



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** May 11, 2020

Approved

Date

5/15/2020

**SUBJECT: AMENDMENT TO THE APARTMENT RENT ORDINANCE DUE TO COVID-19 TO ADDRESS RENT INCREASES FOLLOWING THE RENT INCREASE MORATORIUM**

## **RECOMMENDATION**

Approve an Ordinance amending the Apartment Rent Ordinance, Chapter 17.23 of Title 17 of the San José Municipal Code to provide the following:

- a. Landlords who enter into reduced rent agreements with their tenants pursuant to the COVID-19 Rent Increase Moratorium Ordinance, Ordinance No. 30405, may base their Annual General Increase upon the previously charged contract rent and not the monthly rent charged under those reduced rent agreements executed pursuant to the COVID-19 Rent Increase Moratorium; and
- b. This amendment will be effective for twelve months after expiration of the COVID-19 Rent Increase Moratorium.

## **OUTCOME**

The approval of the proposed amendments to the Apartment Rent Ordinance (ARO) will allow landlords to base their Annual General Increase upon the previously charged rent amount and not on the monthly rent charged under reduced rent agreements. The Approval of the recommended actions will achieve Council direction from the April 24, 2020 City Council meeting.

## **BACKGROUND**

On April 28, 2020, the City Council enacted a temporary moratorium on rent increases for rent stabilized apartments and rent controlled mobile homes. A summary of recent City Council actions on housing items is available here. The moratorium applies to apartments covered by the ARO and mobile homes covered by the Mobile Home Rent Ordinance (MHRO). The moratorium prohibits ARO and MHRO landlords from increasing rents from April 29, 2021 through December 31, 2020. Landlords who have served notices to increase the rent, or who have executed renewed lease agreements, may increase rent on January 1, 2021. Additionally, ARO and MHRO landlords who voluntarily reduce rents during the COVID-19 pandemic under an agreement with their tenant or mobile home resident are allowed to restore their rents back to the original contract rates after the moratorium.

To encourage landlords and tenants to enter into reduced rent agreements, the City Council directed staff: *to adjust the City's Apartment Rent Ordinance (ARO) to temporarily allow permit owners who entered into reduced rent agreements under Section 7 of the proposed ordinance to increase their rent next year based upon their average 12 months' rent they would have charged under their rental contract and not based upon temporary reductions reached under a reduced rental agreement (Vice Mayor Jones memo, April 28, 2020)*

The two amendments to the Apartment Rent Ordinance in *italics* below are needed to implement City Council's direction.

## **ANALYSIS**

The [Urgency Ordinance for the Moratorium on Rent Increases](#) allows landlords who enter into agreements with tenants to temporarily reduce rent during the moratorium and restore the original contract rent when the agreement ends, or the ordinance expires.

### **A. Amendment #1: Modify Limits on Calculating Rent Increases**

In order to encourage landlords to enter into temporary reduced rent agreements with their tenants during this difficult economic time, the City Council directed that the reduced rent agreements should not impact rent increases the following year in 2021.

To implement City Council's direction, it is necessary to amend the Apartment Rent Ordinance 17.23.310:

*Notwithstanding subsection B., Landlords who enter into reduced rent agreements with their tenants pursuant to the COVID-19 Rent Increase Moratorium Ordinance, Ordinance No. 30405, may calculate the Annual General Increase using the Tenant's*

*previously-charged contract rent and not the monthly rent charged under the reduced rent agreement.*

This amendment will allow landlords to calculate the post-moratorium rent increase using the contract rent amount, not the temporary reduced rent amount, after the moratorium expires on December 31, 2020.

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

<b>Contract Rent</b>	<b>Reduced Rent Based on Temporary Agreement</b>	<b>Rent Increase (5%) based on Contract Rent</b>	<b>New Contract Rent based on Rent Increase</b>
\$2,000	\$1,500	\$100	\$2,100

**B. Amendment #2: Limited to a 12-Month Period Following Expiration of the Rent Increase Moratorium**

The second amendment needed to implement City Council direction clarifies this provision of rent adjustment will expire 12 months following the expiration of the Moratorium on Rent Increases.

*This subsection shall expire twelve months after expiration of the COVID-19 Rent Increase Moratorium Ordinance, Ordinance No. 30405.*

This ARO amendment is limited to 12 months to address rent increases in 2021 following the expiration of the Rent Increase Moratorium. It is only intended to address rent increases for landlords who have entered into reduced rent agreements with their tenants.

**CONCLUSION**

In summary, these amendments will encourage and allow landlords and tenants to enter into reduced rent agreements during COVID-19 and preserve landlord rights to increase the rent next year based on the original rental rate. Approving the proposed amendments to the ARO will align the rent increase provisions of the ARO with City Council’s direction at the April 28, 2020 City Council meeting.

**EVALUATION AND FOLLOW-UP**

The Housing Department will track the effectiveness of the Moratorium on the Rent Increase, and the continued impact of COVID-19 on the San José community or rent controlled apartments over the coming weeks.

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### **CLIMATE SMART SAN JOSÉ**

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

### **COMMISSION RECOMMENDATION/INPUT**

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

### **PUBLIC OUTREACH**

Stakeholder meetings were held on April 17, 2020 with ARO landlord and tenant representatives. The feedback from both stakeholders recommended an opportunity for landlords and tenants to come to a mutual agreement on rent concessions or reductions while maintaining the rent on the contract for ARO apartments.

### **COORDINATION**

Preparation of this report has been coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

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."

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**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.