TO: HONORABLE MAYOR & CITY COUNCIL
FROM: Councilmember Johnny Khamis
       Councilmember Lân Diệp
       Councilmember Dev Davis

SUBJECT: AUDIT OF THE APARTMENT RENT ORDINANCE (ARO)
DATE: January 27, 2017

APPROVED: January 27, 2017

RECOMMENDATIONS:

Accept the audit report and the modification to the Administration’s Response as outlined in the memo dated 1/23/17 from Jacky Morales-Ferrand, with these additional modifications:

1. The Administration is directed to develop and implement a unit registry rather than a rent registry and to include annual outreach to renters of units subject to the ARO, as described in this memo (per Audit recommendation #13).

2. The Administration is directed to ensure outside agencies funded by the City of San José that provide legal services to renters of units subject to the ARO provide the City with information regarding the outcomes of their services, (per Recommendation #14).

ANALYSIS:

We are appreciative of the objective oversight of the ARO that the City Auditor has provided to the City Council via the audit report and the recommendations included. We are also pleased to see that the Housing Department and the Auditor reached agreement on Recommendation #5 regarding entering unit addresses into the City-wide integrated permitting system. To ensure that the Housing Department can efficiently and effectively carry out the mission of the ARO, which is to “limit excessive rent increases, alleviate undue hardship to tenants, and provide a fair and reasonable return to landlords,” we recommend the additional actions described below.

Create a Unit Registry rather than a Rent Registry
We agree with the City Auditor’s recommendation to create a Unit Registry rather than a Rent Registry. A rent registry places a big new administrative burden on both the City and on property owners, and raises privacy concerns for both renters and rental property providers.
The compliance process for verifying the rent data for 44,000+ units would be inefficient and a huge drain on staff resources that would be better directed to helping renters by dealing with violations of the ARO. From the audit report, we understand that the Housing Department already struggles to respond to existing complaints. Creating a huge new administrative task would stretch these thin resources even further and produce no benefit for most renters. Even after collecting per-unit rental data from the rental unit providers, the City would then have to verify each and every number reported to them by following up with renters. There is no guarantee that renters will respond to the compliance verification process and those who do would now be burdened with an administrative task. Further, the data in the rent registry would be obsolete almost as soon as it was compiled as renters relocate and new renters move into a given unit.

A unit registry, on the other hand, is much easier to compile and allows the Housing Department to target enforcement of the ARO to bad actors in the City who do not comply with the ARO ordinance. A targeted approach that does not punish good property owners and focuses on those who are non-compliant is much more efficient for the City and property owners and it is better for renters.

Another big downside of a renter-by-renter rent registry is that we would compile a list of information that could be easily subpoenaed by other agencies and levels of government. The City Council has gone on record numerous times with the fact that we do not and will not support creating “lists” that could be sent to another government or that would raise privacy concerns, and there are several privacy concerns to consider: Privacy issues among tenants who will figure out how much each are paying; Privacy issues among neighboring property owners who do not disclose their private financial information as it hurts competition; Privacy issues for tenants who do not want their rent disclosed to others. A unit registry that does not contain tenant information or proprietary information that belongs to property owners does not suffer from these shortcomings. In San José, we do not believe in making lists of Muslims or of undocumented immigrants. Likewise, we cannot support allowing our Housing Department to make a big list of renters of units subject to the ARO.

A unit registry would enhance the City's complaint-driven system for ARO compliance and operate much like the City's Code Enforcement division. It is also similar to how the City is to enforce the Tenant Protection Ordinance. A complaint-based model reduces administrative burdens and costs for the Housing Department and directs vital resources to dealing with violators and helping wronged renters.

To make the unit registry and the complaint-driven system most effective, we really need to focus on the problem we are trying to solve and not create another list. Instead of lists, We propose that we send annual mailers to each ARO-regulated unit, in multiple languages to:

- a) Explain to renters their rights under the ARO,
- b) Let renters know how to report violations, and
- c) Inform them of the availability of resources for services and assistance from third-party organizations.

Legal Services from Outside Providers
The City of San José should ensure that any and all groups who provide legal services for tenants using funds provided by the City are held accountable for their services. San José should ensure that all legal assistance agencies funded by the City report out, on a regular basis, on the outcomes of their services.

We thank Mayor Liccardo and our colleagues on the City Council for your thoughtful consideration of these small, but important, modifications of the staff response to the ARO Audit in keeping with the City Auditor’s recommendations.