



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 24, 2020

Approved

Date

4/27/20

SUPPLEMENTAL

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 FEES FOR APARTMENT BUILDINGS WITH 20 OR FEWER UNITS

REASON FOR SUPPLEMENTAL

This supplemental memorandum includes an updated analysis on the City of San José Moratorium on Rent Increases as it pertains to apartments and mobilehomes. The updated review contains clarifying changes to the Ordinance and includes policy alternatives regarding the impact the Moratorium on Rent Increases will have on the mobilehome community.

BACKGROUND

The COVID-19 pandemic has dramatically altered the normal work functions across the City of San José. City staff have responded to the shifting landscape and challenges presented by the pandemic. Maintaining public and stakeholder engagement remains a priority, and as such, the one-week deferral of the City Council hearing for the Moratorium on Rent Increases provided an opportunity for staff to work with stakeholders on clarifying language for the proposed ordinances. The following changes to the Ordinance reflect more robust considerations after meetings with stakeholders.

ANALYSIS

I. ADDITIONAL AMENDMENTS REGARDING IMPACT OF MORATORIUM ON RENT INCREASES

The following list incorporates staff changes as well as stakeholder feedback gathered after several meetings and letters submitted to the Housing Department and City Council from April 14 to April 24. The following summary of amendments reflects clarifying language changes to the proposed Ordinance. Staff incorporated the feedback from stakeholders in the Ordinance's provisions below underlined in italics, along with an explanation for the amendments.

Amendment #1: Impact on Notices for Rent Increases and Lease Renewals given prior to the Effective Date of the Ordinance

***Section 6.A:** “During the term of this Ordinance, a Landlord may not take any action to 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.”*

***Section 6.B:** “Any pending increase in rent pursuant to a lawfully-served notice or fully executed lease renewal agreement, consistent with the requirements of Chapter 17.22 or Chapter 17.23 of the San Jose Municipal Code and occurring prior to adoption of this Ordinance, shall hereby be without effect through December 31, 2020.”*

Staff received concerns from apartment property managers and owners who have issued rent increases in April to be effective in May, and are unclear about how to proceed next if the Moratorium on Rent Increases is approved. Tenants also expressed concerns that there was also confusion about whether to pay the rent increases.

Staff clarified that any pending increases will not be effective until after Moratorium expires. Therefore, if a tenant, mobilehome resident, or mobilehome owner received a notice of a rent increase for a future date during for the duration this Ordinance (May through December 31, 2020), the rent increase has no effect on the tenant's rent during the moratorium. Additionally, the addition of “a landlord may not take any action to increase rent” means notices for rent increases are prohibited during the Moratorium.

Amendment #2: Effect of the Rent Rollback Provision on April Rent and Future Rent Due

***Section 6.C:** “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. The March 31, 2020 rental rate will only apply to future rent due and owing.”*

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Staff received feedback from apartment landlords and property owners that there needed to be clarification on the rollback provisions to have guidance to negotiate with tenants on rent reductions. Tenants supported the opportunity for rent rollbacks during the time period they are most financially impacted by COVID-19.

Staff clarified that under the rollback provision the future rent owed from May until December 2020 during the Moratorium is the rent that existing tenants were paying on March 31, 2020. The rent rollback does not affect what a tenant paid in April 2020. For example, if a tenant paid \$2,000 in March and received a 5% rent increase (\$100) on April 1, 2020, their April rent would have been \$2,100 and, due to this Moratorium, their May rent returns to \$2,000. On January 1, 2021, rent increases that were noticed previously may go into effect. In the previous example, the rent would return to \$2,100.

Amendment #3: Incentive to Reduce Rents

Section 7: “Notwithstanding the provisions under Chapter 17.22 and Chapter 17.23 of the San Jose Municipal Code, a Tenant, Mobilehome Owner, or Mobilehome Resident may enter into a temporary voluntary agreement with their Landlord to decrease the rent, so long as it does not otherwise change the terms of their tenancy. Upon expiration of the Ordinance or the agreement executed under this part, whichever occurs first, the amount of rent due will be the tenancy’s rent prior to execution of this agreement. ~~as of March 31, 2020 or the initial rent for tenancies commencing after such date.~~ Any agreements entered into pursuant to this section will be without legal force or effect upon expiration of this Ordinance.”

This section explains that agreements to lower the rent under this section do not prohibit landlords from increasing rent back to their original contract rent when the agreement ends, or the ordinance expires. For example in **Table 1**, if a landlord in a rent stabilized apartment agreed in writing to reduce their \$2,000 rent to \$1,500 during this Moratorium, the rent would be restored back to \$2,000 when the Moratorium expires or the agreement ends, whichever is sooner. The rent increase from \$1,500 to \$2,000 will be allowable (although it exceeds 5%) to create an incentive to landlords to reduce rents during the pandemic.

A landlord interested in increasing rent after the Moratorium is lifted must comply with the Apartment Rent Ordinance Chapter 17.23.310(B) which provides that the Annual General Increase is “the monthly rent charged for the previous twelve months” for the rent stabilized apartment multiplied by 5%. Continuing with the example from above, a landlord increasing rent in 2021, would combine a 5% increase on the combined average of the rental amounts charged for the previous twelve months in **Table 1**:

Table 1: Example of Landlord Interested in Increasing Rent after Moratorium is Lifted in December 2020

Base Rent July 2020	Total Rent July – Dec 2020 (6 Months)	Total Rent Jan – June 2021 (6 Months)	Total Rent Paid July 2020 – June 2021 (12 Months)	Average Rent Paid (12 Months)	5% of Average Paid Rent
\$1,500	\$1,500 x 6 = \$9,000	\$2,000 x 6 = \$12,000	\$9,000 + \$12,000 = \$21,000	\$21,000 / 12 = \$1,750	5% x \$1,750 = \$87.50

Therefore, to be in compliance with the Apartment Rent Ordinance, the landlord in **Table 1** may increase rent by a maximum of \$87.50 at the at the next increase. The calculation may be confusing to both tenants and landlords; however, that is the established method for calculating rent increases under the Apartment Rent Ordinance. After the moratorium expires, rent increases next year will be subject to those requirements. In order to allow the landlord to take the full rent increase on the previous base rent, the City Council could direct the City Attorney to draft, a subsequent uncoded temporary ordinance that would take effect next year to address rent increases following expiration of this moratorium.

Amendment #4: Applying Affirmative Defense in Nonpayment of Rent Eviction Cases when Violation of the Ordinance

Section 10.A: *“Affirmative Defense. Non-compliance with any applicable component of this Ordinance shall constitute an affirmative defense ~~for an Affected Tenant against in~~ any unlawful detainer action based upon nonpayment of rent. under California Code of Civil Procedure section 1161(2) or California Civil Code Section 798.56(e), as amended.”*

Section 10.B.(1): *“Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of ~~Affected Tenant(s)~~ Tenants, Mobilehome Owners, or Mobilehome Residents initiated by themselves or by the City ~~or the Affected Tenant Household~~ for actual and exemplary damages.”*

This amendment clarifies the affirmative defense available to tenants in any unlawful detainer action is based upon nonpayment of rent. For example, if a landlord improperly served a rent increase effective May 1, 2020 during the moratorium, and a tenant withheld only the increased amount for which the landlord began eviction proceedings, this Ordinance section provides protections to the tenant for nonpayment of the increased rent amount.

II. ADDITIONAL CONSIDERATIONS FOR APARTMENTS

Additional suggestions were offered by stakeholders and reviewed by staff. After careful consideration, staff has determined that the above modifications and clarifications in the Ordinance address the primary issues surrounding rent increases. One suggested modifications included waiving the late fees that could be charged for unpaid or late paid Apartment Rent Stabilization program fees for fiscal year 2020-2021. This action is not recommended at this time because waiving late fees could invariably result in landlords choosing not to pay the program fee and would incentivize landlords to delay payment.

Historically, the City has experienced a high collection rate for the fees charged to landlords conducting their business in San José. Waiver of late fees may not be as financially impactful for the typical landlord who has paid their fees on time. Instead, Housing Department staff proposes exploring an option by which a landlord who can demonstrate entering into agreements that decreased the rent for tenants impacted by the COVID-19 pandemic, benefit from either a) 90-day deferment of Rent Stabilization Program fees or, b) waiver of late fees.

These options incentivize participation from landlords who are already eager to work with their tenants impacted by the pandemic, and increases the likelihood a tenant will maintain their housing. Additionally, staff will evaluate the proposed fee levels for the 2020-2021 fiscal year to determine if savings from the current fiscal year may provide one-time relief in the fee amounts based on the cost-recovery model. A fully detailed proposal outlining the cost-recovery analysis and potential percentage reduction in program fees requires further review from the City Manager's Office Budget Office and will be included in the proposed 2020-2021 Fees and Charges Resolution.

III. MOBILEHOME CONSIDERATIONS, INCLUDING BANKING

The City of San José contains 59 mobilehome parks that contain over 10,000 individual spaces equipped to maintain water, electricity and a standalone structure that can be built with or without a foundation. A mobilehome is typically a more affordable housing option, and mobilehome residents and mobilehome owners are the investment holders of the physical building but pay rent on the land on which the mobilehome is built.

The State Department of Housing and Community Development, together with the State Mobilehome Residency Law (MRL) regulate several critical aspects of the mobilehome community living such as the authorized reasons for ending a mobilehome resident's tenancy, and a landlord's notice requirements prior to a rent increase. The Mobilehome Rent Ordinance regulates rent increases. As such, there are different aspects to consider when constructing a legislative action for mobilehomes, as compared to action related to apartments.

For example, the Mobilehome Residency Law Section 798.30 provides, "the management shall give a homeowner written notice of any increase in his or her rent at least 90 days before the date

of the increase.” Further, section 798.31 regulates the charges on a monthly bill, stating that a mobilehome resident or mobilehome owner shall not be charged a fee for “other than rent, utilities, and incidental reasonable charges for services actually rendered.”

The Mobilehome Rent Ordinance Section 17.22.450 sets forth the allowable rent increases for mobilehomes. Rent increases are permitted if they do not exceed the Maximum Annual Percentage I (MAPI) increase which is determined yearly based upon a percentage of the Consumer Price Index. However, subsection (B) permits a landlord to increase rent using the cumulative percentages of the current and previous year’s maximum allowable percentage increase, also known as banking. Consequently, for landlords prohibited from increasing rent during 2020, it is likely they will exercise the banking option in 2021. The projected impact of banking on a mobilehome resident or a mobilehome owner is considered in an example in **Table 2**:

Table 2: Example of Projected Banking Impact for Mobilehomes

Monthly Space Rent in 2020	3.01% Rent Increase (MAPI until Sept 30, 2020)	3.01% + Banking of Projected MAPI of 3% in 2021	New Projected Monthly Space Rent in 2021
\$900	+\$27.09	+\$54.09	\$900 + \$54.09 = \$954.09
\$1,200	+\$36.12	+\$72.12	\$1,200 + \$ 72.12 = \$1,272.12
\$1,500	+\$45.15	+\$90.15	\$1,500 + \$90.15 = \$1,590.15

The City of San José’s mobilehome community includes low-income families and seniors on a fixed income. The effect of a rent increase on these vulnerable populations may be challenging under normal circumstances, but more so during a pandemic.

In the example in **Table 2**, for those struggling to pay rent now due to job loss or a reduction of hours, receiving even a 3.01% rent increase will further reduce a resident’s solvency. Accordingly, a banked increase of \$54, \$72 or \$90 increase in one year can be devastating for a low-income or elderly resident on a fixed income.

POLICY ALTERNATIVES

ALTERNATIVE 1: Direct Staff to Explore Prohibiting Banking for the Year – January 2021 through December 2021 and return in the fall with recommendations.

Pros: This approach prevents mobilehome residents and mobilehome owners from receiving a rent increase for 12 months following the expiration of the Moratorium. Instead, rent would likely increase in 2022 on the anniversary date. Landlords retain their right to petition the Housing Department for a fair return.

Cons: If banking were prohibited for a year, then Landlords may be inclined to submit petitions seeking a fair return. If a landlord is granted a rent increase based upon a fair return, this could be a larger increase than what is allowed through banking.

Reason for Recommending: This proposal has the greatest opportunity to protect mobilehome residents and mobilehome owners. To move forward with this proposal, staff seeks City Council direction to further explore this policy direction and to return to Council in the fall with recommendations and direction to draft a proposed Ordinance. By late fall, enough data should be available in order to make a fully informed, comprehensive decision to assist the most vulnerable in the mobilehome community from facing the financial challenge of a potential 6.01% increase next year. This window of time will permit staff to understand the rent increase trends and better gauge the effectiveness of a potential Moratorium on Banking for one year.

Reason for Not Recommending: While mobilehome park owners will not be able to seek a rent increase that includes the year 2020-2021, they retain the right to seek a fair return.

ALTERNATIVE 2: Noticing residents of a rent increase and billing, but not collecting, the rent increase

Pros: Under this proposal, a resident's monthly bill would reflect the noticed rent increase, but not be collected. A credit would appear on the monthly bill itself for the span of the Moratorium on Rent Increases. On January 1, 2020, the rent increase credit would be removed, and the rent increase would go into effect.

Cons: The major concern with this proposal includes the challenge that a mobilehome resident or mobilehome owner will essentially receive two rent increases in the space of a 12-month period.

Reason for Recommending: This proposal would preserve the mobilehome park's anniversary date.

Reason for Not Recommending: This alternative is inconsistent with the Mobilehome Rent Ordinance and increases tenant instability which is inconsistent with the purpose of the Ordinance and the moratorium.

According to the Mobilehome Rent Ordinance, a rent increase is effective when collected. Chapter 17.22.250 defines "rent increase" as "any rent demanded of or paid for by a mobilehome owner or mobilehome tenant in excess of rent paid for the rental unit immediately prior to such demand or payment." Therefore a properly noticed resident with a rent increase that was deferred until January 1, 2020, will begin to pay the increased rent amount in January and may subsequently receive another rent increase months later.

ALTERNATIVE 3: Exclude Mobilehomes from Moratorium on Rent Increases

Pros: This approach decreases the likelihood that mobilehome residents and mobilehome owners receive a "Maximum Annual Increase" next year that combines two years' worth of allowable increase percentages. Instead, rent would likely increase this year on the anniversary date to the maximum allowed, 3.01%. Next year it would be increased again based upon whatever the allowable maximum percentage next year.

Cons: Exclusion of mobilehomes from the Moratorium would expose mobilehome residents and mobilehome owners to a 3.01% rent increase during this pandemic for those mobilehome parks that have upcoming anniversary dates, when many San José residents are facing financial challenges. 22 mobilehome parks have rent increases on the horizon until September 30, 2020. On October 1, 2020, CPI may increase the allowable rent increase between 3-7% as according to Chapter 17.22.155.

Reason for Recommending: The anniversary dates for mobilehomes parks is a significant component for mobilehome park owners. In addition, rent increases for mobilehomes require at least a 90-day notice.

Reason for Not Recommending: San José residents are experiencing housing affordability challenges across a wide range of incomes. Nearly all of the City's parks

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are home to low-income and senior residents. Increasing the rent right now may have the negative consequence of increasing a resident's debt obligation after the crisis is over. The Mobilehome Rent Ordinance has, since 1987, allowed for the combination of the current rent and previous year's rent if the last effective rent increase date was more than 24 months prior. Ultimately, City Council 3.01% increase at this time is a better than the alternative of landlords possibly doubling the rent increase once 24 months have passed since the last effective rent increase.

The City Attorney's Office and Housing staff will be prepared to update City Council with critical updates to the Eviction Moratorium in time for the May 12, 2020 session. Due to the deferral of this item to the April 28, 2020 City Council meeting, staff has not had capacity to begin development of this important legislation.

CONCLUSION

The City Council faces unprecedented challenges during this COVID-19 pandemic, forced to make urgent decisions that attempt to balance the needs of both tenants and landlords. These amendments and policy alternatives reflect thoughtful comments from stakeholders invested in developing solutions for both tenants and landlords. The Moratorium on Rent Increases promotes the overall goal of the Moratorium which is to stabilize tenants so that they can maintain their housing and preserve public health while preserving base rents and a fair return for landlords.

/s/

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