed roughly twenty letters and op-eds to one in her favor. Prop 10, the statewide rent control was voted down and about that time, SJMN began its campaign on California's housing crisis, flooding its paper.

I was shocked to read SJMN's editorial 8/9/2019 "*Why California's Legislature should kill rent control bill.*" The paper is convinced that*… rent control discourages developers from building new projects.* The state Department of Finance stated: *the number of approved building permits in the first five months of 2019 dropped 12.2% from the same period in 2018.* Multiple and apartment permits were down 42%.

Assemblyman David Chiu's AB1482 has passed the Assembly and is now in the Senate and it appears Governor Newsom will sign anything. It destroys the Costa-Hawkins Act, which protects single family homes and properties built after 1995 from local rent control and the right to seek market rents if a resident leaves voluntarily. New is the rent cap of 7% over inflation, a three year life span (with no guaranty of staying there), just cause evictions, and rent control on **all properties** older than 10 years.

No wonder San Jose's Housing Department has added 16 new full-time employees in the last year and are now at 82. Rental owners pay a business tax of $195 and the latest is $73 for each apartment owned to support them. What do these Housing specialists do? Why isn't the Council interested in finding out? Housing is adding a new wrinkle to the Ellis Act. This act under the Apartment Rental Ordinance (ARO), says basically if you want to take your property out of the rental business, you pay relocation fees up to $15,000 to each of your residents. After that If you want to expand your 4 units into 12 units, you have several choices but the main one is to place 50% (6 units) under ARO control and affordable rents. One of the proposals gives tenants the right to return at the same rent.

Replacing ARO units is understandable, but unbelievable for the City to take advantage while owners' take the financial risk. The City allows builders to pay extra fees to avoid including affordable units; builders add only one and a quarter parking spaces; charge huge permit and impact fees. It's better to buy existing 4 to 10 units for those in need under opposition by NMBYs. Who would go through the time demands and expense of building apartments then place half under the uncertainty of Housing ARO?

AB1482 would give San Jose control of all rental property, even single family homes. San Jose has done away with the one-year lease, replaced it with "forever;" removes resident responsibility for water and PG&E use, two of the fastest rising expenses; removed owners choice of occupancy with two adults per bedroom and any number of children; it caps rents at 5% without considering inflation; created a weighted property inspection tiered fee system that locks properties in forever. Who wants that?

David Eisbach, Owner, Broker, Property Manager