



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** April 20, 2020

Approved

Date

4/20/2020

**SUBJECT: ACTIONS RELATED TO A TEMPORARY MORATORIUM ON RENT INCREASES FOR RENT STABILIZED APARTMENTS AND MOBILEHOMES, SUSPENSION OF LATE FEE CHARGES FOR APARTMENT RENT ORDINANCE PROGRAM FEES, ALLOW LANDLORDS AND TENANTS TO ENTER INTO AGREEMENTS TO REDUCE RENT, AND WAIVER OF BUILDING APPLICATION FEES FOR APARTMENT BUILDINGS WITH 20 OR FEWER UNITS**

## **RECOMMENDATION**

A. Adopt an urgency ordinance that establishes a moratorium on rent increases for tenants residing in rent stabilized apartments and mobilehome owners and mobilehome residents residing in mobilehomes subject to rent control. Specifically, the ordinance would:

1. Invoke the urgency provisions in the City Charter, as an emergency measure for immediate preservation of the public peace, health or safety, to temporarily prohibit the eviction of a tenant for nonpayment of rent, if that tenant meets the criteria listed in the ordinance regarding COVID-19;
2. Prohibit rent increases through December 31, 2020;
3. Apply the moratorium to rent increases that went into effect on or after April 1, 2020;
4. Provide that a landlord and tenant, mobilehome resident, or mobilehome owner can enter into a voluntary short-term agreement, without changing other terms of the rental contract, to temporarily reduce the rent through the term of the Ordinance, or shorter period as agreed-upon by the parties. Upon termination of such agreement, the rent will increase back to the amount in effect as of March 31, 2020.
5. Deny tenant service reduction claims related to temporary closure or elimination of recreational common area amenities to comply with County or State public health orders related to COVID-19;
6. Suspension of late fees for unpaid Apartment Rent Ordinance Program fees;
7. Waive building/repair maintenance permit fees for rental properties with 20 or fewer units.

**Please note: Approval of this urgency ordinance requires 8 or more affirmative votes (2/3)**

- B. Approve an ordinance that establishes a moratorium on rent increases for tenants residing in rent stabilized apartments and mobilehome owners and mobilehome residents residing in mobilehomes subject to rent control. Specifically, the ordinance would:
1. Prohibit rent increases through December 31, 2020;
  2. Apply the moratorium to rent increases that went into effect on or after April 1, 2020;
  3. Provide that a landlord and tenant, mobilehome resident, or mobilehome owner can enter into a voluntary short-term agreement, without changing other terms of the rental contract, to temporarily reduce the rent through the term of the Ordinance, or shorter period as agreed-upon by the parties. Upon termination of such agreement, the rent will increase back to the amount in effect as of March 31, 2020.
  4. Deny tenant service reduction claims related to temporary closure or elimination of recreational common area amenities to comply with County or State public health orders related to COVID-19;
  5. Suspension of late fees for unpaid Apartment Rent Ordinance Program fees;
  6. Waive building/repair maintenance permit fees for rental properties with 20 or fewer units.

### **EXECUTIVE SUMMARY**

The Moratorium on Rent Increases accomplishes several established City goals: (a) stabilizing housing, and (b) decreasing homelessness by helping mitigate a tenant's potentially insurmountable debt obligation after the eviction moratorium is lifted, maintaining the tenant's current rent obligation without a rent increase.

The economic devastation resulting from COVID-19 will continue long after the pandemic itself has ebbed. While federal and state authorities exercise their authority to provide financial aid packages and other short-term protections for those impacted by COVID-19, the City of San José has an ongoing commitment to those in our community who may be falling into the gaps of available aid. The Moratorium on Rent Increases is a measure intended to provide some stability for those individuals and families living in rent stabilized units and mobilehomes across the City, prohibiting rent increases on these units until December 31, 2020.

While several measures have been enacted already, including the City and County Eviction Moratoria, as well as State Executive Order N-37-20, this Moratorium on Rent Increases presents another critical opportunity to protect the most vulnerable in the San José community, easing the financial burden residents will experience at the conclusion of this pandemic. As the economy attempts to mitigate the effects of a high job loss rate, the City of San José must be prepared to enact provisions that protect its residents.

## **OUTCOME**

Approval of the recommended actions will provide housing stability to San José tenants living in rent stabilized apartments and rent controlled mobilehomes experiencing financial hardship due to the COVID-19 virus. According to guidance released from the U.S. Department Housing and Urban Development, on March 9, 2020, housing instability and frequent mobility increase the risk of exposure to infectious disease. Limited access to health care services and poor living conditions further compound this risk. The approval of the Urgency and Companion Ordinance establishing a moratorium on rent increases will mitigate against mounting financial impacts that many residents in the rent stabilized community are facing due to work closures and job loss. This measure provides housing stability during this volatile period of time, reducing the risk of homelessness for residents in rent stabilized apartments and mobilehomes.

## **BACKGROUND**

The World Health Organization, State of California, and Santa Clara County have recognized that COVID-19 virus is a life-threatening pandemic, and have issued public health declarations from January to March 2020. As a result of the public health declarations, including shelter in place and allowing only essential services, residents impacted by COVID-19 have faced financial challenges to afford rent, due to layoffs and unemployment. As a result, the City, County, and State have each enacted Eviction Moratoriums. In addition, the Santa Clara County Courts may not issue a summons on a complaint for unlawful detainer unless it is necessary for public health.

### **A. Public Health Declarations**

In California, the Department of Public Health reports more than 28,963 positive cases and more than 1,072 deaths as of April 18, 2020.<sup>1</sup> Health officials expect these figures to rise dramatically unless the population adheres to shelter-in-place guidelines and appropriate social distancing. The following public health declarations have been issued:

- On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International concern.
- On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.
- On February 10, 2020, the Santa Clara County announced a local health emergency due to the spread of the novel coronavirus.
- On March 11, 2020, the World Health Organization declared the coronavirus outbreak a pandemic.

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<sup>1</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

- On March 16, 2020, the County of Santa Clara issued a shelter in place order directing all individuals to shelter in their place of residence unless they must obtain or perform vital services. All businesses, except essential businesses, are required to cease all activities at facilities located within the County. The order is effective on March 17, 2020 and will remain in place until April 7, 2020.
- On March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all Californians to stay home, subject to certain limited exemptions.
- On March 31, 2020, the County of Santa Clara extended the shelter in place order through May 3, 2020 with stricter stay-at-home rules. The changes include prohibiting residential and commercial construction, closing dog parks and playgrounds, and requires essential businesses enact tighter social-distancing rules for workers and customers.

## **B. Eviction Moratoriums Enacted**

On March 17, 2020, the City Council adopted an Urgency Ordinance and Resolution, setting in place a moratorium on evictions in the City of San José for renters on the basis of nonpayment of rent, when their income has been reduced due to novel coronavirus (COVID-19) pandemic. The Moratorium went into effect March 18, 2020 for a period of 30 days until April 17, 2020. The City Council may extend the Moratorium by Resolution. A copy of the City of San José Urgency Ordinance and Resolution can be viewed [here](#).

On March 24, 2020, Santa Clara County Board of Supervisors passed an Urgency Ordinance establishing a temporary moratorium on “COVID-19 Evictions” countywide, including both incorporated and unincorporated areas. The countywide moratorium for residential and small business commercial rentals began on March 24<sup>th</sup> and is effective through May 31, 2020, unless extended. The Ordinance applies in cities who have passed their own moratoriums, with the condition that the more protective moratorium term will apply. A copy of the Santa Clara County Eviction Moratorium can be viewed [here](#).

On March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, banning the enforcement of evictions by law enforcement or courts for tenants affected by COVID-19 through May 31, 2020. The Executive Order also extends the deadline for such tenants to file a response to an Unlawful Detainer summons in the event an eviction is filed against the tenant. The Executive Order went into effect on March 27<sup>th</sup> and is in place through May 31, 2020. Under the order, tenants must notify their landlords letting them know they are unable to pay their full rent payment due to COVID-19 before their rent is due or within seven days of the rent due date. The tenant is required to retain documentation, but is not required to submit to landlord in advance. The tenant is still obligated to repay the full amount of rent due once the Executive Order expires. A copy of the State Executive Order can be viewed [here](#).

On March 30, 2020, Chief Justice Tani G. Cantil-Sakauye issued an order implementing temporary emergency measures that include suspension of the entry of defaults in unlawful detainer actions and suspension of judicial foreclosure actions. For unlawful detainers, the sunset period is for 90 days after the Governor's State of Emergency is lifted or if Judicial Council repeals its order. During this period, courts cannot issue an eviction summons unless it is necessary to protect public health and safety. Default judgments for failure of defendant to appear may not be entered unless necessary for public health and defendant has not filed a court response in the 5 day or 60-day deadline, per the Governor's Order. Trial dates cannot be scheduled after 60 days after request for trial, and dates set as of April 1<sup>st</sup> must be continued for at least 60 days. [The Chief Justice's Order can be viewed here.](#)

### **C. Upcoming State Legislation**

The California Legislature has also introduced legislation aimed at eviction moratoriums for renters and mobilehome residents: Senate Bill (SB) 915 introduced by Senator Leyva on February 3, 2020 and Assembly Bill (AB) 828 introduced by Assembly Phil Ting on March 20, 2020.

- Assemblymember Phil Ting introduced [AB 828 Moratorium on Evictions and Foreclosures on Residents](#) to help those struggling to make ends meet, imposing a moratorium during local state of emergency and 15 days thereafter on evictions for nonpayment of rent and expiration of a lease and foreclosures on residents. AB 828 defines the moratorium period and provides a framework for repayment of past-due rent through a Court ordered Stipulation. Upon the tenant's request, Courts will convene a hearing to determine whether a tenant's inability to pay the rent resulted from reduced income or increased expenses due to COVID-19 can be demonstrated by the tenant, and the landlord cannot otherwise show good cause, the Court may enter an Order that reduces the rent by 25% for twelve months and provides a repayment plan to pay back the past due rent at a rate of 10% per month. The payment recovery period may go through March 2021. As of April 8, 2020, the Bill was read for a second time with author's amendments and re-referred to the Committee on Public Safety.
- Senator Leyva introduced [SB 915](#) on February 03, 2020 to protect mobilehome residents and mobilehome owners impacted by COVID-19, from evictions. Specifically, the bill would prohibit the management of a mobilehome park from terminating or attempting to terminate the tenancy of a resident impacted by COVID-19 during a declared state or local emergency and for a 120-days after the declared emergency order is lifted. Another protection includes a prohibition on management from issuing a 60-day notice of termination of tenancy during the 120-day timeframe. In addition, the impacted resident shall have 15 days before the resident's rent, utilities, and other park charges are due or seven days following receipt of a 7-day notice to notify the park management in writing of their need to have additional time to pay the rent, utilities and other park charges, or to comply with the 7-day notice due to hardship from the pandemic. The bill also prohibits

management from imposing rent increases or other charges in addition to what is included in the resident's base rent during the time the resident is making payments of the overdue rent or from seeking to enforce the requirements of a 7-day notice served upon the resident. As of April 15, 2020, the bill was read for a second time with the author's amendments and re-referred to the Committee on Housing.

#### **D. Council Actions on Moratorium for Rent Increases**

On [April 14, 2020](#), City Council approved the extension of the Eviction Moratorium until May 31, 2020 and directed the City Attorney to return to Council with a draft Urgency and Companion Ordinance implementing a temporary Moratorium on Rent Increases for rent stabilized apartments and rent controlled mobilehomes. The components of the Moratorium on Rent Increases approved included:

- Prohibiting rent increases through December 31, 2020,
- Applying the moratorium to rent increases that went into effect on April 1, 2020,
- Prohibiting tenant petitions based upon service reduction claims related to closure or elimination of common area amenities resulting from compliance with County or State public health orders related to COVID-19,
- Suspending registration late fees for owners of rent stabilized apartments and rent controlled mobilehome parks through December 31, 2020, and
- Suspending of building permit fees for rental properties with 20 or fewer units.

#### **ANALYSIS**

The COVID-19 virus pandemic has grown exponentially since the first case reported in Santa Clara County on January 31, 2020. The rapid transmission rate of COVID-19 has changed the very nature of how we work, live, and protect ourselves against the spread of this virus. With the increased number of layoffs from service industries across San José and County-wide school closures, the implications of the pandemic are debilitating, restricting many residents' ability to afford the basic and fundamental necessities of life including food, housing, and healthcare. Residents across San José require financial and food assistance at levels straining local, state and federal governments resources, with the rising demands unmet. The widespread nature of the crisis is straining health and food providers, and delays in securing funding for relief programs means residents are putting themselves at risk to gain access to these critical services. At the same time, landlords and mobilehome owners are facing financial insecurity as tenants have not been able to pay rent in April. Looking forward to the coming months, it is unclear how deep and widespread the economic impacts will be on the rental housing market.

The key areas of analysis are:

- Financial impacts on residents and loss of income,
- Mechanisms of a Moratorium on Rent Increases for rent stabilized apartments and mobilehomes, and
- Outstanding City Council action items.

Through phone calls and emails, staff heard the impact of COVID-19 on tenants and landlords from over 570 residents. Tenants have shared stories of their personal hardships as a result of COVID-19, including:

- A mobilhome elderly resident who, on April 1, 2020, received a 90-day notice of rent increase. The rent increase will go into effect July 1, 2020.
- Tenant is currently working through a petition under the Apartment Rent Ordinance, contacted the Program to let the staff know they had received a rent increase.
- Tenant is both a residential and commercial tenant. Her business is not considered an essential service and was required to close during the shelter-in-place order. As a result, she was unable to generate income and may be unable to afford rent and lose her rental. She is also at risk of being unable to pay her commercial space and may potentially lose her inventory.

Landlords and mobilehome owners also shared concerns of their hardship, including:

- Mobilehome park owner who inquired after the requirements of the Eviction Moratorium commented that they were still interested in implementing a rent increase. The park owner stated that not increasing rents on the anniversary of rent increase would push the anniversary date back for everyone in the park, and this would affect their small family business. The mobilehome park owner shared that it was a scary time for small businesses and increasing rents for households who are still employed may offset some of the lost revenue from those households that can no longer pay their rent.
- Landlord and spouse are a retired couple living on a fixed income in San José. The landlord received social security and purchased a duplex property as an investment for their retirement to offset living expenses and relies on the rental income to pay the mortgage of their duplex and home. Both tenants residing in the duplex property notified the landlord that they could not pay April's rent. One tenant was laid off and the other tenant was impacted by reduced hours from their employer. The landlord is in jeopardy of defaulting on their mortgage payment and does not have any means to repay a loan.
- The landlord and spouse are a retired couple who own a four-plex in San José. The landlord relies on the rental income of the property to pay living expenses, as well as property tax, insurance, utilities, and maintenance. The landlords household has an adult disabled daughter and grandchildren who are financially dependent on the landlord.

## **I. FINANCIAL IMPACTS ON RESIDENTS AND LOSS OF INCOME**

The financial impact due to COVID-19 has impacted low-wage households, resulted in an increase of unemployment insurance claims statewide, and notices of termination continue to be submitted by landlords and property managers for non-payment of rent in San José due to COVID-19. Depending on the source of income and immigration status, there will still be a significant gap between when the relief funds will be dispersed to alleviate challenges.

- A. Impact on Low-Wage Households** – Depending on residents’ work status, they face different challenges in accessing financial assistance. The City of San José is home to essentially three different types of workers most significantly impacted by the COVID-19: 1) workers with W-2s; 2) Independent Contractors; and 3) undocumented workers. Financial assistance from the Federal Government often precludes those without a W-2 and the undocumented community from qualifying for assistance. For these workers and their families, the consequences of not working can be devastating. With resources unavailable to these workers, the challenge for local and state governments continues to be finding resolutions and funding streams available to provide for these vulnerable populations. The adoption of a rent increase moratorium will allow time for funding to be received by qualified residents and will provided time for other forms of assistance to be available to the most vulnerable populations.
- B. Impact on Undocumented Immigrants in San José** – The effects of the COVID-19 pandemic are not equitably distributed among the City’s work force. Among the three categories of workers in the City – those with W-2s, independent contractors and undocumented workers – it is undocumented workers who may face additional challenges in recovering from this pandemic. Undocumented workers are ineligible for the Federal CARES Act benefits. While Governor Newsom announced \$125 million relief fund for undocumented immigrants, with up to \$1,000 per family and \$500 per individual, the need for basic provisions may exceed the amount allocated to each household. Coupled with the reality that this community may not have traditional jobs to rejoin the job market after the pandemic ends, the Moratorium on Rent Increases will assist undocumented immigrants by keeping the rent in their units low, easing the pressure of needing to earn additional funds to pay for an increase in rent.
- C. Increase in Unemployment** – The California Employment Development Department (EDD) reports the unemployment rate jumped from 3.9% in February to 5.3% for the end of March, translating to the highest rate increase in almost four decades and nearly 100,000 jobs lost.<sup>2</sup> Preliminary figures project that Santa Clara County, which has a labor force of 1,042,500, experienced unemployment figures at 34,300 by the end of March.<sup>3</sup> According to an April 8 forecast released by the Center for Business and Policy

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<sup>2</sup> <https://www.edd.ca.gov/newsroom/unemployment-april-2020.htm>

<sup>3</sup> <https://www.edd.ca.gov/newsroom/unemployment-april-2020.htm>

Research, the Bay Area could suffer a loss of 835,000 jobs over the next few months.<sup>4</sup> Even after the state begins implementing Governor Newsom's framework for reopening the economy, the process of economic recovery will be gradual and the City of San José must be prepared to protect its residents.

**D. Notices of Terminations Submitted to Housing Department** – Under the City Eviction Moratorium, the landlords and property managers must submit copies of the notices of terminations to the Housing Department. From March 18th to April 16th, there were 586 notices of terminations received. Of the 586 notices, there were 531 or 91% are based on nonpayment of rent. On average, the Housing Department receives over 700 notices a month.

**E. Rent Burden of ARO Renters** – According to the findings of the 2019 Economic Roundtable Study,<sup>5</sup> nearly 53% of ARO renters are rent burdened and paying 30% or more of their income for housing. The findings also show that ARO renters have moderately lower incomes than a non-ARO renters, earning \$5,700 less in median household incomes based on the latest 2017 data available. The rent burdens are a precondition to the COVID-19 crisis.

## **II. MECHANISMS OF MORATORIUM ON RENT INCREASES FOR RENT STABILIZED APARTMENTS AND MOBILEHOMES**

On [April 14, 2020](#), City Council directed the City Attorney to draft an Urgency Ordinance and Companion Ordinance (“Ordinance”) implementing a moratorium on rent increases for rent stabilized apartments and rent controlled mobilehomes.

The purpose of the moratorium on rent increases is to further stabilize housing for ARO tenants and mobilehomes residents in the San José community during the COVID-19 pandemic who are struggling to pay their rent, to prevent avoidable homelessness, and maintain the public health during a public health as well as a homelessness crisis. The temporary moratorium on rent increases will help protect the health, safety, and welfare of San José residents. A summary of the Ordinance provisions is included as **Attachment A**, and summarized below.

**A. Purpose** – The purpose of this Ordinance is to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This Ordinance is immediately necessary for the preservation of the public peace, health or safety. Increasing the rent during a time where many tenants are struggling to pay their rent due to loss of work, business closure, or reduced hours, has the potential for destabilizing the residential rental market by placing tenants who are out of work in greater financial uncertainty to pay their rent and thus risk eviction by their landlords from their residences

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<sup>4</sup> <https://www.mercurynews.com/2020/04/17/coronavirus-economy-unemployment-california-bay-area-jobs-layoff-tech-retail-restaurant-hotel-construction-real-estate-google-apple-facebook/>

<sup>5</sup> <https://economicrt.org/wp-content/uploads/2019/11/ERT-San-Jose-ARO-Update-2019-FINAL.pdf>

once an eviction moratorium ends. It is intended to enable rent-stabilized tenants, mobilehome residents and mobilehome owners in the City to be temporarily exempt from rent increases to reduce the risk that these events will lead to potential homelessness for the rent stabilized housing community, thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on rent increases imposed by this Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

**B. Scope** – This Moratorium on Rent Increases applies to any tenant, mobilehome resident, or mobilehome owner subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San José Municipal Code. This would apply to all tenants living in the 38,000 rent stabilized apartments and residents living in over 10,000 rent controlled Mobilehomes throughout the City of San José.

- ***For Apartments*** – As per the authority granted under the ARO Chapter 17.23.167, the Moratorium on Rent Increases will apply to rent stabilized units. These units include a “rental unit in a Guesthouse or in any multiple dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979 or that was offered or available for rent on or before this date.” Thus, rental buildings consisting of three or more units and constructed prior to September 7, 1979 are covered by the Moratorium on Rent Increases.
- ***For Mobilehomes*** – The City’s Mobilehome Rent Ordinance Chapter 17.22.155 covers spaces for which plumbing, electrical and sewer permits were issued prior to September 7, 1979. Some mobilehome spaces may be exempt from the Ordinance. The Mobilehome Rent Ordinance specifies that a rental unit means a “mobilehome or mobilehome lot, located in a mobilehome park in the City of San José, which is offered or available for Rent.” A mobilehome is defined as “a structure transportable in one or more sections, designed and equipped to contain no more than one dwelling unit, to be used with or without a foundation system.” These mobilehomes and trailer owners and renters would be subject to the Moratorium on Rent Increases.

**C. Length of Protection** – The Moratorium on Rent Increases will be effective upon the Ordinance’s adoption through December 31, 2020. This deadline aligns with the National Emergency Concerning the Novel Coronavirus Disease Outbreak and the Federal government’s protection for individuals under the CARES Act. These protections include an extension of Unemployment Insurance benefits for workers for an additional 13 weeks through December 31, 2020 after state Unemployment Insurance benefits end;<sup>6</sup> a waiver of early withdrawal penalties for qualified individuals affected by the

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<sup>6</sup> <https://taxfoundation.org/cares-act-senate-coronavirus-bill-economic-relief-plan/>

coronavirus who have retirement savings that would typically be inaccessible or subject to penalties, for coronavirus-related distributions made between January 1, 2020 and December 31, 2020;<sup>7</sup> and relief for student borrowers wherein employers may reimburse employees up to \$5,250 in student loan repayment assistance or other education-assistance payments from March 27, 2020 through December 31, 2020.<sup>8</sup> Additionally, the CARES act protections extend to employer-side Social Security payroll tax, delaying payments until January 1, 2021, with 50 percent owed on December 31, 2021 and the other half owed on December 31, 2022.<sup>9</sup>

**D. Moratorium on Rent Increases** – For the duration of this Urgency Ordinance, a Landlord may not increase the rent upon any Rental Unit that is subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San Jose Municipal Code. For tenancies existing on or before March 31, 2020, the monthly rent during the term of this Ordinance shall be the tenancy’s contract rent in effect as of March 31, 2020. Landlords may file a fair return petition with the Housing Department, as permitted under Chapter 17.22 or Part 8 of Chapter 17.23 of the San José Municipal Code. A rent increase resulting from a fair return determination will be allowable under the Moratorium on Rent Increases.

- ***For Apartments*** – Chapter 17.23.310 of the ARO includes a limitation on how much a landlord may be able to raise the rent in any given 12-month period, known as “Annual General Increase.” The Annual General Increase in 17.23.310(B) is limited to “the monthly Rent charged for the previous twelve months for the Rent Stabilized Unit multiplied by 5%.” The Moratorium on Rent Increases will prohibit any landlord of increasing the rent in a rent stabilized unit until after December 31, 2020.
- ***For Mobilehomes*** – The Moratorium on Rent Increases would prohibit mobilehome park owners from increasing rent in their mobilehome parks until after December 31, 2020. The Mobilehome Rent Ordinance Chapter 17.22.450 regulates the Rent Increases allowable without review, known as the “Maximum Annual Standard Percentage Increase” (MASPI) Mobilehome Owners are permitted to bank their rent increases from the previous year, allowing them to combine two years of MASPI. allowed rent increases. The banking opportunity would grant the mobilehome residents a 24-month reprieve to recover and prepare for the banked increase of rent. As a result, mobilehome park owners can provide relief for mobilehome residents and owners struggling to pay their current rent. Mobilehome park owners, whose effective date of the last rent increase was more than 24 months prior to the effective date of the current rent increase, maintain the opportunity to increase rent in the amount equal to the cumulative total of the maximum annual percentage increase for the current year and the previous year, as applied to the then current base rent. This

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<sup>7</sup> <https://www.finra.org/investors/insights/cares-act-2020-retirement-fund-access-and-student-loan-relief>

<sup>8</sup> <https://www.finra.org/investors/insights/cares-act-2020-retirement-fund-access-and-student-loan-relief>

<sup>9</sup> <https://www.finra.org/investors/insights/cares-act-2020-retirement-fund-access-and-student-loan-relief>

Moratorium on Rent Increases also attempts to avoid the costs and disruptions from legal actions arising from non-payment of rent disputes, making residents more likely to pay the increased banked rent increase and decreasing potential unlawful detainers and vacancies.

- F. Voluntary Agreements to Temporary Reduce Rent** – A landlord and tenant, mobilehome resident, or mobilehome owner can enter into a voluntary short-term agreement, without changing other terms of the rental contract, to temporarily reduce the rent through the term of the Ordinance, or shorter period as agreed-upon by the parties. Upon termination of such agreement, the rent will increase back to the amount in effect as of March 31, 2020. Agreements are only enforceable and have effect through the term of the Ordinance.

Some landlords are actively working with their tenants to reduce rents to provide relief during the COVID-19 crisis. In rent stabilized properties, rent increases are limited to the annual general increase and may not be increased beyond this amount. The temporary rent reduction provision will allow landlords to temporarily reduce rent through the term of the Ordinance, and afterwards they can return rents to the amounts charged under their underlying rental contract. There may be cases when returning the rent to the prior rate will exceed a 5% increase; this will be allowable during the term of the Moratorium on Rent Increases in order to encourage landlords to reduce the rent during the period of the moratorium. The restoration to pre-COVID-19 rents may result in destabilization to tenants; however, this provision will encourage landlords to reduce rents to keep residents housed during the most difficult months of the COVID-19 crisis.

- G. Prohibit Filings of ARO Tenant Petitions based on Service Reduction** – This Ordinance also includes a provision that precludes service reduction claims for based upon closure or elimination of recreational common area amenities resulting from County or State public health orders related to COVID-19 pandemic. Petitions for service reductions related to health and safety concerns, and those impacting the rental unit specifically, will continue to be accepted during the Moratorium on Rent Increases.
- H. Suspension of Late Fees for Rent Stabilization Program Fees** – Any outstanding late fees for owners of rent stabilized apartments under the Apartment Rent Ordinance are suspended through December 31, 2020. As of April 16, there is currently a minor portion of rent stabilized owners with outstanding late fees. Late fees will not accrue during the term of this Ordinance for failure to pay program fees due in fiscal year 2019-2020, as required under Chapter 17.22 of the San José Municipal Code. Any late fees accruing up to this point are still owed by the Landlord, but they will not accrue any additional late fees during the term of the Ordinance. The Housing Department will work with the Finance Department to notify the landlords and park owners that charging any additional late fees is suspended until December 31, 2020.

- I. Waiver of Building Permit Application Fees for Rental Properties with 20 or Fewer units** – The waiver for building permit application fees will apply to repairs or maintenance of apartments that would require a permit. The waiver will be applied to the application fees for building permits including plumbing, electrical and mechanical permits. For example, if a water heater needed to be replaced, a building permit would be required – and the application fee for that building permit = would be waived. However, it would not include waivers on construction taxes, nor waivers of any State or school fees (which are outside of the City’s authority to waive). There are approximately 27,000 rent stabilized apartments with 20 units or less throughout the City. Without knowing what types or the scale of repairs or maintenance is needed for these units, it is difficult to project the number of waivers that will be issued under this provision.
- J. Affirmative Defense for Eviction if Rents Are Increased** – Non-compliance with any applicable component of this Ordinance may be an affirmative defense for a tenant against any unlawful detainer action for nonpayment of rent filed under California Code of Civil Procedure section 1161(2) or California Civil Code Section 798.56(e), as amended.

Therefore, a tenant may use this Ordinance as a defense if a landlord increases rent during this Moratorium a tenant does not pay it, and a landlord tries to evict them for not paying the increased amount.an unlawful detainer action to challenge.

### **III. OUTSTANDING COUNCIL ACTION ITEMS**

On April 14, 2020, the Council approved extending the Moratorium to May 31, 2020 on evictions for those financially-impacted by COVID-19 and directed the City Attorney to make additional amendments to the Eviction Moratorium Ordinance. The following amendments will be included in the Ordinance brought on May 5, 2020, subject to the City Attorney’s review:

- Extending the time for the tenant to notify their landlord of their status as an affected tenant to seven days after the notice of termination is served;
- Prohibiting landlord retaliation and harassment of tenants;
- Prohibiting eviction of tenants who have been infected or are suffering from COVID-19 under the pretext of a good cause reason to terminate the tenancy;
- Prohibiting serving notices upon tenants that a landlord knows or has reason to know is currently impacted by COVID-19.
- Allowing Affected Tenants to repay the past due rent accruing during the moratorium by December 31, 2020.

Additionally, the City Council directed Staff to craft a template affidavit that tenants can submit in cases where tenants are unable to provide any other verifiable evidence of their COVID-19-related impacts, as is often the case with undocumented individuals working in the informal economy.

Finally, the City Council directed staff to “consider a Council led task force to initiate a convening of stakeholders representing landlords and tenants to explore alternative solutions to address the needs of our rental community impacted by COVID-19.” Following the City Council discussion, staff is moving forward with the actions below:

- **Stakeholder Workshop** – Housing Department staff is partnering with the City Manager’s Office of Innovation to host an online facilitated brainstorming session the week of May 20 with tenant and landlord representatives. The goal of the workshop will be to develop a list of actions that may be taken to address both the needs of landlords and tenants in the wake of COVID-19 crisis.
- **Silicon Valley at Home Facilitated Discussion** – Silicon Valley at Home will host two workshops facilitating a discussion with thought leaders in the housing industry to brainstorm about the challenges facing landlords, homeowners, and tenants. The goal of these sessions will be to identify additional local, State, and federal responses to the COVID-19 crisis.

After further evaluation, staff determined that meaningful brainstorming input can be secured from the two methods above; results will be shared with the City Council and public. Providing support to a City Council led task force would require significant additional staff resources that are not available at this time because staff is assigned to Emergency Operation Center duties. If City Councilmembers wish to hold a task force in addition to current brainstorming efforts, supplemental staffing resources will need to be identified and Brown Act procedures and administrative support for a Council-lead task force would need to be considered.

## **CONCLUSION**

Approving an Ordinance implementing a moratorium on rent increases will continue to provide stabilized housing and create security for those who may face financial hardship as the spread of the pandemic slows and stay at home orders and work closure measures are relaxed so that the economy can begin to recover and individuals can get back to work and in many cases that means finding new employment. Taking proactive measures now will ensure that those most vulnerable in our community, who will be facing the challenges inherent with a recovering job market, can focus on providing for themselves and their families, and not be shouldered with a rent increase when they are already challenged to pay their rent in a rent-burdened rental market. Prohibiting a rent increase prevents exacerbating an already tenuous financial situation for those living in rent stabilized units and mobilehomes, sustaining the rent at a level that the tenants had been able to pay prior to the spread of the virus. This measure also strengthens the City’s commitment to prioritize the health and welfare of its residents.

The uncertainty of where and how long it will take to secure assistance has left many residents at much greater risk of not being able to catch up to pay their bills, thereby increasing their risk of eventual eviction, destabilizing their families, and potentially leading to homelessness.

Approving the moratorium on rent increases is a temporary measure to help stabilize housing for tenants living in rent stabilized apartments and mobilehome residents in rent controlled mobilehomes impacted by COVID-19 in the San José community. By enacting measures to help stabilize housing for residents, the City upholds the purpose of the Apartment Rent Ordinance and Mobilehome Rent Ordinance, and also strengthens its commitment to decrease homelessness. Further, this measure will be in step with other protections at both the state and local level in response to this health and housing crisis to protect the health, safety, and welfare of its citizens.

### **EVALUATION AND FOLLOW-UP**

The City Manager will track the effectiveness of the Moratorium on the Rent Increase, and the continued impact of COVID-19 on the San José community over the coming weeks.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo aligns with one or more of Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

Stakeholder meetings were held on April 17, 2020 with landlord and tenant representatives. The following is a summary of perspectives shared at the stakeholder meetings in **Table 1** below:

***Table 1 – Summary of Perspectives from Stakeholder Meetings with Landlord and Tenant Representatives***

	<b>Landlord Representatives</b>	<b>Tenant Representatives</b>
<b>Scope</b>	Limit rent increase freeze to tenants impacted by COVID-19, similar to the Eviction Moratorium	Clarify differences between “Eviction Moratorium” and “Moratorium on Rent Increases” for tenants during public information and education outreach
<b>Moratorium on Rent Increases</b>	Replace “suspended” instead of “void”, as the “the rent increase may not be collected during the term of the rent freeze”	Clarify “void” is of rent increases and mechanism of how rent increases paid in April would be affected
<b>Prohibit Filings of ARO Tenant Petitions based on Service Reduction</b>	Prohibit a tenant from filing a service reduction if tenant refuses entry for maintenance or landlord to enter to make repairs	Request for the City of San José to develop a list of essential amenities (e.g. laundry room) versus non-essential (e.g. pool) to comply with public health orders. In addition, the one service reduction that cannot be allowed is the laundry room.
<b>Suspension of Late Fees for Rent Stabilization Program Fees</b>	Include late fees for 2020-2021, which will be billed later this year. The fees for 2019-2020 have already been paid for most landlords.	Comments were not provided on this provision
<b>Suspension of Building Permit Fees for Rental Properties with 20 or Fewer units</b>	Apply to all units. Just as how the Moratorium on Rent Increases applies to all ARO units, the suspension of permit fees should apply to all units. All tenants will have the same need for repairs regardless of what building they live in. Also, gives incentive to landlords in larger buildings to give rent concessions.	Maintain suspension for 20 or less to protect mom and pops owners

<b>Affirmative Defense for Eviction if Rents are Increased</b>	Clarify that tenants can use this as a defense only if they refuse to pay the rent increase that a landlord illegally gave. There will likely be some landlord who mistakenly gives a rent increase because they are confused about the timeline of eviction moratorium versus. rent freeze, or they are just uninformed.	Include a requirement for landlords and mobilehome owners to inform tenants and residents of their rights using a Housing Department approved notice regarding protections under Moratorium on Rent Freeze
Other Alternative Solutions	Allow landlords and tenant to come to a mutual agreement on rent concessions or other means of rent reductions, including banking	Make an amendment where rents may return to original rate after one year of Eviction Moratorium expires on May 31, 2020 or on the latest Shelter In Place Order issued by the County of Santa Clara, whichever is longer

### **COORDINATION**

Preparation of this report has been coordinated with the City Attorney's Office, City Manager's Budget Office, and Planning, Building, and Code Enforcement.

### **COMMISSION RECOMMENDATION**

This Housing and Community Development Commission meetings have been cancelled due to the COVID-19 pandemic.

### **FISCAL/POLICY ALIGNMENT**

This action is consistent with the City's Consolidated Plan 2015-2020, adopted by City Council on May 5, 2015, to provide homes for very low- and extremely low-income households, and with Goal H-2 of the City's Housing Element 2014-2023, adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

HONORABLE MAYOR AND CITY COUNCIL

April 20, 2020

**Subject: Actions Related to a Temporary Moratorium on Rent Increases for Rent Stabilized Apartments and Mobilehomes**

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### **COST IMPLICATION**

The Building Development Fee Program is a full cost-recovery program. As a result, the review and inspection work associated with the waived building permit and inspection fees for apartment buildings with 20 or fewer units will be charged to the COVID-19 Emergency Response appropriation within the Emergency Reserve Fund. As the level of activity related to this waiver is currently unknown, the Administration will continue to monitor the number and cost of waived permits and recommend future adjustments as necessary.

The suspension of late fees through December 31, 2020 is expected to have a modest impact and will be absorbed within the Rental Stabilization Program Fund.

### **CEQA**

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

/s/

JACKY MORALES-FERRAND  
Director, Housing Department

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

### **ATTACHMENT:**

Attachment A – Summary of the Provisions in the Moratorium on Rent Increases



## Moratorium on Rent Increases for Rent Stabilized Apartments & Rent Controlled Mobilehomes

### Summary of Provisions

On [April 14, 2020](#), directed staff to return to Council to discuss enacting an Urgency and Companion Ordinance for a Moratorium on Rent Increases for rent stabilized apartments and rent controlled mobilehomes, including:

Components	Summary of Provisions
<b>A) Purpose</b>	<ul style="list-style-type: none"> <li>Promote housing stability during COVID-19 pandemic &amp; prevent homelessness</li> </ul>
<b>B) Scope</b>	<ul style="list-style-type: none"> <li>Applies to any ARO tenant, mobilehome resident, or mobilehome owner</li> </ul>
<b>C) Length of Protection</b>	<ul style="list-style-type: none"> <li>Effective date is 4/21/20 through 12/31/2020</li> </ul>
<b>D) Moratorium on Rent Increases</b>	<ul style="list-style-type: none"> <li>Prohibits ARO landlord or mobilehome park owner from increasing rent for rent stabilized apartments or rent controlled mobilehomes</li> <li>Allows ARO landlord or mobilehome park owner to file a fair return petition. A rent increase resulting from a fair return determination will be allowable under the Moratorium on Rent Increases.</li> </ul>
<b>E) Allowable Rents</b>	<ul style="list-style-type: none"> <li>For tenancies existing on or before 3/31/2020, the monthly rent during the term of this Ordinance will be the tenancy's contract rent in effect as of 5/31/2020</li> <li>For any rents that were increased on 4/1/2020, future rents will return to the rent charged on March 31, 2020</li> </ul>
<b>F) Allowance of Temporary Rent Reductions</b>	<ul style="list-style-type: none"> <li>Landlords and tenants may enter into an agreement to temporarily reduce rent</li> <li>When ordinance expires, rent may be returned to the prior rental rate without limitation to the annual general increase</li> </ul>
<b>G) Prohibit Filings of ARO Tenant Petitions based on Service Reduction</b>	<ul style="list-style-type: none"> <li>Precludes service reduction claims for based upon closure or elimination of recreational common area amenities resulting from County or State public health orders related to COVID-19 pandemic</li> <li>Allows petitions for service reductions related to health and safety concerns and reductions in a tenant's apartment.</li> </ul>
<b>H) Suspension of Late Fees for Rent Stabilization Program Fees</b>	<ul style="list-style-type: none"> <li>Late fees on outstanding Rent Stabilization Program fees will not accrue during the term of this Moratorium for failure to pay registration fees due in fiscal year 2019-2020</li> </ul>
<b>I) Waiver of Building Permit Application Fees for Rental Properties with 20 or Fewer units</b>	<ul style="list-style-type: none"> <li>Waiver of building permit application fees for repairs on buildings covered by the Apartment Rent Ordinance with 20 units or less</li> <li>Applies to building permit application fees for repairs such as plumbing, mechanical or electrical</li> </ul>
<b>J) Affirmative Defense for Eviction if Rents are Increased</b>	<ul style="list-style-type: none"> <li>If a landlord increases rent during the Moratorium, a tenant may use the moratorium as a defense to an eviction for nonpayment of rent</li> </ul>