CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor

Report to the City Council
City of San José

THE APARTMENT RENT ORDINANCE: ADDITIONAL INVESTMENT, IMPROVED PROCESSES, AND STRATEGIC RESOURCE DEPLOYMENT NEEDED TO BETTER SERVE TENANTS AND LANDLORDS

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor
Sharon W. Erickson, City Auditor

November 30, 2016

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

The Apartment Rent Ordinance: Additional Investment, Improved Processes, and Strategic Resource Deployment Needed to Better Serve Tenants and Landlords

San José's Apartment Rent Ordinance (ARO) seeks to "limit excessive rent increases, alleviate undue hardship to tenants, and provide a fair and reasonable return to landlords." The ARO's rent control provisions apply to rental apartment properties with three or more units permitted before September 7, 1979. There are about 45,820 such units in San José, which make up about a third of the City's 140,000 rental housing units.

In April and May 2016, the City Council approved modifications to the ARO and approved future consideration of new stabilization programs to supplement the ordinance. The interim ARO, which took effect in June 2016, phased in some provisions of the ARO, beginning with lower allowable rent increases.

The objective of our audit was to review the administration of the City's existing ARO and assess the Housing Department's readiness to administer the modified ordinance and new programs.

Finding 1: The Housing Department Has Been Challenged to Meet Expectations of the Apartment Rent Ordinance. With only 1.5 full-time equivalent employees to implement the ARO, the Rental Rights and Referrals Program did not provide the level of service that it was intended to provide. Mediation and arbitration services were delayed, with many customer cases lingering beyond the ordinance's timelines. There was also a lack of review and follow-up on these cases, which could identify additional concerns. Enforcement also suffered with a lack of follow-up on key requirements of the ordinance, like landlords' filings of tenancy termination notices to identify potential non-compliance with the ordinance (such as excessive rent increases or landlord retaliation). With limited staffing, the Program has not been able to identify instances of potential non-compliance, much less investigate and enforce such instances. In addition, the Program's efforts to inform residents and landlords of their rights and responsibilities have been sparse and untargeted. Furthermore, providing online services like online petition filling and a property look-up tool, would offer convenience and cost savings to both customers and staff.

Finding 2: Better Use of City Resources Can Shorten Timelines and Improve Customer Service. Improvements are needed to make current processes more efficient and effective. For example, the Rental Rights and Referrals Program can better use its existing access to the citywide integrated permitting system (AMANDA). The current process for identifying rent control unit addresses is

inefficient. We recommend Housing Department staff enter the unit addresses into AMANDA, and use that system's features to ensure live access to changes to those properties, like permit applications for condominium conversions and demolitions, and code enforcement cases. This may require some additional training on the system, and some modification of the system. In addition, to keep both departments apprised on matters of mutual interest, we recommend that the Housing Department initiate periodic meetings with the Department of Planning, Building, and Code Enforcement (PBCE) to exchange updates and discuss program needs. To maximize this interdepartmental coordination and data sharing, the Housing Department should ensure their recorded data is standardized by developing and implementing data input procedures. We also recommend that the Program continue its efforts to improve its fee exemption process by reducing the time, effort, and confusion of staff and customers, and ensuring that exemptions are given on appropriate and fair grounds. Finally, the Program could make better use of the City's Call Center during periods of high demand.

Finding 3: Some Aspects of the Modified Apartment Rent Ordinance May Offer Only Modest Benefits While Presenting Significant Burdens and Costs. Our modeling shows that the 5 percent limit on annual rent increases that was recently approved by the City Council, would protect tenants only from the most dramatic market spikes. Controlling these rent spikes may provide critical relief, however the accompanying banking provision allows for annual rent increases of up to 8 percent, which undermines the protections offered by the 5 percent limit. In addition, the banking provision adds complexity for rent control landlords, the majority of whom own small apartment buildings, and are not necessarily professional apartment managers. Of the 17 rent control programs we reviewed, only San José's paired banking to flat allowable annual rent increases. In light of the modest benefits compared to the burdens and costs associated with banking, we recommend the City Council consider eliminating the banking provision in the final ordinance.

Additionally, depending on how it would be implemented, the proposed rent registry would also present significant burdens and costs to the City, landlords, and tenants. Other cities have adopted variations on two predominant types of registries: unit registries and rent registries. Both types contain unit information. The primary differences are that the rent registry requires additional information about the tenants occupying the units, current and past rents, and leases. Based on other cities' experiences, we believe the Department may struggle to collect all the required information from landlords, and doing so will be staff-intensive. In our opinion, a rent registry system could divert limited Program resources away from administering the fundamental elements of the ordinance. Furthermore, because of tenant turnover (estimated once every four years), registry data may have a limited useful "shelf life." As an alternative to what could be a costly, burdensome, and difficult to enforce rent registration system, we recommend the City Council consider allowing staff to use the citywide integrated permitting system as the basis for a simpler unit registry with links to its existing customer relationship management system.

Finding 4: Before Expanding Services, the Housing Department Should Prepare a Strategy to Meet Its Rent Stabilization Goals. San José's overall number of rental units continues to grow. At the same time, the number of rent control units is capped given limitations placed by state law. This, combined with rent growth that is outpacing personal wage growth, means that an increasing number of non-rent control tenants may seek Program services. As directed by the City Council, the Housing Department is exploring additional programs, including an Anti-Retaliation and Protection Ordinance and a pilot voluntary mediation program, which would provide support to a broader range of tenants – whether they live in rent control units or not. As the Housing Department expands and fine-tunes Program services, it behooves the Department to be explicit about program goals. To maximize its impact, we recommend that the Department improve its performance measures, survey customers, and increase reporting to the City' Housing and Community Development Commission to better track the effectiveness of the Rental Rights and Referrals Program.

Finding 5: Additional Resources Are Required. The Rental Rights and Referrals Program charges annual fees to owners of rent control units, non-rent control units, and mobilehomes. The fees are supposed to fully recover costs of providing services to these three distinct customer groups, but ARO fees do not reflect some ARO expenses – such as those attributable to assistance from PBCE.

To address needed staffing for FY 2016-17, the Housing Department was approved an additional $277,000 to prepare for the City Council-approved modifications to the ARO. However, given its challenges implementing and enforcing the old ARO, the Program will need additional resources to ensure sufficient and appropriate hearing services, investigation enforcement, and outreach. Moreover, the need for additional staffing may grow if Program improvements result in additional customer demand. More resources will also be needed to provide new services through the proposed Anti-Retaliation and Protection Ordinance, and policies related to the Ellis Act. To expand services, the Program will need to adjust service delivery and fees. This is particularly important if these services will be available to non-rent control tenants and landlords. Finally, as services are expanded and associated expenses increase, the City should consider how much of the burden should fall on tenants and landlords.

This report includes 19 recommendations. We will present this report at the December 8, 2016 meeting of the Neighborhood Services and Education Committee. We would like to thank the Housing Department and the Department of Planning, Building and Code Enforcement for their time and insight during the audit process. The Administration has reviewed this report and its response is shown on the yellow pages.

Respectfully submitted,

Sharon W. Erickson
City Auditor

finaltr
SE:lg

Audit Staff: Michael Houston
Amy Hsiung
Robert Rodrock

cc: Norberto Dueñas, Jacky Morales-Ferrand, Dave Bopf, Rick Doyle, Harry Freitas, Rob Lloyd, Julie Edmonds-Mares, Shasta Greene, Diane Buchanan, Desiree Jafferies, Rachel VanderVeen

This report is also available online at www.sanjoseca.gov/audits

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Introduction

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability, and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services.

In accordance with the City Auditor's Fiscal Year (FY) 2015-16 Work Plan, we have completed an audit of the City's Apartment Rent Ordinance (ARO). In June 2015, the City Council identified the ARO as one of the top priorities. After that, the Housing Department led the development of updates to the ordinance. Modifications were adopted in April and May 2016. In response to the City Council's request for an audit of the Housing Department, we conducted this audit to evaluate the administration of the ARO and readiness to administer modified programs. We previously conducted an audit of the Housing Loan Portfolio (issued May 2014), and plan to conduct an audit of Housing Department grant programs as part of our FY 2016-17 Work Plan.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the "Audit Objective, Scope, and Methodology" section of this report.

The City Auditor's Office thanks the Housing Department, the Department of Planning, Building and Code Enforcement, and the City Attorney's Office for their time and insight during the audit process.

Background

The mission of the City of San José's Housing Department (Department) is "*to strengthen and revitalize our community through housing and neighborhood investment.*" Since its establishment in 1988, the Department has taken on a broad range of challenges facing current and future residents.

The Department has three core services:

- *Housing Development and Preservation*:[1] Provide funding and technical assistance for the construction of new affordable housing and the acquisition and rehabilitation of existing housing; preserve existing affordable housing through loans and grants and management of the City's loan portfolio; provide homebuyer assistance and rehabilitation loans and grants; and provide inclusionary and market rate housing assistance to the housing development community.
- *Community Development and Investment*: Invest in at-risk residents and neighborhoods by providing housing and community development loans and support to public service providers; coordinate regional efforts to end homelessness.
- *Neighborhood Development and Stabilization*: Provide investment and support to neighborhoods through funding infrastructure improvements and providing rental rights and referral services to community residents.

Per the Municipal Code (2.04.2620), the Housing Department is responsible for:

- Administering programs for housing development, conservation, and rehabilitation;
- Implementing low interest rehabilitation loans;
- Administering housing programs pursuant to agreements with other government agencies;
- Administering a rental rights and referrals program; and
- Performing such other programs or functions related to housing or community services as requested by the City Council or the City Manager.

Housing Is a Challenge for San José and the Region

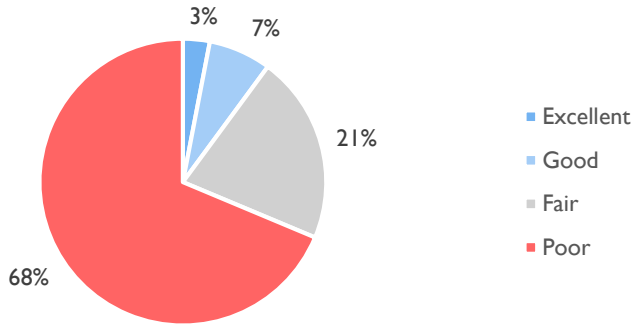
San José residents face some of the highest housing costs in the nation. Only a tenth of respondents to the 2015 National Citizen Survey[2] rated the availability of affordable housing as "good" or "excellent," while 68 percent considered availability to be "poor." This was in spite of the fact that since 1999, San José has

[1] See the 2014 Housing Loan Portfolio audit for additional details on the Department's role in affordable housing production.

[2] The National Citizen Survey is a collaborative effort between National Research Center, Inc. (NRC) and the International City/County Management Association (ICMA). The survey was developed by NRC to provide a statistically valid sampling of resident opinions about community and services provided by local government. Results were statistically re-weighted, as necessary, to reflect the actual demographic composition of the community. 2015 marked the fifth consecutive year San José has participated in the survey.

only experienced 7 quarters which would qualify as a severe rental housing shortage.[3]

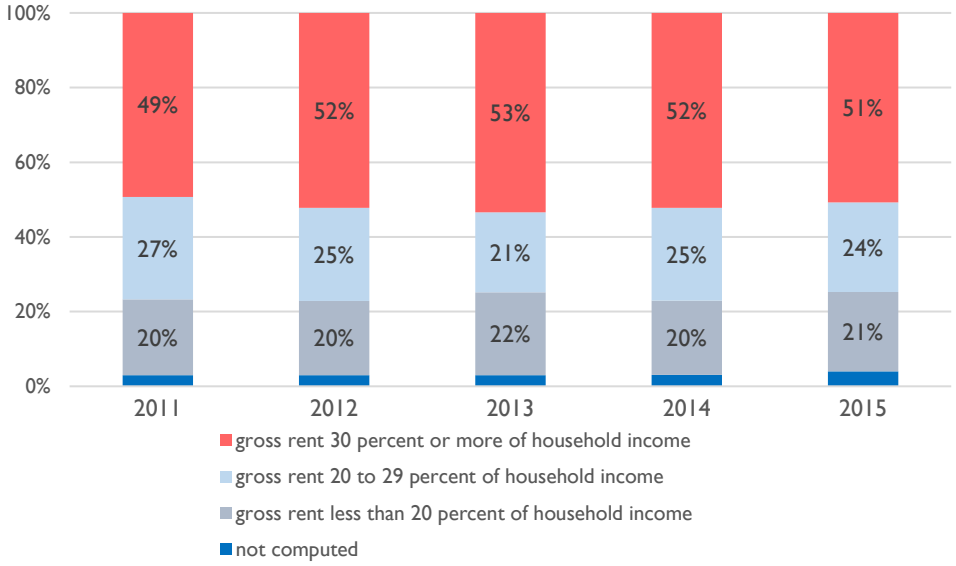
Exhibit 1: Most San Joseans Rate the Availability of Affordable Housing as Poor



Source: 2015 National Citizen Survey

The U.S. Department of Housing and Urban Development considers households that pay more than 30 percent of their income for housing "rent burdened." The U.S. Census' 2015 American Community Survey estimated that 51 percent of tenant-occupied San José households spent more than 30 percent of their monthly income on gross rents. About half of San José tenants have been rent burdened since 2011. This is shown in Exhibit 2 below.

Exhibit 2: Most San José Tenant Households Are Rent Burdened

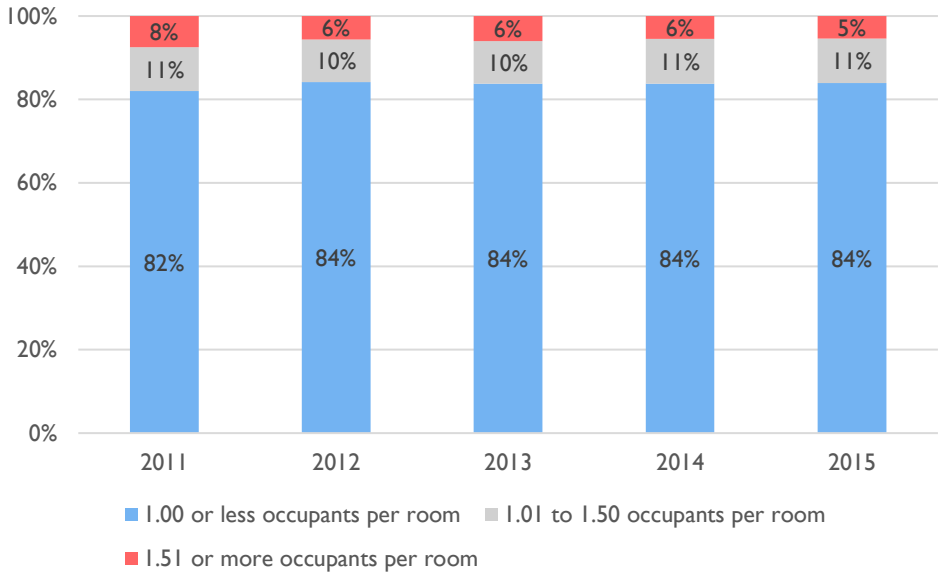


U.S. Census American Community Survey 1-Year Estimates. (table B25070) "Gross rent as a percentage of household income." Renter-occupied units.

[3] A "severe rental housing shortage" is defined in 17.23.155 of the Municipal Code, as "any period in which the director of housing determines, pursuant to Section 17.23.695, that there is a vacancy rate in all city rental housing of three percent or less."

One way tenants can respond to high rents is to bring additional income earners into a household to share housing costs. Increasing the size of a household can lead to overcrowding,[4] a public health concern. U.S. Census data indicate an estimated 16 percent of San José tenant households were living in overcrowded conditions in 2015. This share has remained consistent over recent years.

Exhibit 3: Many San José Tenant Households Are Overcrowded

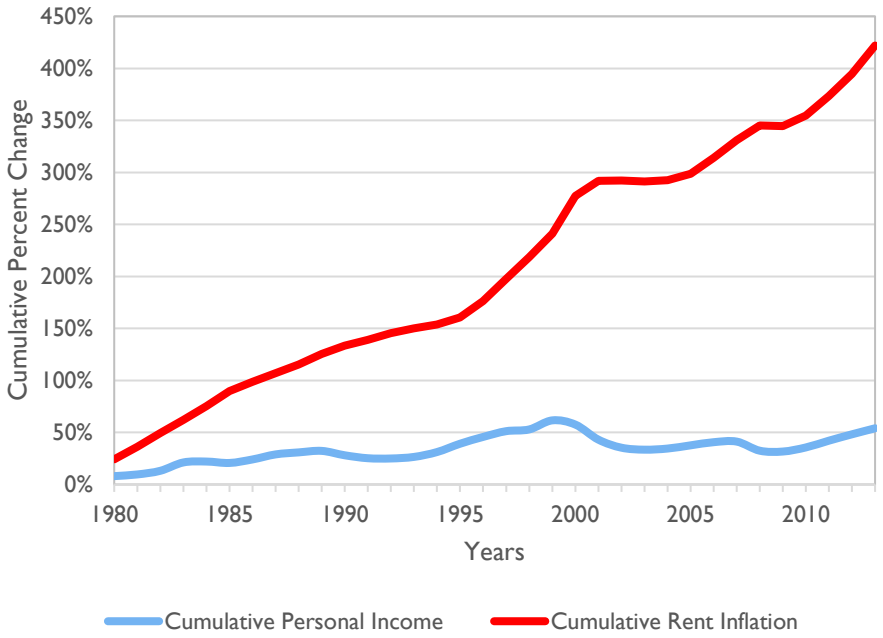


U.S. Census American Community Survey 1-Year Estimates. (table S2501) "Occupants per room." Renter-occupied housing units.

The gap between rent prices and tenants' ability to pay has grown significantly. Personal income and wage data for the San Francisco-Oakland-San José metropolitan area show that personal income grew by an average of 1.3 percent annually between 1980 and 2014, while rents increased by an average of 4.9 percent. Exhibit 4 below graphically shows a gap of 4.9 percent annual rent increase for a long-term tenant with typical wage growth between 1980 and 2014.

[4] Overcrowding is most commonly defined using the U.S. Housing and Urban Development's "persons-per-room in a dwelling unit." "Overcrowding" is defined as more than one person per room, and "severe overcrowding" is defined as 1.5 persons per room.

Exhibit 4: Rents Have Outpaced Personal Income, 1980-2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics;[5] and Personal Income and Employment for the San José-Sunnyvale-Santa Clara, CA Metropolitan Statistical Area from the U.S. Department of Commerce, Bureau of Economic Analysis.

Rent Control Policies Aim to Limit Rising Rents

In addition to encouraging the construction of affordable housing, the Housing Department has developed policies, ordinances, and regulations to preserve the supply of affordable housing in San José. Rent control is one of these.

Two state laws place constraints on local rent control:

- The *Costa-Hawkins Rental Housing Act* limits the expansion of local rent control policies to units occupied prior to February 1, 1995. In cities that already had rent control, units that originally qualified under the new construction exemption must remain exempt. The Act also mandates *vacancy decontrol* – that is, that rents can be reset to market rates when tenants move out of their units of their own accord.[6]
- The *Ellis Act* protects rent control property owners' right to exit the rental market (i.e., to demolish buildings or to convert them to single-family homes or other uses). However, the law allows jurisdictions to adopt legislation that requires property withdrawn from the rental market to be rent controlled if it is used for residential rentals within five years after

[5] See Appendix B for more information about this index and our rationale for using it.

[6] Unlike other cities with rent control, San José already allowed vacancy decontrol prior to Costa-Hawkins.

withdrawal. As a part of their local Ellis Act ordinances, some local jurisdictions require rent control property owners to provide relocation benefits or compensation to residents who would be displaced. San José is contemplating (but does not yet have) a local Ellis Act ordinance that would outline additional rights and responsibilities for tenants and landlords. The Housing Department plans to return with an ordinance for consideration in the coming months.

San José's Rent Control Applies to Older Apartment Buildings

In 1979, San José's City Council voted to institute rent control in the City. In 1985, the original rent control ordinance was split into two separate ordinances, one for mobilehomes, and another for apartments. The resulting rental dispute mediation and arbitration ordinance (Apartment Rent Ordinance, or "ARO")[7] was intended to limit excessive rent increases, to alleviate undue hardship to tenants, and to provide a fair and reasonable return to landlords.

The rent control provisions of the ARO applies only to rental units in "multiple housing properties" permitted before September 7, 1979.[8] Of the City's estimated 140,000 rental units, 95,524 are multiple housing units and 84,319 are apartment units. Of these, about 45,820 are subject to the rent control provisions of the ARO.[9]

The basic provisions of the 1979 ARO included:

- 8 percent annual allowable rent increases, or up to 21 percent if it had been more than 2 years since the last increase;
- Vacancy decontrol (as described above);
- Resolution services for disputes between tenants and landlords;
- Debt service pass throughs (mortgage costs that can be passed on to tenants through rent increases); and
- Capital improvement, rehabilitation, and operation and maintenance pass through (costs from property improvements, maintenance, or repairs that can be passed on to tenants through rent increases).

[7] Municipal Code Chapter 17.23.

[8] A multiple housing property is defined as a residential property that has three or more units; there may be one or more buildings within a multiple housing property.

[9] Throughout this report, we use 45,820 as the count of total ARO units in San José, but that number may be as high as 45,872. At the time of our review of the Multiple Housing Roster, we identified 45,820 total ARO units on 5,226 properties. An additional 52 units on 12 properties were built in 1979, but it is not clear whether those units were built before or after September 7, 1979 (which would determine if those units are subject to ARO provisions). Housing Department staff have been working to look through records to determine the built dates for these properties, as their limited staffing resources permit.

In 2003, the ARO was modified to include:

- Noticing requirements when landlords – including those not subject to the ordinance's rent control provisions – provide tenants with lease termination notices; and
- Expanded access to arbitration services for all apartment tenants when served "no-cause" evictions. A no-cause eviction occurs when a landlord issues a notice to vacate to a tenant without specifying a reason (state law requires landlords to provide a minimum of 60 days advance notice).

The City Council Approved Modifications to the Apartment Rent Ordinance in 2016

In April and May 2016, the City Council voted to update provisions regulating allowable rent increases and cost pass throughs from landlords to tenants. An Interim Ordinance was also approved and became effective on June 17, 2016. The Interim Ordinance phases in various provisions of the modified ARO, beginning with the new allowable annual rent increase. In September 2016, the Housing Department sought and the City Council subsequently approved the interim ordinance's sunset by the end of FY 2016-17.

The 2016 provisions include:

- A 5 percent annual allowable rent increase.
- A banking allowance providing landlords with the ability to "bank" the difference between actual rent increases and the maximum allowable 5 percent. Specifically, after a year of no rent increases, landlords who refrain from increasing rents to the maximum annual 5 percent allowable rate, will be able to bank up to 10 percent, and increase rents up to 8 percent in a year (including capital improvements). The provision limiting rent increases to 5 percent became effective in June 2016. The banking provision is to be part of the final ordinance planned for June 2017.
- A new fair return petition process based on maintenance of net operating income (MNOI) for landlords seeking to collect more in rent.[10] The new formula became effective September 2016.
- A capital improvement incentive program through which owners make investments that improve the livability of their properties related to earthquake retrofits, health and safety improvements, and others.

[10] If a landlord finds that the annual allowable rent increase insufficiently covers operating costs, s/he may submit a fair return petition for a higher rent increase. A hearing officer would evaluate the petition based on the MNOI standard – that is, determine the difference between gross income and actual operating expenses in a selected base year (net operating income), and adjust for inflation. If the petitioning landlord has a lower net operating income than the base year, they would be eligible to increase the rent at a rate approved by the hearing officer.

In addition, the City Council approved the development of a rent registry to facilitate monitoring and enforcement, and a pilot of a voluntary mediation program.[11]

The City Council Will Be Considering Other Rental Policies

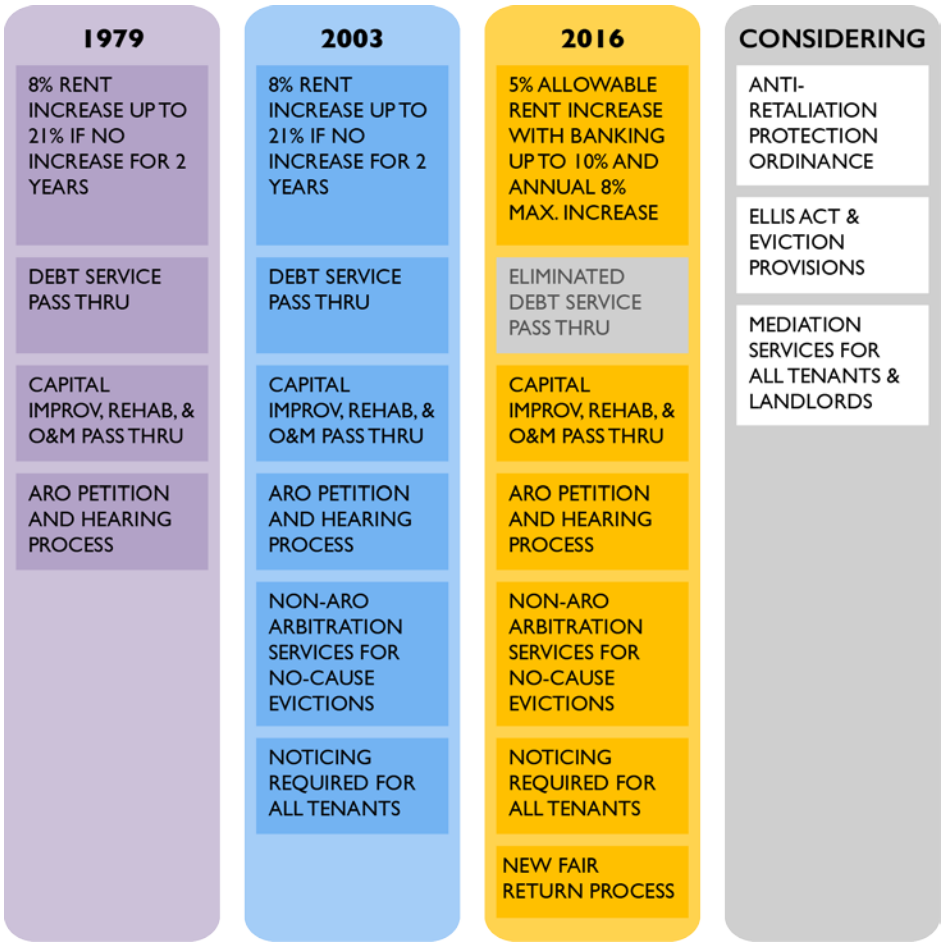
The City Council also directed the Housing Department to return with policies and ordinances to protect tenants and preserve rent controlled apartment units:

- *Anti-Retaliation and Protection Ordinance* (ARPO). As the Housing Department currently envisions it, ARPO would provide protection to tenants reporting issues in their units and buildings. For example, a tenant would be protected from retaliatory lease terminations and evictions for two years if they filed a legitimate housing code complaint (as verified by Code Enforcement), or filed a legitimate petition or complaint with the Rental Rights and Referrals Program. If a landlord wanted to terminate a lease for such a tenant, the landlord would need to submit to the City a petition to terminate the lease for "just cause."[12]
- An ordinance addressing *tenant displacements* (pursuant to the *Ellis Act*) when property owners withdraw from the rental market, including relocation benefits.
- Review of potential updates to provisions on *demolitions and conversions* of rent control apartment buildings to single-family homes or condominiums for consideration by the City Council.

[11] The voluntary mediation program would be available to all San José apartment tenants to resolve non-rent control disputes and would not need to be initiated by a petition. The Housing Department is in the process of developing the program's details.

[12] Also referred to as "good cause." Just cause means a reason for terminating leases and evicting tenants. These reasons can include non-payment or late payment of rent, breach of a rental agreement or lease, and substantial property damage.

Exhibit 5: Timeline of Key Features of the Apartment Rent Ordinance and Other Proposed Rental Housing Policies



Source: Audit team summary based on the San José Municipal Code and City Council archives.

*In 1985, the Rent Stabilization Ordinance was split into two separate ordinances, one for mobile home parks and another for apartments.

Note: "O & M" refers to operation and maintenance pass throughs.

The Rental Rights and Referrals Program Administers the Apartment Rent Ordinance

In administering the ARO, the Housing Department's Rental Rights and Referrals Program (Program) staff are responsible for:

- Taking calls and walk-ins from tenants and landlords;
- Processing complaints that qualify for resolution through a hearing process;
- Coordinating hearings among affected tenants, landlords, and hearing officers in compliance with ARO requirements; and
- Referring other cases to nonprofit service providers for assistance or other agencies for enforcement.

Examples of cases that might undergo a hearing process include landlords' requests for rent increases above the annual allowable limit or tenants' claims of service reductions. Cases that might be referred to another organization include delays in returned security deposits, allegations of discrimination, or other cases requiring legal expertise.

In FY 2015-16, the Program had 3.5 full-time equivalents, to assist apartment tenants and landlords – those covered and not covered by rent control – as well as mobile home tenants and owners. Of these 1.5 were assigned to the ARO. As of FY 2016-17, the Program includes 5.65 full-time equivalents, of which, 3.5 full-time equivalents are assigned to the ARO.

Program staff also assist with outreach and enforcement activities to a limited extent. Finding 1 provides more information about these roles.

Audit Objective, Scope, and Methodology

The objective of the audit was to review the administration of the City's Apartment Rent Ordinance and assess the Housing Department's readiness to administer modified programs. Various modifications approved at the April 19 and May 10, 2016 City Council meetings will impact the resources needed to administer the ARO.

We sought to understand the relevant management controls, including general contract compliance relevant to our audit objective. Specifically, we:

- Interviewed Rental Rights and Referrals Program staff to understand their responsibilities and how complaints are handled.
- Analyzed Housing Department customer records to understand the scale of interactions and timelines involved in handling cases.
- Reviewed complaints filed to the Rental Rights and Referrals Program by tenants and landlords to understand what issues the Program handles.
- Reviewed Housing Department activities in preparation for implementation of the new ordinance.
- Reviewed the Municipal Code to understand the intent of and rules associated with the ARO, as well as to understand what powers already exist.
- Identified databases and sources of registry information across City departments and agencies to use in a potential registry database.
- Compared San José workload against other California municipalities with rent control ordinances, including Santa Monica, San Francisco, and West Hollywood.

- Interviewed staff in the Department of Planning, Building and Code Enforcement to understand how they and the Housing Department work together to administer rent control and fee processes.
- Compiled and reviewed relevant U.S. Census data on San José residents, workers, and households.
- Compiled and reviewed Housing Department budgets and financial records.
- Reviewed San José's legislative history and City Council items regarding the ARO and other rental housing policies.
- Reviewed current and historic data on the regional rental housing market, regional inflation, and personal wages to understand the market conditions the ARO operates within and the impacts on the ARO.
- Identified and reviewed other California rent control ordinances and other policies related to rental housing (including rent registries and anti-retaliation and protection ordinances). Cities included Los Angeles, San Francisco, Oakland, Berkeley, Santa Monica, West Hollywood, Mountain View, Palm Springs, Beverly Hills, East Palo Alto, Los Gatos, Hayward, Campbell, Alameda, Fremont, Mountain View, and San Leandro.
- Reviewed contracts between the City and hearing officers, and between the City and nonprofit service providers.

In addition to our audit, the Housing Department has contracted with the professional management consulting firm, Management Partners to provide subject matter expertise and a more detailed staffing analysis. The Department expects to present additional staffing needs associated with approved modifications to the Program during the upcoming FY 2017-18 budget process.

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Finding I The Housing Department Has Been Challenged to Meet Expectations of the Apartment Rent Ordinance

Summary

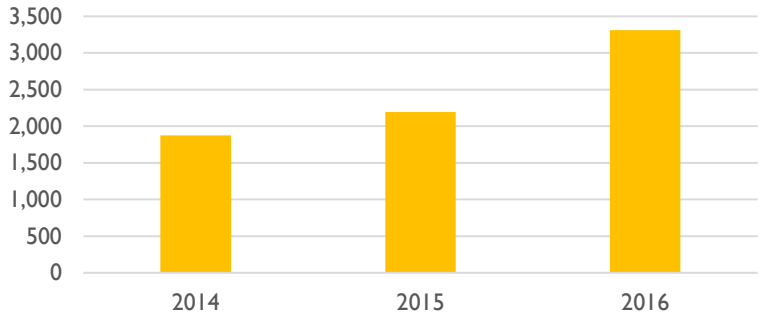
With only 1.5 full-time equivalent employees to implement the ARO, the Rental Rights and Referrals Program was unable provide the level of service that it was intended to provide. Mediation and arbitration services were delayed, with many customer cases lingering beyond the ordinance's timelines. There was also a lack of review and follow-up on these cases, which could identify additional concerns. Enforcement also suffered with a lack of follow-up on key requirements of the ordinance, like landlords' filings of tenancy termination notices to identify potential non-compliance with the ordinance (such as excessive rent increases or landlord retaliation). With limited staffing, the Program has not been able to identify instances of potential non-compliance, much less investigate and enforce such instances. In addition, the Program's efforts to inform residents and landlords of their rights and responsibilities have been sparse and untargeted. Furthermore, providing online services like online petition filing and a property look-up tool, would offer convenience and cost savings to both customers and staff.

Customer Service Is Key to the Apartment Rent Ordinance

The Rental Rights and Referrals Program staff are available during standard office hours (Monday through Friday) to serve customers. Duties include answering customer inquiries, resolving disputes where appropriate, receiving and processing complaints from tenants and landlords, and scheduling hearings with administrative hearing officers.

In FY 2015-16, Program staff saw almost 3,500 ARO-related interactions. These interactions can be categorized into questions about the Program or ordinance, requests for petitions, and referrals to outside service providers.

Exhibit 6: Total Apartment Rent Ordinance Customer Interactions



Source: Auditor analysis of Rental Rights and Referrals Program Salesforce data.

Note (1): These interactions include customers who own or live in duplexes, houses, and other types of residences that contact the Program with questions about rental agreements. It does not include interactions pertaining to mobilehome residents and park owners.

Note (2): Interactions increased in FY 2015-16 as result of publicity surrounding modifications to the ARO.

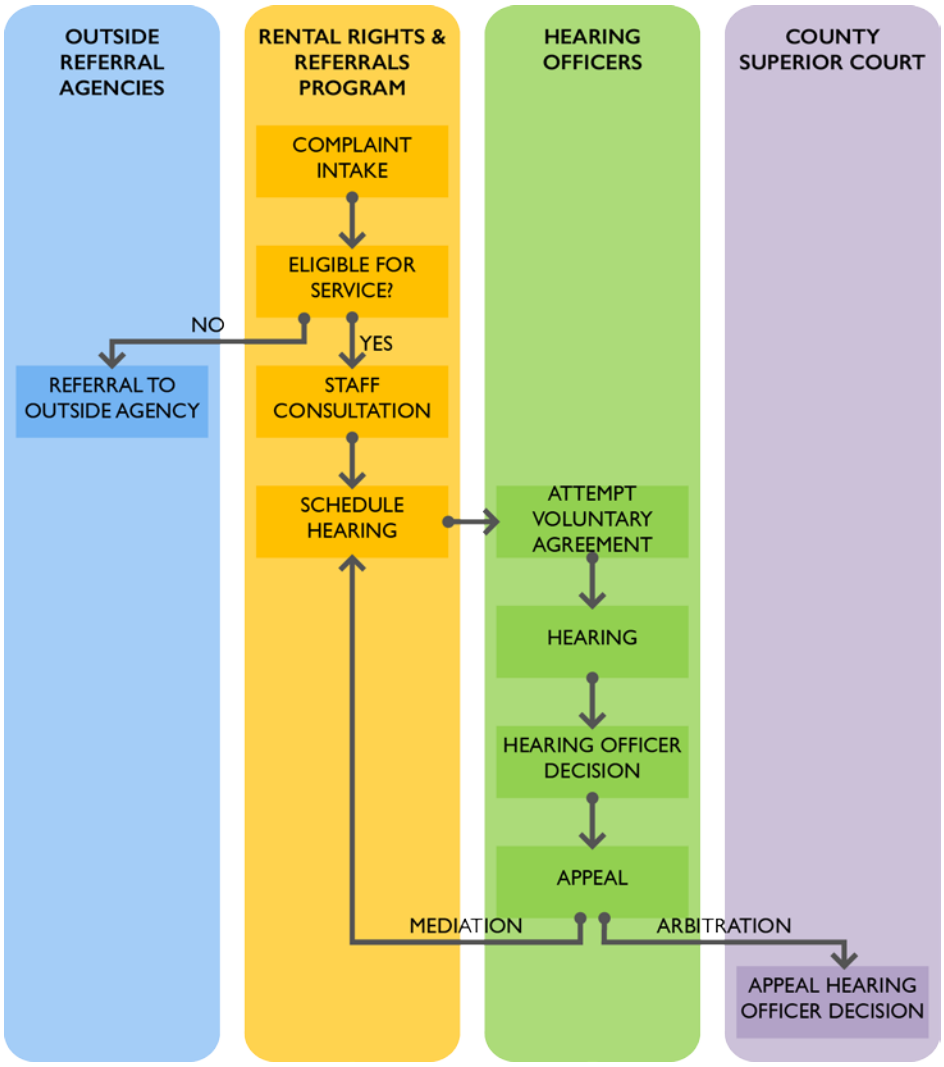
Mediation and Arbitration Hearings Were Not Closed Within the Ordinance's Timelines

In cases where tenants or landlords submit petitions for mediation or arbitration, the old ordinance provided specific timeframes for filing petitions, notifying affected parties, scheduling hearings, obtaining documentation, and receiving and distributing final decisions from hearing officers. Generally, the ordinance required:

- Decisions on mediations within 31 days after a petition was filed;
- Decisions on arbitrations within 47 days; and
- For cases that underwent both mediation and arbitration hearings (appeals), the whole process could take up to 85 days.

Although the reasonableness of these timelines may vary depending on the complexity of the cases, we found that overall, only 61 percent of mediation hearings were closed within the required 31 days. For arbitrations, 77 percent were closed within the required 47 days. Exhibit 7 outlines the process.

Exhibit 7: Customer Complaint Process Within the Rental Rights and Referrals Program



Source: Audit team summary based on terms of the Apartment Rent Ordinance and interviews with staff on key processes within the Rental Rights and Referrals Program.

Note: Decisions from mediation hearings can be appealed through arbitration. Cases where a party may refuse to operate in accordance with a hearing officer decision can be referred to County Superior Court.

The Housing Department contracts with outside administrative hearing officers to perform hearings for mediations and arbitrations.[13] At these hearings, officers resolve disputes between tenants and landlords regarding issues like rent increases

[13] Required qualifications for hearing officers include 40 hours of formal training in mediation; successful performance of mediations or hearings similar to those held under the Apartment Rent Ordinance; and successful mediation of rental disputes or other experience or training showing the capability to deal with the issues found in rental dispute hearings.

and service reductions.[14] The Department saw 415 petition requests and 316 hearings in FY 2015-16 (or about 26 per month).

Hearings can be difficult to schedule, requiring Department staff to find mutually agreeable times for tenants, landlords, and hearing officers. Some cases involve multiple unrelated tenants who all need to be included. In addition to scheduling, Program staff are responsible for obtaining and reviewing the documentation required for hearings. One staff member is primarily responsible for scheduling hearings and taking calls; another is responsible for processing petitions and handling walk-ins.

According to Housing Department staff, delays were also attributable to the limited number of administrative hearing officers. Throughout FY 2015-16, the Program used the services of 11 hearing officers, however, at any given time, fewer hearing officers may be available. For example, in August, there were seven hearing officers available, and earlier that year, Housing Department staff reported fewer officers were available. Furthermore, scheduling hearing officers for hearings can be challenging because some cases will require specific skills and levels of expertise.

In-House Staff Could Resolve More Low-Level Disputes and Follow-up on Closed Cases

Cities like Berkeley and Oakland have dedicated staff trained in mediation who can resolve disputes as needed during regular business hours.[15] San José already uses Program staff to help tenants and landlords voluntarily resolve some low-level disputes without the need to schedule hearings (i.e., staff consultations as shown in Exhibit 7 above). Resolving disputes at that level saves time and effort. In our opinion, the benefits are significant of having in-house staff with some mediation training who can assist existing staff in less sensitive dispute resolutions.

Such in-house staff could also perform other duties like following up on the work and decisions of contracted hearing officers. Reviewing dispute resolution outcomes would help the Department identify tenants and landlords in possible need of assistance. Disputes may lead to potential future issues with the involved parties, and other tenants and landlords with similar circumstances. Take the following example from July 2016, which was facilitated by a hearing officer.

> A tenant came forward to report a bedbug infestation. The landlord blamed the tenant for the infestation. The case was closed after the tenant and landlord made a voluntary agreement whereby the tenant would pay $800 for pest

[14] A service reduction is when the level of service provided by a landlord has been reduced without a corresponding decrease in rent.

[15] Santa Monica, which delivers dispute resolution in-house, and recorded only 55 hearings in FY 2015-16, has an extensive infrastructure for hearings, including a division of 6 staff members dedicated to hearings, including a Hearings Manager, Hearings Specialist, Hearings Investigator, and Hearings Examiner.

> abatement with the understanding that the landlord would pick up any future treatments if needed. The agreement specified that as long as the terms of the agreement were followed, the landlord would not sue the tenants for the infestation. This case was "closed" in July 2016 without follow-up from the Housing Department.

First, on the surface, the bedbug case may require follow-up by Program or Code Enforcement staff, potentially with regards to the building's other tenants who may not have been aware of the voluntary agreement. Follow-up could also surface additional concerns about the parties and other properties connected to them, or about the work of contracted hearing officers. Currently, the Program does not have enough staff to perform this kind of follow-up.

Management Partners Is Developing a Staffing Plan

As discussed earlier in the Background section of this report, the Department is currently involved in developing and implementing modifications to the ARO. In its preparation for this, the Department has engaged Management Partners to provide subject matter expertise and a more detailed staffing analysis. This work will inform the Housing Department's new ordinance, which may outline or update procedures that affect departmental activities.

Recommendation #1: To ensure efficient and effective customer service, the Housing Department's staffing plan should assess the need for additional dispute resolution professionals.

There Is Little Follow-Up on Notices of Tenancy Termination

The ARO requires landlords to notify the City when they initiate lease terminations with tenants. Per the outgoing ordinance:

> *"A copy of each and every notice to vacate issued to a tenant that does not state a reason for eviction that would legally entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure shall be filed with the rental rights and referrals program of the City of San José within five days after the service thereof on the tenant."*

This is important because, in cases of involuntary termination of a lease, landlords must continue limits to rent increases and may not reset rents. This provision was intended to prevent landlords from displacing tenants in order to raise rents on their rent control units.

Following up on notices of tenancy terminations is the mechanism the Program has to identify that rents remained at the levels required by the ordinance. Housing Department staff reported that in the past, they had been notified of landlords who raised rents after terminating tenancies.

Our review of the 429 notices submitted in FY 2015-16, revealed a number of issues that may warrant follow-up. Some notices showed rent increases that appeared to exceed the annual allowable rent increases. There were also cases where landlords initiated terminations that should be checked against the ARO's retaliation protections – such as one in which the landlord cited a tenant's use of harsh language as a reason for terminating his lease. Program staff recorded and filed the notices, but apparently did not review or follow up on them; they also surmise that landlords are not always filing the notices as required.[16] Program staff report that they simply do not have enough time to follow-up on these situations.

Other Key Elements of the Apartment Rent Ordinance Are Not Monitored or Enforced

The lack of review and follow-up on notices of termination is only one example of roles defined in the ARO that the Program has been unable to fulfill. Others include:

- Requiring landlords to advise tenants of their rights in the event of "no-cause" evictions;
- Requiring non-rent control landlords to participate in arbitration with tenants evicted for no-cause; and
- Requiring that landlords provide displaced tenants with specific timelines before vacating units.

Beyond those related to lease terminations and evictions, there are other provisions of the ordinance that the Program has not monitored or enforced. These include:

- Restrictions on rent increases;
- Noticing requirements for rent increases; or
- Requirements that landlords do not retaliate against tenants who bring concerns to the City.

These are key elements of the ordinance that define the fundamental rights and responsibilities of tenants and landlords under the ARO.

[16] Rental Rights and Referrals Program staff surmised that most landlords were not noticing the Program when they terminated leases. By way of comparison, according to the consultant hired by the Department to provide a profile of San José's renters and rental housing market, about 11,000 of the City's 45,820 ARO units turn over every year.

San José Has Broad Authority to Enforce Its Apartment Rent Ordinance

San José has the authority to deploy various enforcement measures. The ordinance outlines various enforcement measures including civil penalties, civil actions, and fines for violations like excessive rents. However, San José does not exercise such authority.

In contrast, other cities make use of strong enforcement measures as needed. For instance, in West Hollywood and Santa Monica, non-compliant landlords lose the ability to apply rent increases or are required to reduce rent. Other cities like San Francisco sue noncompliant landlords. Santa Monica, Berkeley, and West Hollywood all have staff specifically dedicated to enforcement, including attorneys and legal professionals.

In our opinion, enforcement is needed to ensure the ARO achieves its intended benefits. In addition to Program staff properly identifying violations of the ARO, investigators and attorneys are needed to execute enforcement procedures.[17] Although, enforcement is expensive, at a minimum, the City should be equipped to provide enforcement when complainants come forward.

Recommendation #2: To ensure enforcement of the Apartment Rent Ordinance, the Housing Department's staffing plan should consider the need for dedicated staffing in the City Attorney's Office.

Outreach to Customers Should Be Improved

It is the City's responsibility to ensure that it is providing accurate, current, and relevant and clear information to its customers. Reflecting the value of effective communication and outreach, several City departments and programs have staff dedicated to providing public information, community engagement, marketing and promotion, and public education. Other cities, including some of the ones referenced above, have dedicated staff and resources for outreach. The Rental Rights and Referrals Program does not have such staffing.

The Program's current outreach is limited and consists of mailing annual letters to landlords, staffing tables at community events, and hosting an informational website. 119 outreach events have been held since 2011 – an average of 20 events per year. We noted several opportunities where the Program could improve its outreach efforts.

[17] Some reports of code violations that might be brought to the attention of Program staff would fall under the purview of PBCE. PBCE is responsible for enforcing housing code violations enumerated elsewhere in the Municipal Code.

Targeted approaches. In 2015 and 2016, when the Housing Department was revising the ordinance, it embarked on significant targeted outreach to tenants and landlords. Most ongoing outreach has not been targeted, and usually consists of distributing informational flyers at events unrelated to housing where affected tenants and landlords may not even be present. Since 2011, only 39 and 13 events were respectively targeted to tenants and landlords.

Other cities pursue a targeted approach via educational events, including workshops and seminars. West Hollywood and Santa Monica even archive some of these and post them publicly on their websites. It is also common to see newsletters and other informational materials specifically addressed to tenants and landlords covered by their ordinances. In Berkeley, where there are a large number of college students, the rent control group focuses some of its marketing efforts specifically on students.

Improved language accessibility. According to the Housing Department's consultant, "*ARO renters are younger, earn less, are disproportionately minorities, have less education, and have greater rates of limited English proficiency than non-ARO renters.*"[18] The Program provides forms in English and Spanish, but does not offer any additional language offerings for these materials. Any outreach should use commonly used languages, and the Department should identify languages that are most needed, translating relevant outreach efforts into those identified languages. Other cities, like San Francisco's Rent Board offered the option to translate its website, as well as downloadable forms in multiple languages for customers to download.

Welcoming physical spaces. The lobby of the Housing Department, where Program customers go to access information and file petitions, provides cryptic signage, most of which is only in English. The lobby may be particularly frustrating to some customers considering there are no staff assigned to greet customers even during regularly scheduled business hours.

Clear web pages. The Housing Department website provides information on for the Program, but they are difficult to understand, and some of them use technical language taken directly from the San José Municipal Code. The website also contains links to text documents that serve as Program informational handouts, but these are harder to access. Of many alternatives, Alameda's website was notable for having visual appeal, an intuitive interface, and information that is easy to understand in plain language.

Broader online services. Customers increasingly expect the option to complete transactions online, and therefore demand more resourceful websites. Currently, the Program posts a PDF listing of rent control units on its website. An online

[18] *San José ARO Study Final Report*, Economic Roundtable (April 2016).

look-up tool would ease customers' search for rent control units or confirm whether their units are covered.

Currently, the Program requires customers to go to City Hall to provide signatures on petitions. Offering services online will offer time savings to both customers and Program staff. Online functionality will be increasingly important if the Housing Department pursues a system that requires tenants and landlords to periodically provide updates on tenancies and rent rates (see Finding 3's discussion on rent registries). The City of Los Angeles' program allows customers to submit complaints via an online form. West Hollywood provides regularly updated lists of rent control rentals on its website.

Customer Inquiries Reveal the Need for Improved Outreach

Customer questions logged in the Housing Department's customer database reveal that people need better information about the ARO. Tenants and landlords had questions about fundamental elements of the ordinance. Take the following examples:

- Numerous tenants living in rent control units asked if rent increases were allowable, even though their reported rents were well within allowable limits as prescribed by the ARO.
- Tenants reported perceived rent control violations, even though they were not living in rent control units.
- Numerous tenants and landlords wanted to know if their units or properties were subject to rent control.
- Tenants asked whether additional tenants moving into their ARO units would affect their rents.
- Numerous landlords asked about how much they could increase rents and how to notify tenants.

And then there are the many customers who may not even know to bring their questions and concerns to the Rental Rights and Referrals Program. As Exhibit 8 below shows, the Program has seen a remarkably low number of customer interactions compared to other cities.

Exhibit 8: San José Has Experienced Fewer Customer Interactions Than Peer Cities

	SAN JOSE	West Hollywood	Santa Monica	San Francisco
Covered Units (2015-16)	45,820	17,000	28,000	173,000
Customer Interactions (2015-16)	3,489	14,000	13,250	58,800
Interactions per Covered Unit	*8 per 100*	*82 per 100*	*47 per 100*	*34 per 100*

Source: Auditor compilation of select data from peer cities.

The low number of customer interactions may suggest that many tenants and landlords do not know about the Apartment Rent Ordinance. In our opinion, the Housing Department should ensure that tenants and landlords are better informed.

Recommendation #3: To improve communication and outreach, the Housing Department should:

a) Adopt a targeted approach to tenants and landlords,

b) Improve language accessibility,

c) Improve its lobby space,

d) Improve websites, and

e) Expand its online offerings including an on-line look-up tool, and the ability to file petitions online.

Improvements In Outreach May Increase Demand for Services and Require More Resources

As discussed above, San José currently sees low numbers of customer interactions, especially when compared to other cities with rent control policies. West Hollywood, Santa Monica, and San Francisco experienced per capita customer interactions that were respectively ten, six, and four times greater than San José's. While we do not know if San José will see these levels of customer interaction, we can only assume that with greater enforcement and outreach, the City will experience significantly increased volume of interactions. As such, in our opinion, the Department will likely need even more staffing resources.

Recommendation #4: To fulfill increasing demand for services, the Housing Department's staffing plan should consider the additional staff required for coordinating hearings, referrals for dispute resolution and advice, investigation and enforcement activities, and improving outreach.

Finding 2 Better Use of City Resources Can Shorten Timelines and Improve Customer Service

Summary

Improvements are needed to make current processes more efficient and effective. For example, the Rental Rights and Referrals Program can better use its existing access to the citywide integrated permitting system (AMANDA). The current process for identifying rent control unit addresses is inefficient. We recommend Housing Department staff enter the unit addresses into AMANDA, and ensure live access to changes to rent control properties, like permit applications for condominium conversions and demolitions, and code enforcement cases. This may require some additional training on AMANDA, and some modifications to the system. In addition, to keep both departments apprised on matters of mutual interest, we recommend that the Housing Department initiate periodic meetings with the Department of Planning, Building, and Code Enforcement (PBCE) to exchange updates and discuss program needs. To maximize interdepartmental coordination and data sharing, the Housing Department should ensure their recorded data is standardized by developing and implementing data input procedures. We also recommend that the Program continue its efforts to improve its fee exemption process by reducing the time, effort, and confusion of staff and customers, and ensuring that exemptions are given on appropriate and fair grounds. Finally, the Program could make better use of the City's Call Center during periods of high demand.

The Housing Department Uses an Inefficient Process for Identifying Unit Addresses

Once a year, to reach out to tenants and landlords of rent control units, the Housing Department requests from PBCE a list of multiple housing properties and addresses[19] to upload into its customer relationship database. In a 21st century city, the Housing Department should have continuous access to an accurate and updated record of rent control properties so that it can appropriately enforce the ordinance and target outreach to the right people.

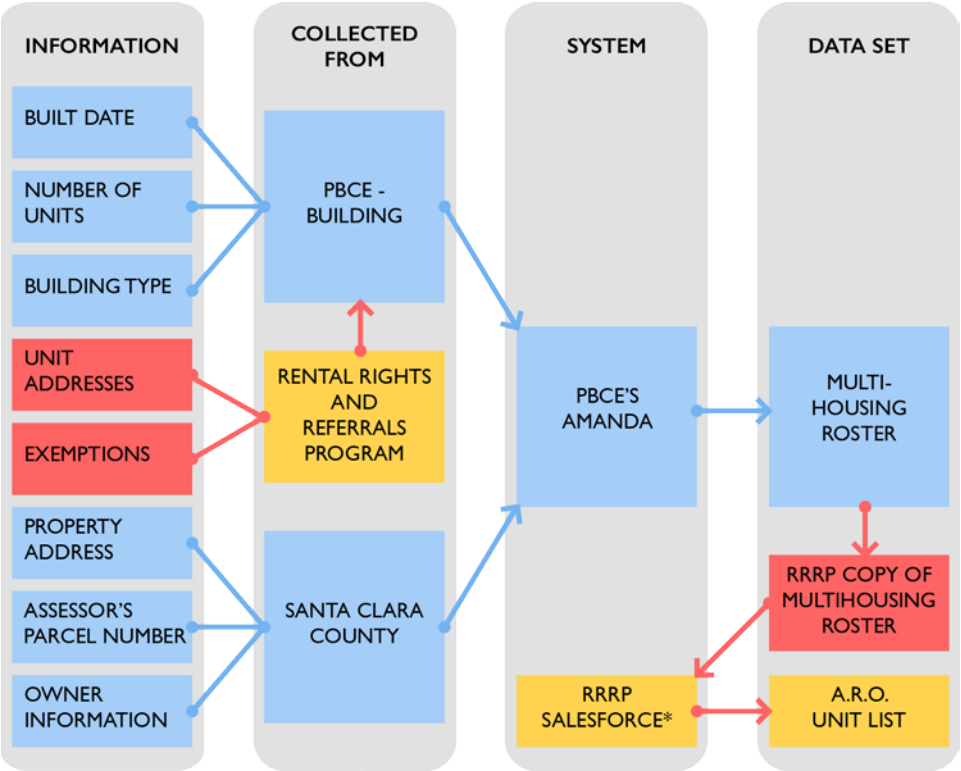
Instead, every year, the Housing Department undergoes a laborious process to arrive at an updated list of rent control unit addresses. It:

[19] PBCE maintains the Multiple Housing Program roster in the City's integrated permitting system (AMANDA), which contains most of the information required to determine if a property is subject to rent control. The database also draws from parcel data maintained by Santa Clara County.

1. Requests from PBCE, a spreadsheet from AMANDA (the City's building and permit database) containing property owner information and addresses of multiple housing properties.
2. Matches PBCE's list against a list of individual units on ARO properties that the Housing Department periodically buys from a mailing address vendor. This has been necessary because AMANDA currently has property and building information, but it does not contain information on individual units.

This process is unnecessarily time-consuming and error-prone. It requires Housing Department staff to repeatedly match and manipulate two separate data sources.

Exhibit 9: Information Exchange Is Inefficient



Source: Audit team summary based on its accounting of the City's information systems and processes as identified by staff at the Housing Department and PBCE.

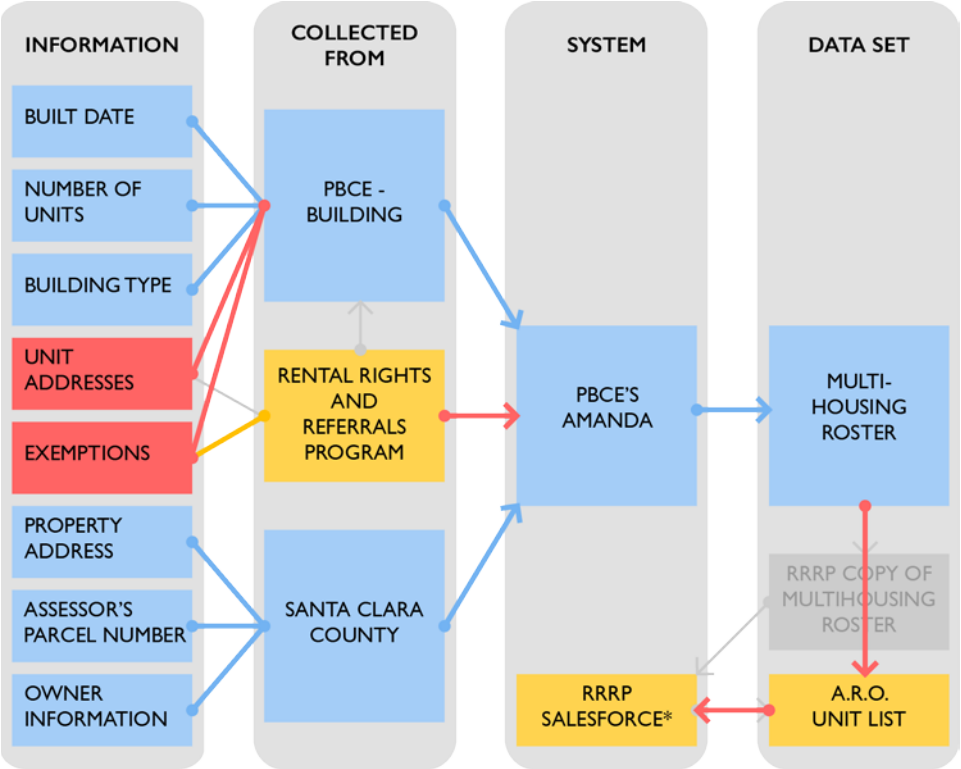
*"RRRP Salesforce" refers to the Rental Rights and Referrals Program's customer relationship management system.

More Information Pertaining to Rent Control Units Could Be Stored in AMANDA

AMANDA contains the City's records on buildings, permits, and multiple housing properties. Housing Department staff already have round-the-clock access to live data stored in the AMANDA system, but it stores its information separately. It is our understanding that AMANDA could be modified to contain extra data fields to

store information about rent control units.[20] The Housing Department would need to invest staff time to populate the data fields after soliciting and/or purchasing a change order to add the desired fields.[21]

Exhibit 10: Information Exchange Can Be Improved



Source: Audit team summary based on its accounting of the City's information systems and processes as identified by staff at the Housing Department and PBCE.

* "RRRP Salesforce" refers to the Rental Rights and Referrals Program's customer relationship management system.

Including unit information in the AMANDA system would help ensure the ongoing accuracy of tracking units. This would be important regardless of whether the City decides to use AMANDA as its primary registry or another system (as discussed in more detail in Finding 3).

Recommendation #5: The Housing Department should enter unit addresses into the citywide integrated permitting system.

[20] For example, whether buildings are subject to rent control, specific unit addresses, and other information the Housing Department has been obtaining from the mailing address vendors it has used to prepare mailing lists.

[21] PBCE staff report that, with the current upgrade in process, PBCE does not have capacity to modify AMANDA, or collect and enter data. However, the Housing Department may coordinate with PBCE as the lead in the permitting system, and submit a change order to the contractor.

The Housing Department Should Take Advantage of Its Live Access to the Citywide Integrated Permitting System

Including unit information in AMANDA and making full use of that system would enable the Housing Department to benefit from live updates recorded in AMANDA, such as entries by other City departments and divisions. Such entries would include the full range of permit activities relevant to the Housing Department, including applications for and issuances of demolition or zoning permits for rent control units. All of this is potentially available through automatic notifications or querying from AMANDA.

This would allow better coordination with PBCE on permitting, and potentially, code enforcement issues. For example, a permit from PBCE is required for a landlord or property owner to demolish rental units, or to convert such units into condominiums. At such times, the services offered by the Rental Rights and Referrals Program can benefit affected tenants. If the Housing Department was automatically notified when property owners apply for permits on covered properties, the Program could more easily and quickly reach out to affected tenants to inform them of their rights and ensure those rights are not violated.

It would also provide Housing staff the ability to answer simple, routine questions about properties, rather than having to call PBCE to answer such questions.

Recommendation #6: The Housing Department should use its live access to the citywide integrated permitting system to answer routine questions about properties and receive alerts about changes to the Multiple Housing Roster, conversion or demolition permit applications, and code enforcement cases.

The Housing Department Should Finish Identifying All Rent Control Units

As described earlier in the background section, rent control applies to units with occupancy permits dated before September 7, 1979. However, the City's integrated permitting system (AMANDA) includes only years when occupancy permits were granted – it does not contain specific dates. When time and staffing allowed, PBCE and Rentals Rights and Referrals Program staff pulled permit records to determine whether individual apartments built in 1979 were subject to rent control.

At the time of our audit, staff had not verified whether 52 units on 12 properties were subject to rent control.

Recommendation #7: The Housing Department should continue to identify the occupancy permit dates for the remaining 52 units to determine which if any of those units are subject to rent control.

The Housing Department Should Coordinate With the Department of Planning, Building and Code Enforcement on Policy Recommendations that Impact Service Delivery

PBCE's Code Enforcement Division has expressed an interest in staying informed of the changes to the Housing Department's regulations and service delivery models, because they inevitably affect PBCE. For example, the Housing Department's proposed modifications to the ordinance, increased outreach, and the Anti-Retaliation and Protection Ordinance, may lead to an increase in code enforcement complaints, which may demand more investigation and enforcement by PBCE staff. In addition, since PBCE facilitates invoicing for ARO units and PBCE answers questions from invoiced landlords, PBCE anticipates increased calls regarding recent and potential future increases in ARO fees.

The Housing Department may also benefit from learning about code enforcement cases, as they can potentially affect Rental Rights and Referrals Program customers and can expose health and safety violators as "high risk" landlords and properties. Such violators might also be out of compliance with ARO provisions.

Currently, the Housing Department does not make full use of information from PBCE's Code Enforcement Division. Better information exchange would allow for the Housing Department and Code Enforcement to respectively enforce the ARO and related housing policies, as well as the City's health and safety code. Moreover, this can help ensure both departments have information they need to assist their respective customers.

Recommendation #8: The Housing Department should coordinate with the Department of Planning, Building and Code Enforcement (PBCE) regarding how the modified Apartment Rent Ordinance will impact its operations, such as complaint intake, potential workload impacts on PBCE, and the tracking of proposed demolitions and condo conversions.

Data Standardization Needed

Most of the Rental Rights and Referrals Program's information is stored in the Housing Department's customer relationship management system (Salesforce). The system contains information about its customer interactions, including the names, dates, and contact information of the people seeking assistance. It also contains information on the timelines and outcomes of dispute resolution efforts, and

referrals to outside agencies. The Department relies on this data to refer to customer and case information, and track Program workload and output.

We found several inconsistencies with the data in the system. For example, fields were not populated correctly or consistently, some inputs contained misspellings, and much of the needed information is entered into a single field. These problems complicate meaningful reporting, as they must be manually fixed prior to analyzing.

The Housing Department should ensure the data in their customer relationship management system is clean and standardized, by developing and implementing formalized data input procedures. Such procedures should be available for Program staff to reference, as needed. This would ease burdens on other departments, as well as Housing's own staff, making data more accessible and requiring less manual manipulation to be useful in their work.

Program staff noted that many of the data inconsistencies were due to staffing changes over the years. As the Program grows, staffing will likely increase, further emphasizing the need for consistent data input. Furthermore, to the extent that the Program links its database to AMANDA, and organize its database more like a unit registry, the Salesforce database could be used to accumulate important unit specific information.

Recommendation #9: To ensure the accuracy and consistency of its data, the Housing Department should standardize its customer data using common data input tools (drop downs, standard addressing conventions, etc.), and formalize data input procedures in a reference manual available to staff.

The Fee Exemption Process Can Be Improved

To fund the ordinance's provisions and services, annual fees are assessed to rent control property owners on a per unit basis. FY 2015-16 rent control fees were $12.25 per unit; they increased to $19.29 for FY 2016-17. Units that qualified for exemptions were charged $1.95 per unit instead (in FY 2015-16). In FY 2015-16, 5,282 units were exempted from rent control fees, amounting to $64,700 in exemptions ($535,000 in rent control fee revenue was collected that year).

Under the ARO, owners of rent control units can request a fee exemption for the following reasons:

- The unit is occupied by the landlord.
- The rental unit is used for transient accommodations (for periods of less than 30 days) in a hotel or guest house.
- The rental unit is owned or operated by a governmental agency.

- The rent is subsidized by a governmental agency.
- The property is a: hospital; convent; monastery; extended care facility; emergency residential shelter; residential care facility; residential service facility; asylum; nonprofit home for the aged; fraternity or sorority house; a dormitory owned and operated by an institution of higher education; high school; or elementary school.

The Housing Department underwent the following annual process to solicit requests for exemptions from landlords:[22]

- The Housing Department requested from PBCE, a spreadsheet containing property owner information and addresses of apartment buildings.
- The Housing Department used the building and address records to mail out fee exemption forms to property owners.
- When Department staff received completed forms, they manually entered the number of exempt units into a new spreadsheet.
- Department staff then sent this spreadsheet back to PBCE to upload into AMANDA. PBCE's staff tested it for obvious errors, and requested that Housing staff look into discrepancies.

The Fee Exemption Process Is Time Consuming and Burdensome

The exemption process presents additional time and resource demands as Program staff have to request from PBCE the list of rent control property owners, prepare exemption instruction packets, mail them, review the completed exemption forms that landlords mail in, enter results into a spreadsheet, and forward results to PBCE which is the official collecting entity for property-related fees.

According to Program staff, the most time-consuming part is the processing and review of the exemption requests, which they estimate takes about 2 minutes each for easier small buildings, and up to an hour for more difficult larger buildings. Based on this, we estimate that the Program's processing and review of fee exemption requests received in FY 2015-16 took more than three weeks of staff time. In addition, exemption requests occasionally (staff estimate 5 percent) require back-and-forth via email or phone, which takes more time. Also, some fee exemption requesters call the Program to confirm receipt of their requests because the Program does not issue receipts or acknowledgements when an exemption is granted.

[22] The Department recently acquired a list of unit information in order to begin building up their rental database and to begin outreach to tenants.

Confusing Terms May Have Resulted in Exemptions Landlords Were Not Entitled to Receive

In spite of the above described time- and labor-intensive process, we found that in FY 2015-16, some exemptions were granted to property owners who may not have been entitled to receive them. Some of these may have been attributable to aspects of the exemption process that were confusing. For example, in its mailed letter to landlords, the Housing Department advised that exemptions are granted if: "The landlord occupies one of the units." This may be interpreted as a landlord is exempt from paying fees on an entire building if he can demonstrate that he lives in the building. We found instances where property owners claimed and received fee exemptions for multiple units on the sole basis that one unit was occupied by the landlord. Contrary to this, exemptions are intended only for the fees assessed on units directly occupied by the landlord.

Confusion was also revealed by question marks ("?"), unanswered questions, and incorrectly answered questions on the hard copy exemption forms we reviewed. In addition to issuing ineligible exemptions, effects of this confusion include customer dissatisfaction and misinformation, and lost time when Program staff respond to otherwise preventable customer inquiries.

The Department Accepts Lax Standards for Validating Exemption Eligibility

We also noted some lax standards for validating eligibility for fee exemptions. Take the following examples in which property owners requested and were subsequently issued fee exemptions:

- Landlords presented utility bills showing their names as evidence that they lived in the units. It is common for tenant-occupied units to have utility services billed to landlords even when landlords live offsite.
- Landlords presented junk mail or advertisements addressed in their name as evidence that they occupied a unit. This is a weak form of evidence.

FY 2016-17 Brought Significant Improvements to the Exemption Process

In Summer 2016, the Housing Department and PBCE coordinated to tighten the FY 2016-17 exemption process in some important ways.

- The FY 2015-16 exemption mailing included requests for data that were already available in AMANDA. For example, the fee exemption form prompted landlords to enter the number of units on their properties and the addresses of the properties even though this information was recorded in AMANDA. For the FY 2016-17 exemption process, the Housing Department and PBCE coordinated to ensure that such information was already printed on the form for confirmation by the property owner.

- During the FY 2015-16 exemption process, some property owners should have never been included in the exemption mailing because their properties met one of the aforementioned qualifications, which are immediately identifiable in AMANDA. For FY 2015-16, the Housing Department considered exemption requests for 8 properties containing 895 units, from owners requesting fee exemptions on the basis that their units were being used for temporary, transient accommodations or fraternity/sorority housing. For the FY 2016-17 exemption process, PBCE provided to the Housing Department only those properties for which AMANDA did not show qualification for fee exemptions. Hence, the Housing Department was able to avoid soliciting fee exemptions from landlords who were obviously eligible for them.

Customers and the Housing Department Would Benefit From Additional Improvements

Even with the recent improvements to the exemption process, there remain opportunities for the Housing Department to improve customer service within its exemption process, and to ensure rent control landlords appropriately and equitably pay fees.

First, an online form would allow the Housing Department to automatically restrict inputs to data fields and alert landlords of incorrect entries. It would also allow landlords to request exemptions faster, and receive immediate receipts to confirm that their requests were successfully received. This is just one of several online services the Housing Department should pursue, as addressed in Finding 1.

Second, for those requesting exemptions based on their units' use type, the Housing Department, where possible, should validate exemption requestors' claims against AMANDA. Also, for the purposes of validating exemption requests, it may be possible to access and utilize other authoritative sources. For example, the County Assessor or the County Housing Authority may have lists of units that are receiving affordable housing subsidies, which were eligible for exemptions under the ARO.

Recommendation #10: Revise the fee exemption process by:

a) Developing an online exemption option,

b) Providing receipts or acknowledgements to landlords to confirm exemption requests have been submitted and granted/not granted,

c) Establishing reasonable standards for landlords to prove eligibility for exemptions, and

d) Developing a validation process to confirm exemption eligibility against building data in the citywide integrated permitting system and other authoritative sources.

The City's Customer Contact Center Can Supplement the Housing Department's Customer Service

The City's Customer Contact Center is a resource for providing information to the public. A division of the City's Information Technology Department (IT), the Customer Contact Center receives phone calls from members of the public, and "serves as the primary point of City information for residents, businesses, and employees." Call takers at the Customer Contact Center are Office Specialists, and are well suited to answer calls.

We recommend the Housing Department apprise IT of program updates in anticipation of service changes that may lead to an increase in calls. For example, during the recent months-long period when the Housing Department increased rent control fees and proposed changes to the ARO, the Customer Contact Center was not informed. According to IT, it would be helpful if the Housing Department provided scripts and instructions for call takers to use when assisting inquiring members of the public, with more detailed questions forwarded to the Housing Department.

According to its customer records, the Program receives about 1,000 phone calls per year from members of the public. In 2016, incoming calls jumped to 2,000. Given their limited staffing, the Rental Rights and Referrals Program should consider directing callers to the Customer Contact Center during periods of intense interest. This would free up Housing Department staff to focus on Program-specific work and more specialized customer interactions.

Recommendation #11: To help handle spikes in call volume, Housing Department should:

a) **Alert the City's Customer Contact Center of service changes that affect the public,**

b) **Provide scripts to the Customer Contact Center in advance of program and service delivery changes, and**

c) **Consider, as needed, directing callers to the Customer Contact Center to answer phone calls.**

Finding 3 Some Aspects of the Modified Apartment Rent Ordinance May Offer Only Modest Benefits While Presenting Significant Burdens and Costs

Summary

Our modeling shows that the 5 percent limit on annual rent increases that was recently approved by the City Council, would protect tenants only from the most dramatic market spikes. Controlling these rent spikes may provide critical relief, however the accompanying banking provision allows for annual rent increases of up to 8 percent, which undermines the protections offered by the 5 percent limit. In addition, the banking provision adds complexity for rent control landlords, the majority of whom own small apartment buildings, and are not necessarily professional apartment managers. Of the rent control programs we reviewed, only San José's paired banking to flat allowable annual rent increases. In light of the modest benefits compared to the burdens and costs associated with banking, we recommend the City Council consider eliminating the banking provision in the final ordinance.

Additionally, depending on how it was implemented, the proposed rent registry would also present significant burdens and costs to the City, landlords, and tenants. Other cities have adopted variations on two predominant types of registries: unit registries and rent registries. Both types contain unit information. The primary differences are that the rent registry requires additional information about the tenants occupying the units, current and past rents, and leases. Based on other cities' experiences, we believe the Department may struggle to collect all the required information from landlords, and doing so will be staff-intensive. In our opinion, a rent registry system could divert limited Program resources away from administering the fundamental elements of the ordinance. Furthermore, because of tenant turnover (estimated once every four years), registry data may have a limited useful "shelf life." As an alternative to what could be a costly, burdensome, and difficult to enforce rent registration system, we recommend the City Council consider allowing staff to use the citywide integrated permitting system as the basis for a simpler unit registry with links to its existing customer relationship management system.

The City Council Approved Modifications to the Apartment Rent Ordinance

In FY 2014-15 and FY 2015-16, the Rental Rights and Referrals Program recorded 1,447 inquiries from customers seeking advice about allowable rent increases.[23] Concerns about rent increases were widespread among tenants living in rent control units. Among these was a tenant who asked about the permissibility of a 5 percent rent increase for his ARO rental unit – which was well within the allowable annual rent increase of 8 percent at that time, and would also be allowed under the modified ordinance. Another tenant asked about a 19 percent increase in an ARO unit (the old ordinance allowed for up to 21 percent increases if landlords had not raised rents in 2 years).

As discussed in the Background section of this report, in April and May 2016, the City Council considered and approved modifications to the ARO that included:

- Reducing the annual allowable rent increase to 5 percent, with banking up to 10 percent and an annual maximum of 8 percent; and
- Developing a rent registry for improved monitoring and enforcement.

San José Is Unusual in That Limits on Annual Increases Are Not Tied to Market Conditions

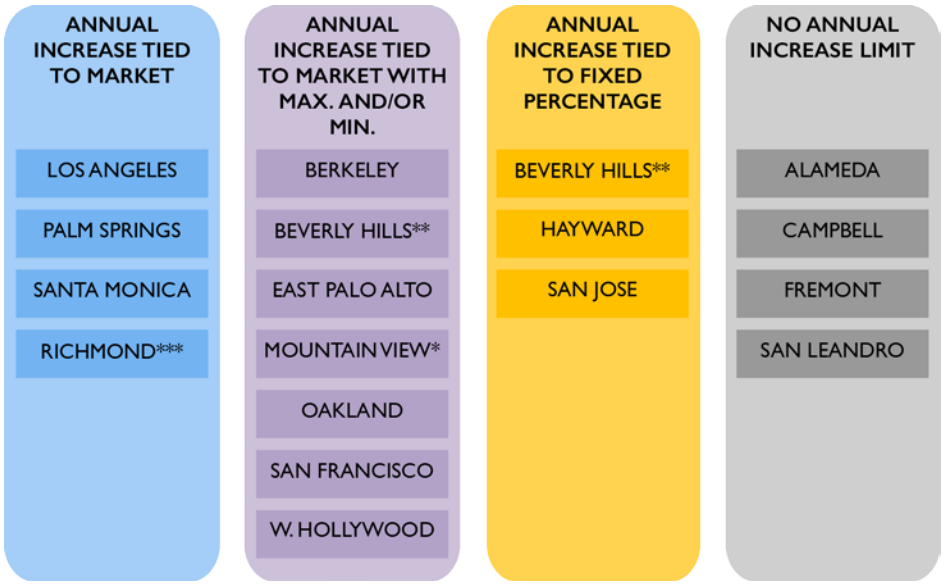
In addition to San José, we reviewed sixteen cities in California that have some form of rent control, which can be defined as laws or ordinances that place limits on the rents for housing. Bay Area cities include San Francisco, Oakland, Berkeley, East Palo Alto, and Hayward. Several other cities had rent control on their ballots in November 2016.

San José is one of a few California cities to use a flat percentage to limit allowable annual rent increases. As shown in Exhibit 11 below, most peer cities tie allowable rent increases to the rental market. For example, Palm Springs limits rents to 75 percent of the increase in the Consumer Price Index (CPI) for that area. Other cities, like Berkley tie rent limits to the market with a minimum and a maximum.[24]

[23] Other customer inquiries in FY 2014-15 and 2015-16 were related to a range of other matters including conflicts between co-inhabiting family members, maintenance issues, potential code enforcement violations, and legal questions.

[24] See Appendix A for more information about rent control policies in California cities.

Exhibit 11: A Sample of California Cities with Rent Control Ordinances



Source: Audit team summary based on review of rent control ordinances in California.

* Mountain View had a rent control program with no annual increase limit, but in November 2016, voters approved a ballot measure tying rent limits to the market with a minimum and a maximum.

** The rent control ordinance in Beverly Hills has two parts depending on the population being served.

*** In November 2016, voters in Richmond approved a rent control ballot measure.

Landlords Can Reset Rents When Tenants Decide to Move

As discussed in the Background section of this report, State law and San José's ARO mandate *vacancy decontrol* – that is, landlords can reset rents to whatever rates they want when tenants move out of their own accord.[25] As a result, limiting annual rent increases may protect **tenants**, but it does not ensure the long-term affordability of rent control **units**.

Fixed Rate Limits on Annual Rent Increases May Bring Only Modest Benefits

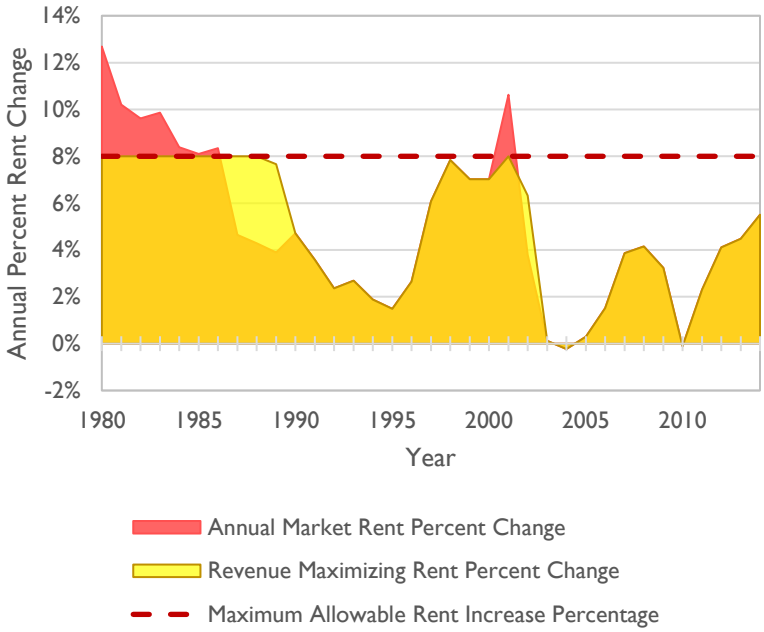
Landlords operate in a rental market, and their increases are limited by market rents. Our modeling shows that relying on a flat percentage to limit annual rent increases has the benefit of cutting rent spikes during periods of high inflation, but does not necessarily result in lower housing costs for tenants over the long term. See Appendix C for more information about our modeling.

[25] Vacancy decontrol is mandated by the *Costa-Hawkins Rental Housing Act.*

The 8 Percent Cap on Rent Increases Reduced Rents Only During the Highest Spikes in the Rental Market

As shown in Exhibit 12 below, San José's previous 8 percent allowable annual rent increase would have limited market rate increases only between 1980 and 1986, and again in 2001 (when compared to market prices illustrated by CPI-U Rent[26]). These were periods when the rental market produced especially high rents. The exhibit also demonstrates that the 8 percent cap would have allowed a revenue-maximizing landlord to raise rents equal to the maximum allowable rent increase until their rents were equal to the market rent price.

Exhibit 12: The 8 Percent Annual Rent Cap Still Allowed Landlords to Charge Annual Market Rent Increases to Long Term Tenants for Most of the Period Between 1980 and 2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

Note: The graph demonstrates potential annual rent changes for units occupied by the same tenant since 1980.

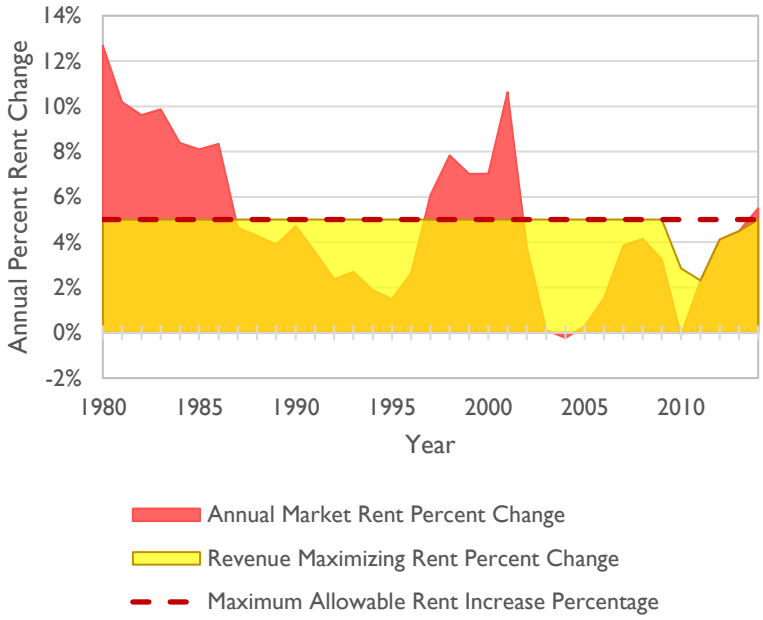
Lowering the Cap to 5 Percent Increases the Impact

Similarly, Exhibit 13 below shows how reducing the annual allowable rent increase to 5 percent (as recently approved by the City Council), would have limited rents for rent control units. Reducing the allowable rent increase from

[26] To approximate market conditions, we turned to the U.S. Department of Labor's Bureau of Labor Statistics' Consumer Price Index – "Rent as a Primary Residence" for the San Francisco-Oakland-San José metro area (CPI-U Rent). See Appendix B for more information about this index and our rationale for using it.

8 percent to 5 percent would have impacted additional years between 1980 and 2014 – including 1980 through 1986, 1997 through 2001, and 2014. The exhibit also demonstrates how a revenue-maximizing landlord would have changed rent prices if the 5 percent annual limit had been in place over that time period.

Exhibit 13: A 5 Percent Annual Rent Cap Would Have Limited Landlords' Ability to Charge Annual Market Rent Increases to Long Term Tenants for Some of the Period Between 1980 and 2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

Note: The graph demonstrates potential annual rent changes for units occupied by the same tenant since 1980.

Limits on Annual Rent Increases Have Not Ensured Rental Affordability for Tenants

When annual allowable rent increases exceed increases in market rents, our modeling suggests that landlords would adjust rents to market rates, just at a slower pace. This eases the burden of sudden increases in rents paid by tenants.

However, while rent control tenants were provided some stability when the market produced the most extreme rent increases, rents did not necessarily become more "affordable" even for long-term tenants over time. For additional analyses on the changes in rents compared to wages, see Appendix D.

Limits on Annual Rent Increases Could Reduce Landlord Revenue

The tradeoff for relieving tenants is potentially less revenue to landlords. Our modeling shows that even after they raised rents on their rent control units to

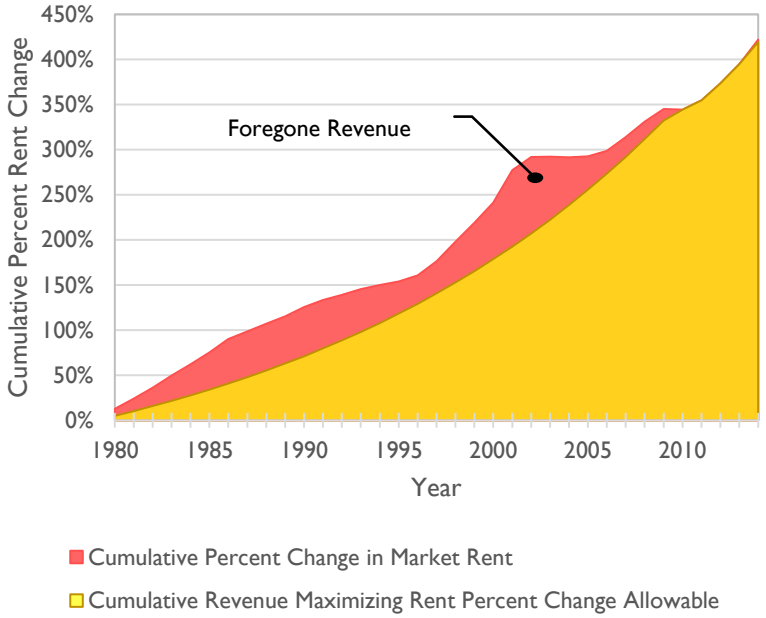
meet market prices, some landlords might not have been able to recover foregone revenue from previous years of rent limits (depending on when they entered and exited the market).

Between 1980 and 2014, the rental housing market produced average annual rent increases of 4.9 percent (based on CPI-U Rent). Our modeling suggests that the 5 percent limit on annual rent increases would have allowed for average annual rent increases of 4.8 percent for the same time period. Given the relatively high levels of inflation in the early 1980s, long-time landlords owning apartment buildings throughout this period could have seen foregone revenue which could not be recovered in subsequent years because typically landlords could not set rents higher than the market rent price.

When the landlord enters the business, when the tenant enters the lease, and the required vacancy decontrol, will all have a significant impact on the amount of foregone revenue experienced by individual landlords.

Exhibit 14 below illustrates a rent control landlord's potential foregone revenue, had the 5 percent limit been in place between 1980 and 2014, and had the landlord owned the property and had the same tenant for that entire period.[27]

Exhibit 14: A 5 Percent Rent Cap Would Have Limited Revenue for Long Term Landlords With Long Term Tenants Between 1980 and 2014

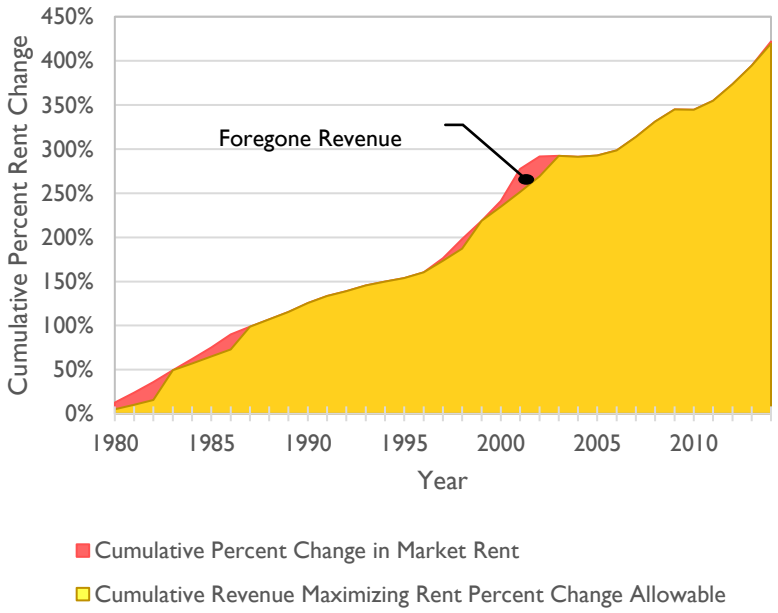


Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

[27] See Appendix C for similar graphs at the 8 percent annual allowable increase level.

Exhibit 15 shows the impact of vacancy decontrol on the 34-year scenario. According to a consultant that the Housing Department contracted to analyze the demographics of rent control tenants, tenants move out of their rent control units every four years. Vacancy decontrol allows landlords to reset rent prices to market rates when tenants leave of their own accord. Exhibit 15 below demonstrates the effect of this vacancy decontrol on landlords' potential foregone revenue.

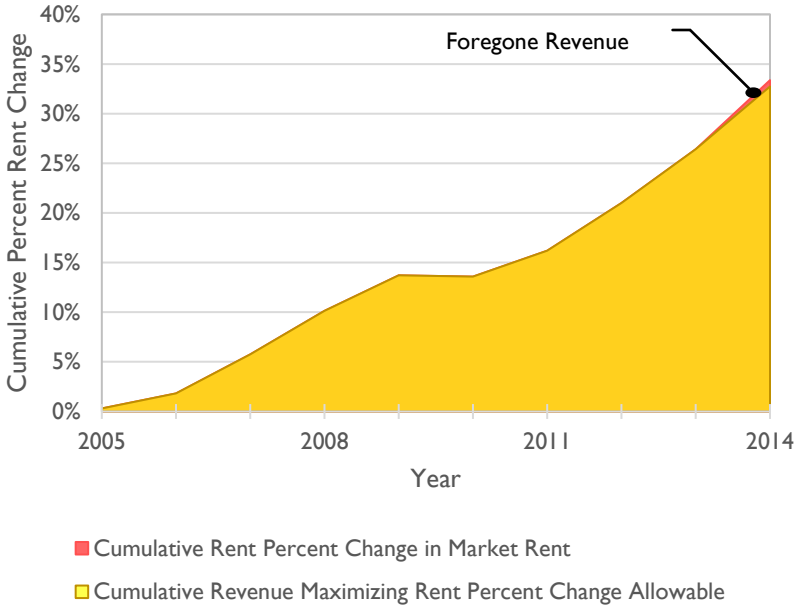
Exhibit 15: A 5 Percent Rent Cap Would Have Slightly Affected Revenue for Long Term Landlords Seeing Typical Tenant Turnover Between 1980 and 2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

Actual impacts and potential foregone revenue depends on when the landlord and tenant entered into their relationship. Exhibit 16 below illustrates a landlord's potential foregone revenue, had the 5-percent limit been in place over the last **ten years**, had the landlord owned the property and had the same tenant for that entire period. Vacancy decontrol would have not affected this model, because market rent price changes were less than the 5 percent annual limit in all years, except 2014.

Exhibit 16: A 5 Percent Rent Cap Would Have Minimally Affected Revenue for Landlords With Long Term Tenants Between 2005 and 2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

Banking Provisions Add to the Complexity and Cost of Regulation, and May Provide Little Benefit to Tenants or Landlords

As discussed earlier in the background section of this report, the modifications to the ordinance approved in April and May 2016, once implemented, will allow landlords to bank up to 10 percent of previously unassessed rent increases, and increase rents up to 8 percent.

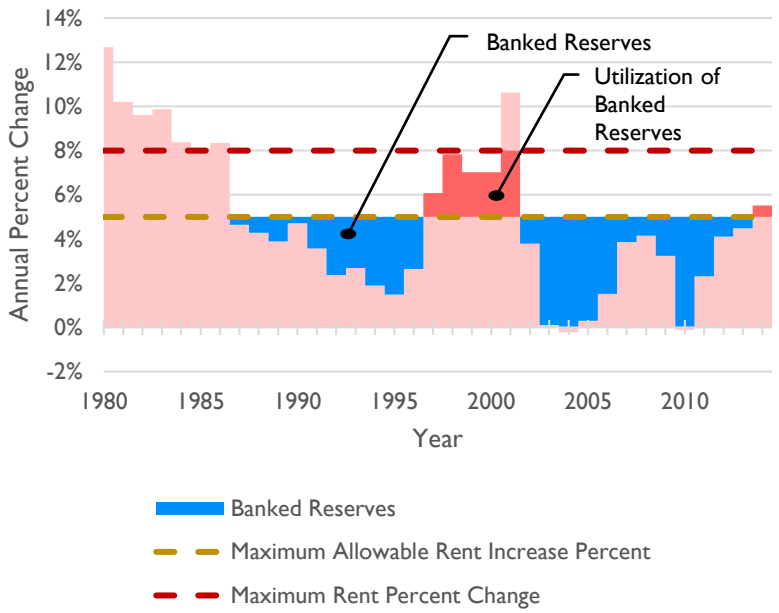
As originally proposed by the Housing Department, the banking provision accompanied a variable allowable annual rent increase tied to the rental housing market (CPI-U All Items).[28] When tied to the rental housing market, a banking provision can provide additional benefits for both landlords and tenants by incenting landlords to even out annual rent spikes over a longer time period. However, the City Council adopted a flat allowable annual rent increase unconnected to the market.

[28] To approximate market conditions, we used Consumer Price Index – Rent as a Primary Residence (CPI-U – "Rents") instead of CPI-U – "All items." See Appendix B for more information about this index and our rationale for using it.

Of the rent control programs we reviewed, only San José's paired banking to a flat allowable annual rent increase limit.[29] Pairing the flat allowable annual rent increase with a banking provision would allow landlords to increase rents at market rates, and bypass the 5 percent annual allowable rent increase limit when the market allows.

In Exhibit 17 below, we applied the current banking provisions to the market (CPI-U Rent) during the time period between 1980 and 2014. The exhibit shows how a landlord could have passively built up a banked reserve when market growth was less than 5 percent, and then utilize those banked reserves to increase rents above the 5 percent limit during market spikes (while still staying within market).[30]

Exhibit 17: Banking Would Allow Some Landlords to Charge Market Rates and Exceed the 5 Percent Limit During Market Spikes



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

[29] See Appendix A for a list of the California cities with rent control that we reviewed for this report.

[30] Due to compounding growth, we assume a profit-maximizing landlord would not use banking because more revenue is made by increasing rents at the maximum allowable each year, whether that maximum is dictated by a rent increase limit or by the market, than by waiting to increase later.

Banking Provisions Present Regulatory Complexity

A rent banking system presents an extra level of complex and intimidating regulation. For each rental unit, rent increases would need to be tracked, as would the amounts banked year after year, and the banked balances. Tenants would have a harder time determining whether their rent increases were permissible, and would need to rely more on Rental Rights and Referrals Program staff and the administrative hearing process for confirmation. The potential for non-compliance and confusion are considerable.

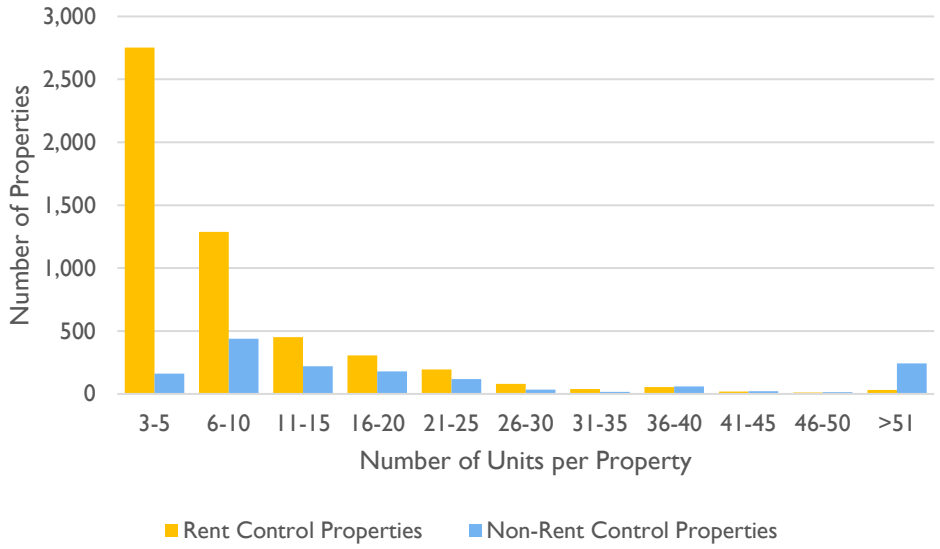
A consultant's review of East Palo Alto's banking terms found that the City's banking plan was not worth the costs and burdens. That review found:

> *"Both the need to track actual rent and the "banking" system each greatly complicate Program administration and add to landlords' reporting requirements. If these were eliminated, landlords would only need to inform the Program of changes in tenancy or services."*

The report also noted that large landlords—those with professional management staff—were more likely to comply than small landlords who "rarely use or understand the banking provisions and fail to follow them correctly even when they try."

Landlords of small apartment buildings may be less likely to invest in the professional staff required to identify and take advantage of the banking provisions. However, as Exhibit 18 below shows, smaller properties are much more likely to be subject to rent control, and are therefore less likely to have sophisticated property management operations.

Exhibit 18: Distribution of Rent Control and Non-Rent Control Buildings by Size



Source: Audit team analysis of PBCE's Multiple Housing Roster data.

In our opinion, including a banking provision with the flat allowable annual rent increase provides only modest benefits to tenants and landlords, while increasing the administrative burden on the program. As we pointed out earlier in Finding 1, the current Rental Rights and Referrals Program has insufficient resources to adequately follow-up on, investigate, and enforce the current ARO, even without these additional provisions. Proactive recording, tracking, and enforcement of banking allowances for 45,820 units would add to this burden and increase costs.

Recommendation #12: The City Council should consider eliminating the banking provision in the final ordinance.

The Cost of the Program Could Be Reduced by Using a Unit Registry Rather Than a Rent Registry

Rent control programs often have registries to track units, rents, and occupancy information. Registry systems track changes to units and leases. They are used as a means to detect changes – and hence identify potential violations to housing regulations. In its April 2016 memo to the City Council, the Housing Department wrote:

> *"A rent registry allows jurisdictions with rent-stabilization programs to collect data on units, to monitor changes in tenancy and rents, and to track allowable rent increases. It also provides staff with the ability to enforce compliance with the Ordinance."*

Rent Registries Are More Detailed Than Unit Registries

There are two prominent types of registries used for rent control programs: a unit registry and a rent registry.

A *unit registry* is a database that typically stores any data required to identify the unit as subject to rent control. In San José, this data would be:

- Built date or Certificate of Occupancy Date;
- Number of units;
- Building use type;
- Unit address;
- Exemptions;
- Property address;
- Assessor's Parcel Number (APN); and
- Property owner information.

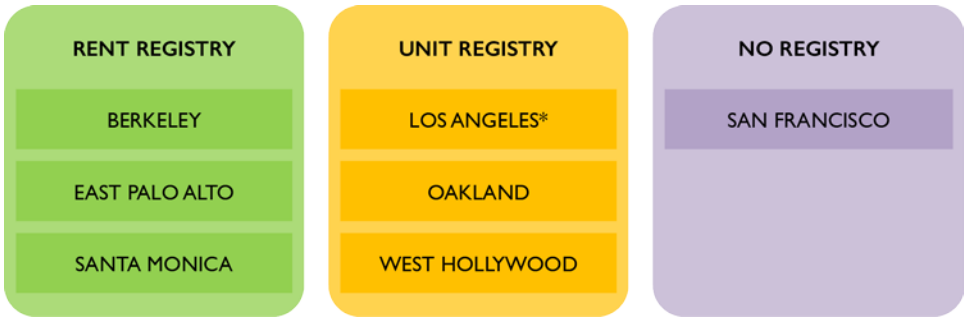
A *rent registry* is a more detailed unit registry. In addition to the information contained in the unit registry, the rent registry tracks rental information by individual unit. This additional information can include:

- Past and current rent prices;
- Changes in rents;
- Names of tenants and household members; and
- Lease termination information (including move-out dates and whether moves were initiated by tenants or landlords).

Peer Cities Have Adopted Various Registry Systems

Registry systems require varying levels of technical infrastructure and staff to develop and maintain. Deciding which registry to build depends upon the type of program the City chooses. A proactive agency will need a more robust database, and for that reason, might require a rent registry. On the other hand, a complaint-based program will have less data demands and can likely save money bypassing a rent registry in favor of a unit registry. The latter relies on tenant complaints to ensure enforcement, and are most effective when significant outreach and tenant protections are in place. San Francisco is able to administer a program without a registry, but relies on that city's highly organized and mobilized tenant groups. Exhibit 19 below shows the types of registries used in a sample of comparable cities.

Exhibit 19: Registry Types in Comparable Cities



Source: Audit team compilation of systems used as reported by various programs.

* The city of Los Angeles is transitioning to a rent registry for 2017.

Some cities have adopted costly systems to fulfill their database needs. Santa Monica's rent registry database uses a proprietary database that was developed in the early 1980s, and is maintained by two programmers, one database coordinator, and one data entry operator.

Registries Require Updates

Both unit and rent registries are only effective if they contain regularly updated and accurate information. Updates for a unit registry are minimal, and much of it is already in place and available to the Housing Department through AMANDA – the City's integrated permitting system.

Recurring Registrations Are Required for a Rent Registry

A rent registry requires a more involved effort than a unit registry, and is commonly achieved through registrations by landlords. Some cities (such as Santa Monica) require rents be registered every time a unit turns over. Other cities, like Los Angeles require annual registrations.

According to the Housing Department, it intends for the Rental Rights and Referrals Program to develop and implement a registry with annual registrations tied to the fee invoicing process. Such a system, as contemplated by the Housing Department, would require landlords to retroactively report changes in tenants and rents since the previous registration. This approach relies on landlords reporting accurate information without the confirmation of tenants. Furthermore, if rents are to be self-reported by landlords, Program staff will also have difficulty ensuring the data's accuracy. Some cities, verify registrations with tenants, which would greatly increase costs. The registration requirements would be difficult to enforce, and present additional costs and burdens for Housing staff and landlords.

Rent Registries Can Be Difficult to Enforce

Other cities reported difficulty getting people to register. For example, a review of East Palo Alto's Rent Stabilization Program found that collecting a similar level of information was overly burdensome, despite the fact that roughly two-thirds of that city's rental housing stock is held by a single owner.

Similarly, the Housing Department's Loan Portfolio program reported difficulties collecting similar data for its Rent Roll tool.[31] While the Rent Roll requires more data than a rent registry might, that Rent Roll information is required for 60 percent fewer units than rent control units, 96 percent fewer properties, which are managed or owned by only 10 to 12 developers. To achieve the success it has had, the Housing Department dedicates two full-time staff members to this effort for six months. These examples suggest that the data collection demands of a rent registry could require significant City resources.

[31] The Housing Department requires affordable housing developers to annually submit Rent Rolls for each unit in the City's Housing Loan Portfolio. The Rent Rolls detail information for each unit in the building including, name of occupants, number of tenants, rent and utility charges, Section 8 voucher information, unit size, income group targeted, move-in date, income at time of occupancy, and current income.

Technological Tools May Not Eliminate Manual Processing

As pointed out in Finding 1 of this report, online services can offer significant convenience and cost savings to customers and the City. As such, a rent registration system in which landlords can submit information online or on a mobile app, would be great. However, such a system may present additional up-front and ongoing costs. And an online registration process does not guarantee that landlords will use it. Staff in Los Angeles report that after five years of having an online and mobile friendly unit registry, only 20 percent of users use that option, while many landlords continue submitting paper forms. That means 80 percent submit manual forms which would require manual processing and additional time.

Some Cities' Registrations Are Enforced Punitively

Berkeley has implemented steep punitive measures to promote compliance with its registration requirements. For late registrations, that city warns of a "100 percent penalty" on its $234 per unit annual fee. In addition, Berkeley threatens "*Properties not in full compliance with registration requirements for all units are not eligible to implement any rent ceiling increases for any unit on the property. Noncompliance may also be used as a defense in an eviction action*." Similarly, in Santa Monica, "*Property owners who fail to register a tenancy are not permitted to pass through rent increases otherwise allowed…Late registration may result in a property owner being served with a Complaint for Non-Registration and/or Excess Rent Receipt and Retention*." It is reasonable to assume that similar penalties may be needed to promote compliance in San José.

A Rent Registry Could Be Costly

Based on the experiences of other cities, a rent registration system could take significant staff time, and thus present extra costs to the City, fee-paying landlords, and tenants.

Los Angeles, which already had a unit registry for its 624,000 rent control units, is moving to a rent registry to better track unlawful rent increases. That city anticipates extra costs of developing and implementing a database to intake, monitor, and query information. Los Angeles is also preparing for the extra ongoing costs of the following tasks:

- entering landlord-reported information;
- verifying reported information;
- investigating discrepancies; and
- responding to increased customer inquiries and public information requests.

Los Angeles' Housing and Community Investment Division has determined its rent registry will raise costs by over $1,400,000 per year, which will be passed onto landlords through increased fees.

Continual follow-up on delinquent landlords could divert the Housing Department from ensuring compliance with the ordinance. We estimate that facilitating, monitoring, and following up on annual registrations could consume at least the time of two full-time staff members on an ongoing basis. This exceeds the total number of staffing allocated to the ARO in 2015-16 (1.5 fulltime equivalents), and could exceed $200,000 annually. Spread across the 45,820 ARO units, this equals $4.36 in additional fees per rent control unit per year.

In addition to costs associated with developing and maintaining a rent registry and staff time to facilitate and monitor submissions for over 45,820 apartment units, the Housing Department would need investigators to look into cases of non-compliance like when reported information may suggest that landlords exceeded allowable rents, or displaced tenants in order to raise rents. This would require follow-up, investigation, and enforcement as Finding 1 discussed.

Limited Value from a Registration Process

If landlords accurately register, a rent registry could help Program staff identify and quantify turnover each year and determine the turnover that is attributable to voluntary move outs or forced move outs. This would enable the Program to proactively follow up with landlords who may have (intentionally or not) raised rents more than would have been otherwise allowed.

However, we are doubtful that the Program would be able to review the registration records of the 45,820 rent control units. As discussed in Finding 1, landlords submitted 429 tenancy terminations[32] in FY 2015-16 that Program staff thus far have not reviewed. Additional staffing would be needed to ensure that rents are within required limits throughout lease terms, and to ensure that rents are kept within required limits after landlords terminate leases. Staff – not a registration system – will be the most important resource for investigating and enforcing non-compliance.

Furthermore, because of tenant turnover (estimated once every four years, as previously discussed), registry data would have a limited useful "shelf life."

In place of a rent registry, a simpler unit registry, tied to the citywide integrated permitting system, would allow the Housing Department to identify high risk

[32] Some landlords may be tempted to turn over units so that they can reset rents. This is one of the things rent control ordinances are trying to minimize. To protect against this, San José requires rent control landlords to keep rents within rent control limits after they terminate leases. Landlords are also required to file tenancy termination notices, so that Program staff can follow-up can check for excessive rents on new tenants.

landlords or apartment buildings for targeted enforcement. For example, landlords that are associated with repeat code enforcement violations may disregard ARO provisions as well. An analyst could use code enforcement case data to identify such landlords for further investigation. Or data from the customer relationship system may reveal that a number of complaints from various tenants tend to come from the same buildings.

The Housing Department Already Has Access to Most Data Required to Populate a Unit Registry

While the additional costs to establish a rent registry and continuously collect data to populate it will be a challenge for this fee supported program, a unit registry can be developed with less effort. As discussed in Finding 2, the Housing Department already has access and some training to use the citywide integrated permitting system. Additional property fields can be added, including unit addresses, which are all that prevents the Housing Department from using the system as a unit registry now. This could be the basis of a potential registry tool, which could be less costly than the specialized registries other cities are using. In addition, using AMANDA, which also supports the existing fee invoicing and payment processes, could integrate the registration with the annual invoicing function.

AMANDA is currently being upgraded by a contractor who is working with City departments that use the system. Modifications required to support the Housing Department are not included in that contract, but potentially could be included as a change order, or offered to another contractor under a separate agreement. This would be a one-time cost, as would the initial effort to collect unit addresses for all rent control units (as recommended earlier in this report). AMANDA is already set up to automatically receive County records that are updated regularly.

The only costs associated with a unit registry after its initial set up, would be an agreed-upon fraction of the operations and maintenance costs for AMANDA. This is so that the Housing Department contributes to this shared City resource, as other AMANDA users do around the City (e.g., Fire Department, Department of Public Works).

A unit registry provides the Housing Department with a way to identify customers, and given the relative costs, we consider this is a worthy benefit to the program. In our opinion, the City's AMANDA system is a viable option for such a unit registry. The Housing Department is also weighing how it can incorporate its existing customer relationship management system into a future registry, and has engaged Management Partners to explore registry options.

Recommendation #13: To reduce costs and burdens associated with rent registries, the Housing Department should develop and implement a simpler unit registry. This could be potentially achieved through the citywide integrated permitting system.

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Finding 4 Before Expanding Services, the Housing Department Should Prepare a Strategy to Meet Its Rent Stabilization Goals

Summary

San José's overall number of rental units continues to grow. At the same time, the number of rent control units is capped given limitations placed by state law. This, combined with rent growth that is outpacing personal wage growth, means that an increasing number of non-rent control tenants may seek Program services. As directed by the City Council, the Housing Department is exploring additional programs, including an Anti-Retaliation and Protection Ordinance and a pilot voluntary mediation program, which would provide support to a broader range of tenants – whether they live in rent control units or not. As the Housing Department expands and fine-tunes Program services, it behooves the Department to be explicit about program goals. To maximize its impact, we recommend that the Department improve its performance measures, survey customers, and increase reporting to the City' Housing and Community Development Commission to better track the effectiveness of the Rental Rights and Referrals Program.

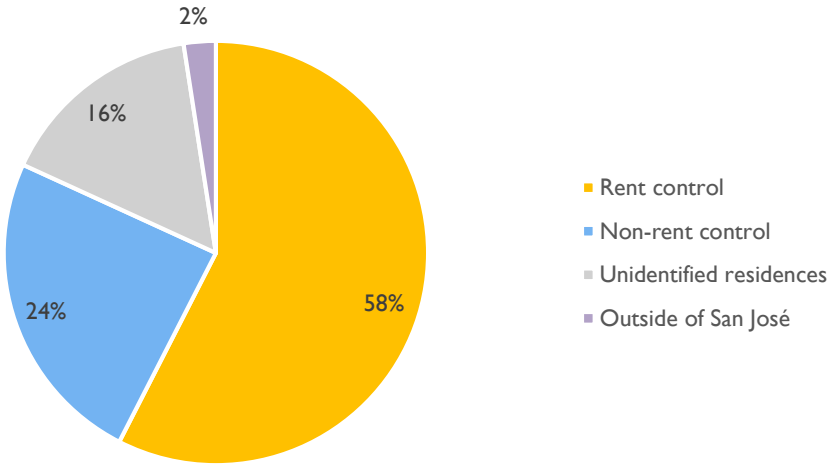
The Overall Number of Rental Units Is Growing, but the Number of Units Covered by Rent Control Is Diminishing

The number of San José's rent control units – which totaled about 45,820 in 2015-16 – will continue to decline over the years as units are taken off of the rental market.[33] Meanwhile, the overall number of rental units in the City is increasing. According to the U.S. Census, in 2010, there were 120,000 tenant-occupied units in San José. By 2015, this had increased by 17 percent to an estimated 140,000 tenant-occupied units.

While no additional units will be covered by rent control, given Bay Area-wide pressures on rents and housing, one can reasonably infer a growing demand for Rental Rights and Referrals Program services. In fact, the Housing Department's database shows that in FY 2015-16, over 24 percent of Rental Rights and Referrals Program interactions came from customers not associated with rent control apartments (excluding mobilehome customers).

[33] As discussed in the Background section of this report, the state's Costa-Hawkins Act limits the expansion of rent control policies onto new rental units. The state's Ellis Act also protects rent controlled property owners' right to exit the rental market.

Exhibit 20: Customer Interactions by Residence, FY 2015-16



Source: Rental Rights and Referrals Program Salesforce records.

Note: Non-rent control residences include non-rent controlled apartments, duplexes, condos, and single-family homes. Mobilehome residences were excluded.

Non-rent control tenants and landlords contacted the Program for various reasons. These ranged from questions about termination notices and security deposits, to concerns about landlord retaliation. Below are other examples:

- An apartment tenant called to report that she was being threatened with eviction.
- A tenant in a duplex called to report that his landlord was going to begin charging utilities.
- A tenant renting a unit in a house, called to report that she and her children had to leave their unit, and go outside to access a bathroom.
- A couple walked in to the Rental Rights and Referrals Program, stating that after reporting issues with cigarette smoke in their apartment, no electricity for 5 days, no heat and air conditioning, and no hot water (resulting in a Code Enforcement referral), that they were served with an eviction notice.

The majority of interactions from non-rent control tenants ended up as referrals to nonprofit service providers. Because these tenants did not live in rent controlled units, the Rental Rights and Referrals Program did not have program offerings to meet the needs of these customers.

Tenants and Landlords Referred to Outside Service Organizations Are Not Guaranteed Assistance

As its name suggests, the Rental Rights and Referrals Program refers customers to legal aid organizations for diverse issues including withheld security deposits, unlawful evictions, and discrimination. According to Program staff, San José's local nonprofit legal service agencies serve the customers that Program staff have referred as a courtesy.

Since the Program has not entered into agreements with, and does not compensate, these organizations, nonprofit service agencies are not obliged to accept referred customers, provide any services to those customers, or provide the City with any information about the outcomes of those referrals.[34]

Recommendation #14: To ensure that customers have consistent and reliable access to legal services, the Housing Department should contract with non-profit legal service agencies, and require those agencies provide the City with information regarding outcomes.

The Housing Department Has Proposed Expanded Stabilization Policies That Would Apply to More Rental Units

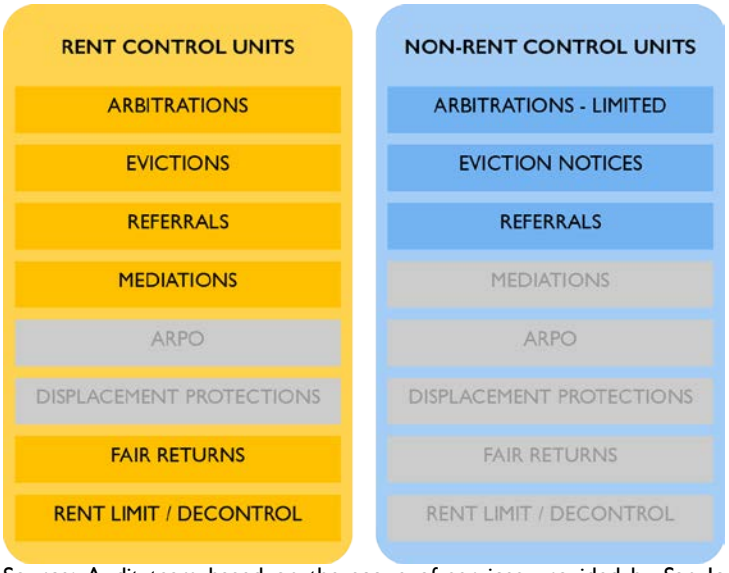
Stabilizing tenants and landlords involves intentional actions that promote dependable rental housing. These include prescriptive policies that define terms and conditions for tenants and landlords regarding issues like evictions or lease termination notices and the demolition and conversion of rental housing. In addition to limiting rents, stabilization efforts seek to secure tenants in their homes. The modified Apartment Rent Ordinance, as well as the proposed Anti-Retaliation and Protection Ordinance (ARPO), proposed local Ellis Act ordinance, and the pilot voluntary mediation program discussed in the Background are components to the Housing Department's stabilization agenda.

As shown in Exhibit 21 below, the Rental Rights and Referrals Program currently serves two apartment tenant groups: customers covered by rent control, and those not covered by rent control (non-rent control customers). As of now,

[34] In contrast, the Housing Department has an active contract with the Law Foundation of Silicon Valley to provide education, investigate complaints, and provide conciliation of disputes and legal services. However, these services are restricted to "fair housing" cases involving alleged housing discrimination. Federal and state fair housing laws prohibit discriminating against people seeking to buy, rent, and finance housing based on housing seekers' race, color, national origin, religion, sex, familial status, and other protected classes. The contract between the City and the Consortium, funded through the federal Community Development Block Grant program, outlined compensation terms not to exceed $397,000 for the year. If the Rental Rights and Referrals Program were to secure a similar contract with a dedicated service provider, the costs would equate to $8.65 per each of the 45,820 rent control units – or $4.71 per each of the 84,319 multiple housing apartment units in the City.

the extent of services the Program offers to non-rent control customers are tenancy termination notices, potential arbitration for lease terminations, and referrals to outside organizations. The majority of services are available only to rent control customers.

Exhibit 21: Services Offered to Rent Control Customers Versus Other

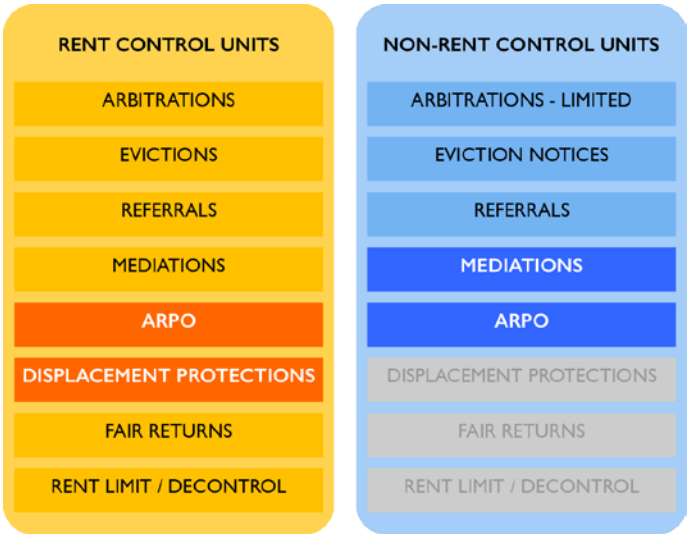


Source: Audit team based on the scope of services provided by San José Municipal Code Chapter 17.23.

Note: Services in gray represent those that have not been implemented.

If the services contemplated by the ARPO and voluntary mediation program are indeed extended to all tenants and landlords, the services previously available only to 45,820 rent control units will also be available to tenants and landlords in all of the estimated 84,319 apartment units in San José. Exhibit 22 shows the potential expansion of services by the Rental Rights and Referrals Program under the Housing Department's current proposals.

Exhibit 22: The Proposed Expanded Services to All Rental Units



Source: Audit team based on the scope of services provided by San José Municipal Code Chapter 17.23, and the modifications approved by the City Council.

Note: Services in gray represent those that have not been implemented or are not applicable.

The Housing Department Should Develop Goals and Performance Measures, and Monitor Performance

The old ordinance aimed to provide for some immediate needs, including:

- Prevention of excessive and unreasonable rent increases;
- Alleviation of undue hardship upon individual tenants; and
- Fair and reasonable returns for landlords.

The ordinance sought to simultaneously serve two constituencies with competing interests—landlords and tenants. However, it did not explicitly establish a desired level of "fairness." Based on public comment, and the testimony of tenants and landlords, the ARO is seen as pro-tenant, pro-landlord, anti-tenant, and anti-landlord. And among other things, it is seen as "affordable housing" and as a means to uphold the ideal that "housing is a human right."

Furthermore, the modified ordinance does not state clear goals. For example, with respect to annual allowable rent increases, it is unclear whether the City merely aims to protect tenants from rent spikes or promote tenant stabilization in the long term.

A review of New York City's housing initiatives reflected on similar ambiguity:

> *"New York City's housing efforts have been most successful when public initiatives have directed sophisticated techniques to well-defined problems… In contrast, a vague sense that housing is too expensive in New York provides little strategic guidance for the design of a multi-billion dollar municipal effort."*[35]

A clearly defined program purpose is a statement of what a program is trying to solve. A clearly defined problem statement would allow the Housing Department to demonstrate the program's value by clearly defining what it is the program is supposed to do. From that clear vision, management, decision-makers, and members of the public then have a basis for designing the program to address the stated problem, and develop evaluative criteria for reviewing success.

Strategic Planning Creates a Framework for Progress to Meet Desired Goals

Strategic planning provides a foundation required for effective administration of a program by providing an organization the opportunity to define desired results, then plan tasks so to meet those results. For that reason, a strategic plan should be clear and action-oriented, with a clear path to the desired results. The plan should prepare for contingencies, create a framework for progress, and allocate resources strategically to meet its goals.

In our opinion, the Housing Department should develop a formal strategic plan[36] with specific goals, that include:

- *Objectives* that are specific, measurable, attainable, relevant, time-framed, and state what is expected to change as part of the goal;
- *Strategies* that clearly articulate pathways to achieve an objective, give clear direction, and allocate resources and new opportunities, as they advance the goal;
- *Activities* which are steps taken by an agency to implement a strategy; they should clearly communicate the intended action and describe the results of that action; they should be measurable, as they advance the goal;

[35] *The Growing Gap: New York City's Housing Affordability Challenge*. Office of the New York City Comptroller. April 2014.

[36] The King County (Washington) Auditor's Office offers a good overview of strategic planning in their January 2009 white paper, *Goal Planning: Key Elements of a Performance Management Framework*. Other sources for strategic planning guidance include: the California State Department of Finance's *Strategic Planning Guidelines*, May 1998; U.S. Department of Energy's *The Performance-Based Management Handbook, Volume Five: Analyzing, Reviewing and Reporting Performance Data*, September 2001; U.S. Government Accountability Office's *Managing for Results: Practices for Effective Agency Strategic Reviews*, July 2015; and the U.S. Office of Personnel Management.

- *Measures* to track the performance of objectives, strategies, and activities; they should be relevant, measurable, unambiguous, reliable, and meaningful to users;
- *Targets* are quantitative levels of a measure that the organization is striving to achieve through its activities, strategies, and objectives; they should be realistic, have clear ownership, and be clear about trade-offs between competing targets.

Well Designed Measures Can Provide Insights Into Program Effectiveness

The Housing Department publishes three related performance measures in the City's annual operating budget:

- The "percentage of tenant/landlord mediations that resulted in mutual agreement;"
- The "number of unduplicated mobilehome and apartment clients served by the Rental Rights and Referrals Program;" and
- The "percentage of rehabilitation and mobilehome clients satisfied or very satisfied based on overall service."[37]

In addition to these, and to better track its effectiveness, the Department should consider other useful measures as part of a strategic plan. Such data could help the Department forecast and plan for the future, and surface issues that need to be addressed. Performance data could be collected through annual surveys, not just through a rent registry,[38] and could include:

- Changes in the number and location of rent control units over time;
- The difference in monthly rents of rent control and non-rent control units, over time; and
- Turnover in rent control and non-rent control units to measure the effects of vacancy decontrol or stabilization efforts.

With a new ARO under development, and services on the way for the broader tenant population, it may be an ideal time for the Housing Department to develop and implement clear goals, which will enable the Department to assess the effectiveness and direction of the program. We believe the Housing Department is well-positioned to develop formal strategic planning for the

[37] These data are collected from a survey conducted as part of the rehabilitation program. However, the rehabilitation program is winding down and no longer reflects the Rental Rights and Referrals Program's work.

[38] As discussed in Finding 3, such data would be daunting to collect for each of the 45,820 rent control units. As an alternative to such a massive data collection undertaking, and as an alternative to a rent registry, a periodic statistically representative survey could reduce the burden. As a preliminary estimate, Housing could make reasonable inferences on the entire rent control population with perhaps as few as 381 responses. In our opinion, this is a reasonable and cost effective alternative.

Rental Rights and Referrals Program. This would entail clear definitions of what the program is supposed to do, and measure the Program's effectiveness in meeting those goals.

Recommendation #15: To ensure customers are provided necessary services, the Housing Department should develop a strategic plan for the Rental Rights and Referrals Program that outlines desired goals and outcomes, and establishes measures of program effectiveness.

The Rental Rights and Referrals Program Should Seek Customer Feedback

Customer surveys are another effective tool for measuring impact. The Program does not have a system for soliciting and collecting feedback from tenants and landlords. With this information, the Housing Department could actively reexamine its service offerings to ensure that it is meeting the needs of its customers. At a minimum, the Department should look to collect customer feedback regarding:

- Scale of customer satisfaction with provided services;
- Timeliness of services provided;
- Outcomes of referred customers; and
- Suggestions for improvement.

Recommendation #16: To track customer satisfaction, and the perceived effectiveness of services, the Housing Department should develop customer satisfaction and information surveys, feedback cards, and online feedback options.

The Housing and Community Development Commission Can Serve a Useful Advisory Role

The City's Housing and Community Development Commission (HCDC) consists of 13 members who advise the Director of Housing, the Mayor, and the City Council on housing and community development matters. Members include property owners, tenants, and representatives from organizations with related interests.[39]

[39] Its members are to consist of one owner and one tenant from residential rent stabilized properties; one owner and one tenant from mobilehome parks; at least five members who meet one or more of the following criteria: (1) a member of a low- or moderate-income household as defined by HUD, (2) an elected member of a neighborhood association in a low- or moderate-income neighborhood, (3) a resident of a neighborhood targeted under the place-based neighborhoods initiative, or (4) someone who is employed by an organization that primarily serves the interest

Currently, the HCDC advises on major departmental policy proposals like the development of the modified ARO and homelessness programs. HCDC meetings are also a potentially useful forum for sharing program information. In the past, the Rental Rights and Referrals Program provided day-to-day updates and activities to the HCDC, but this no longer happens. Information that the Program currently tracks, and might be of interest to the HCDC, includes outcomes of complaints and petitions (e.g. the number of decisions by hearing officers, the number of voluntary agreements by staff, the number of referrals, etc.).

Other cities including Los Angeles, Oakland, and Santa Monica have roles similar to that of San José's HCDC, and periodically (rather than occasionally) hear rent stabilization updates. Among other things, at monthly meetings, San Francisco's Rent Board Commission members discuss the need for modifications to the regulations, discuss monthly workload statistics provided by staff, and noteworthy news regarding housing issues that may warrant the commission's attention. These reports are archived on program websites.

In our opinion, involving the HCDC or other committees or commissions can promote transparency about the activities and progress of the Rental Rights and Referrals Program's rent stabilization efforts. Periodic discussions can also lead to needed updates and changes.

Recommendation #17: The Housing Department should provide periodic updates on the Apartment Rent Ordinance, rent stabilization efforts, and the Rental Rights and Referrals Program to the Housing and Community Development Commission.

of low-income residents; and members with experience related to development, lending, community development, homeless services, or federal funding.

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Finding 5 Additional Resources Are Required

Summary

The Rental Rights and Referrals Program charges annual fees to owners of rent control units, non-rent control units, and mobilehomes. The fees are supposed to fully recover costs of providing services to these three distinct customer groups, but ARO fees do not reflect some ARO expenses – such as those attributable to assistance from PBCE.

To address needed staffing for FY 2016-17, the Housing Department was approved an additional $277,000 to prepare for the City Council-approved modifications to the ARO. However, given its challenges implementing and enforcing the old ARO, the Program will need additional resources to ensure sufficient and appropriate hearing services, investigation enforcement, and outreach. Moreover, the need for additional staffing may grow if Program improvements result in additional customer demand. More resources will also be needed to provide new services through the proposed Anti-Retaliation and Protection Ordinance, and policies related to the Ellis Act. To expand services, the Program will need to adjust service delivery and fees. This is particularly important if these services will be available to non-rent control tenants and landlords. Finally, as services are expanded and associated expenses increase, the City should consider how much of the burden should fall on tenants and landlords.

The Apartment Rent Ordinance and Other Housing Services Are Funded by Fees

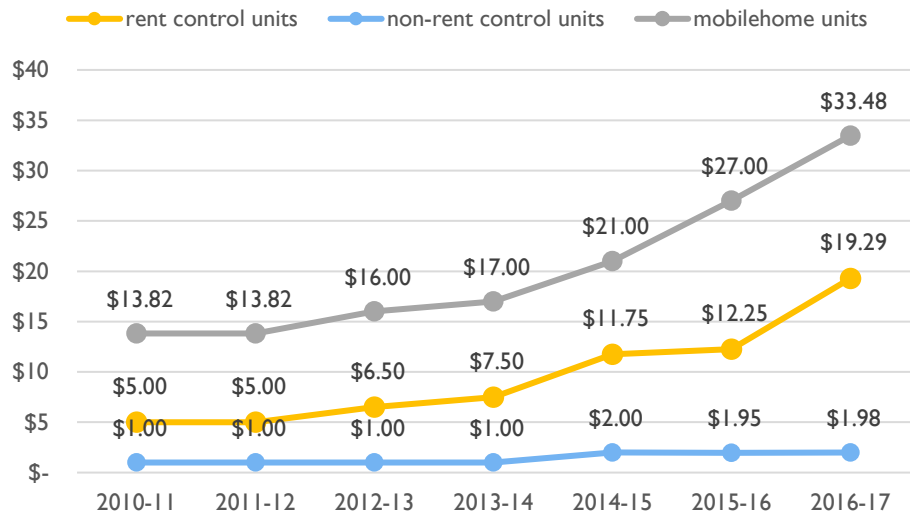
The Rental Rights and Referrals Program charges landlords annual fees to cover the costs of providing services.[40] There are two distinct fees for owners of apartment rental units:

- A rent control fee charged to each apartment unit covered by the rent control provisions of the ARO, and
- A non-rent control fee is charged to each apartment unit in buildings with three or more units that are not covered by or exempted from the ARO's rent control provisions.

The following exhibit shows the historic fee amounts per unit per year.

[40]Landlords also face other fees. PBCE administers a fee to fund its efforts in ensuring the safety of multi-family housing building with three or more units. For FY 2016-17, Multiple Housing Program fees ranged from $25.93 per unit for Tier 1 buildings (low-risk multiple housing properties for which owners can provide information about the condition of each unit and affirm they share the report with tenants), $58.60 per unit for Tier 2 buildings (for inspections of exterior premises, common areas, and 25 percent of units on a five-year cycle), and $116.91 per unit for Tier 3 buildings (higher risk which require more research and time to inspect).

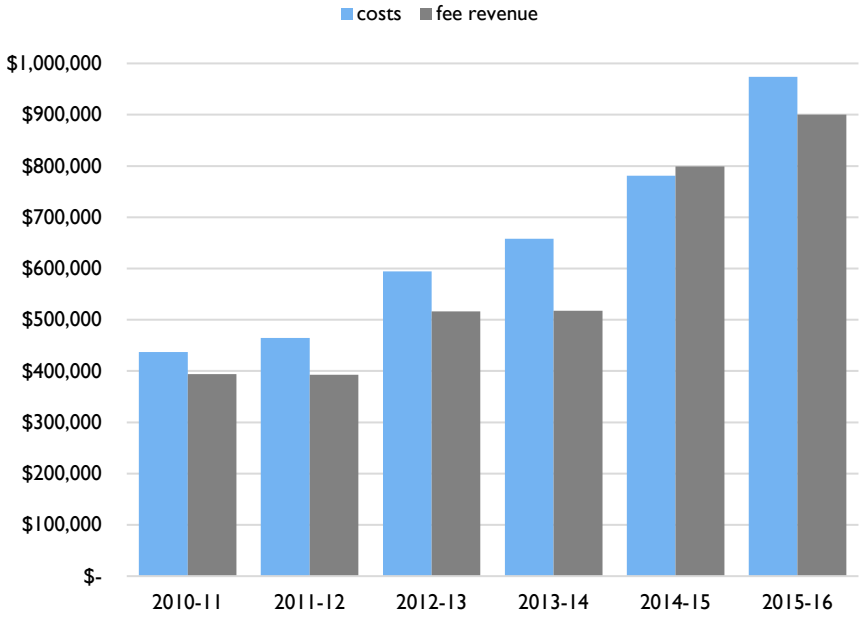
Exhibit 23: The Housing Department's Rental Rights and Referrals Program Fees Have Increased Over the Last Few Years



Source: Adopted fees as presented in the Annual Fees and Charges Reports (2010-11 through 2016-17).

According to the City Council-approved cost recovery framework, Rental Rights and Referrals Program fee activity (including the rent control fee, the non-rent control fee, and mobilehome fee) is supposed to recover 100 percent of its costs. In FY 2015-16, the activity as a whole collected $900,000 in fee revenue and incurred $974,000 in costs (for a 92 percent cost recovery rate).

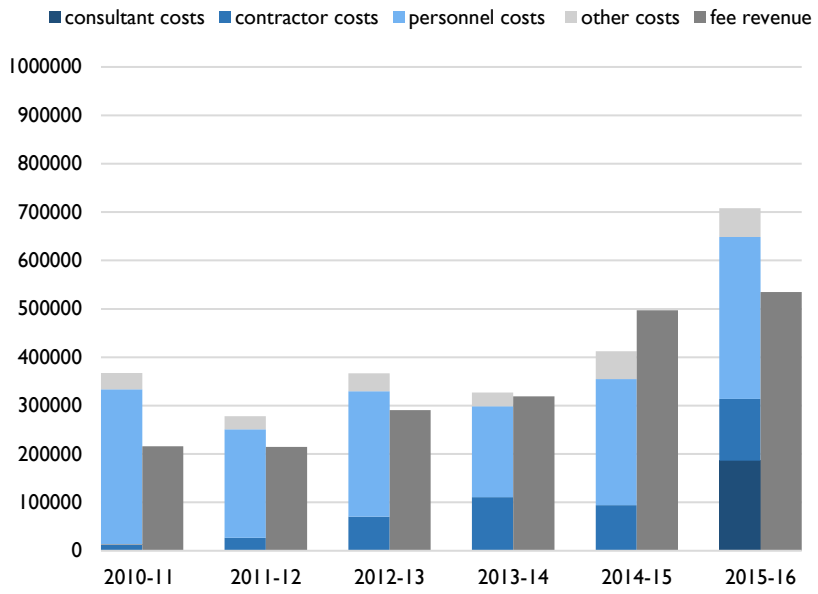
Exhibit 24: Rental Rights and Referrals Program Expenses and Fee Revenue Between FY 2010-11 and 2015-16



Source: Compiled by the Audit team from records from the City's Financial Management System and indirect cost allocation plans from the Finance Department.

Exhibit 25 below shows the expenses and fee revenue associated with the rent control portion of the Rental Rights and Referrals Program. In FY 2015-16, rent control fee revenue totaled $535,000 and costs totaled $708,000 – a 76 percent cost recovery rate.

Exhibit 25: Apartment Rent Ordinance Expenses and Fee Revenue Between 2010-11 and 2015-16



Source: Compiled by the Audit team from records from the City's Financial Management System, and indirect cost allocation plans from the Finance Department.

The Department of Planning, Building and Code Enforcement Has Incurred Expenses to Support the Apartment Rent Ordinance

The Department of Planning, Building and Code Enforcement (PBCE), as part of its core mission, investigates claims of landlords who may have violated the City's health and safety code. In addition, PBCE provides the following assistance to the Housing Department in administering the ARO:

- Maintaining the roster of rent control properties on the citywide integrated permitting system (AMANDA);
- Leading preparations for the annual invoicing of landlords (PBCE collects fees as stipulated by the ARO);
- Providing the Housing Department with a list of rent control properties to facilitate the fee exemption process;
- Uploading results of the Housing Department's fee exemption process into AMANDA;

- Checking to confirm the amounts of exemptions requested does not exceed the total units and informing ARO staff if it does;
- Reviewing the dataset and resolving any data or formula issues;
- Updating the invoice; and
- Fielding internal and external inquiries from Program staff and landlords.[41]

To date, PBCE has not fully quantified the staffing or financial impact of these supporting duties, nor has it formally requested reimbursement or compensation from the Housing Department. For example, errors in the Housing Department's exemption process have caused discrepancies that PBCE needs to resolve, which requires significant staff time. According to PBCE, the Housing Department met with PBCE management to become a contributing partner to AMANDA, as other departments have. Through this "partnership," shared costs are split between user departments based on activity. In the interim, a charge code was set up through which PBCE staff can charge time and expenses to the Housing Department. These expenses should be disclosed and included in the cost of the ARO.

The Housing Department should identify the remaining expense to PBCE of delivering its programs. Another important reason to identify all direct and indirect costs[42] is because unit fees are calculated based on total costs.

Recommendation #18: To recognize the administrative costs associated with billing Apartment Rent Ordinance-related fees, the Housing Department should work with the Department of Planning, Building and Code Enforcement to establish fee supported staffing, and enter into the interdepartmental partnership of users of the citywide integrated permitting system.

[41] Because it is the entity that sends fee invoices, PBCE receives questions from rent control landlords. And because it is the custodian of property information, PBCE receives questions from Housing Department staff about property information.

[42] The Finance Department is responsible for preparing the City Cost Allocation Plan, which shows the results of the allocation of overhead costs to departments and funds. The plan identifies and accounts for general fund and other indirect costs related to central services that benefit all City departments like information technology, facilities maintenance, and human resources. The plan assigns core services different overhead rates, which are to be used to calculate estimates for inclusion in the applicable adopted operating and capital budgets and the annually adopted fees and charges. Per the Finance Department, overhead should be assessed on all "direct labor costs" – costs incurred for employees working (as opposed to costs of fringe benefits). Based on its FY 2015-16 expense reports, the Housing Department did not include overtime in the calculation of its overhead. According to Housing Department staff, the Department applies the overhead rate only to salaries. In 2015-16, the effect of this omission was only $600, but as the Program changes and staffing grows, the impact of excluding overhead on overtime may be more significant.

Fee Amounts Reflect the Range of Rent Control Programs Across the State

For FY 2016-17, San José's annual rent control fee is $19.29 per unit, which is significantly lower than those of other California cities. Though there are many contributing factors to the range of fee amounts between cities, a key reason for San José's lower fee amount is that it has not had sufficient staffing and has provided only scant services as described in the preceding sections of this report.

Furthermore, as the Housing Department builds its more comprehensive rent stabilization suite described in Finding 4, its fee structure will need to consider more than one customer group, and will need to reflect the services offered.

Exhibit 26: San José's vs. Other Cities' Rent Control Programs

	San José	West Hollywood	Santa Monica	San Francisco
Covered Units (2015-16)	45,820	17,000	28,000	173,000
Customer Interactions (2015-16) *Interactions per Covered Unit*	3,489 *8 per 100*	14,000 *82 per 100*	13,250 *47 per 100*	58,800 *34 per 100*
Expenditures (2015-16) *per Covered Unit* *per Interaction*	$655,000* *$14* *$200*	$1,800,000 *$106* *$129*	$4,700,000 *$168* *$355*	$7,000,000 *$40* *$119*
Annual Fees	$19.29	$120.00	$174.96	$37.00
Staff Size (FTE) *Covered Unit per FTE* *Interactions per FTE*	1.50 *30,547* *2,181*	9.00 *1,889* *1,556*	24.00 *1,167* *556*	32.00 *5,406* *1,838*
Contracted Services	Hearings	Hearings	Mediators and hearing officers as needed	Outreach
Counseling	In-House / Referrals	In-House	In-House	In-House
Mediation	Contracted Hearing Officers	In-House	In-House	In-House
Eviction Protections	Considering Anti-Retaliation Protections	Just-Cause	Just-Cause	Just-Cause
Displacement Protections	Proposed	Yes	Yes	Yes
Annual Rent Increase Limits	5% Fixed	75% CPI	75% CPI	60% CPI
Banked Rent Allowances	Yes	None	Yes	Yes
Registry	Council approved a rent registry	Unit registry	Rent registry	None

Source: Auditor compilation of select terms of San José's Apartment Rent Ordinance, proposed Anti-Retaliation and Protection Ordinance, Ellis Act policy, and those of select cities as recorded in their ordinances and reported by their senior staff.

Note: San José's $655,000 in 2015-16 expenditures differs from the $708,000 in program costs cited elsewhere in this finding. The latter includes overhead costs.

As shown in Exhibit 26 above, other California cities with rent stabilization programs rely on rental unit fees. Many had fees much higher than those of San José; some also have other sources of funding. Fees are paid by property owners, and as such, affect property owners' bottom lines. However, landlords may pass fees onto their tenants – undermining the stabilizing effects which the

Program seeks.[43] Acceptable fee amounts, the sources of funding, and levels of public subsidy are policy decisions to be considered by the City Council, so long as fees don't exceed the costs of providing the service.

Fees and Charges Should Be Structured to Promote Good Behavior and Equity

To ensure that a few problematic landlords or tenants do not heavily impact costs and fees across all customer classes, it may be desirable to pursue different fee amounts within each of the different services. For example, landlords requiring resource-intensive enforcement and follow-up could pay proportionately increased fees. PBCE recently implemented a risk-based tiered inspection program whereby inspections are scheduled for properties at higher risk of violations. According to PBCE, this is a more equitable approach for landlords because they are charged fees based upon the level of service provided. In addition, there is a financial incentive for landlords to properly maintain their properties. The City may seek a similar structure for the ARO and other rent stabilization programs to reflect levels of service to specific landlords.

Finally, noncompliant landlords pose additional program burdens that, as a cost recovery program, might be passed on to all property owners. One way to reduce the burden noncompliant landlords impose on compliant landlords, is through administrative fines and citations. Those fines can then be collected and redirected back into the program budget to offset any additional costs incurred.

As discussed earlier in Finding 1, the City has broad authority to develop and impose such penalties, but the Housing Department and Rental Rights and Referrals Program lacks the resources to identify noncompliance, let alone enforce the noncompliance. Fees for enforcement actions could be imposed upon the noncompliant landlord in proportion to the additional resource burden that landlord has imposed upon the program.

The Apartment Rent Ordinance Is Modestly Resourced

For FY 2016-17, the Housing Department sought and received approval for an additional Housing Policy and Planning Administrator, an Analyst, and a consultant for the development and implementation of the modified ARO. But these approved resources – totaling $277,000 – are intended to prepare for the new ordinance. The cost of delivering the ARO in FY 2015-16 was $708,000, but that does not include the following additional costs discussed throughout this report:

[43] The ordinance technically does not allow landlords to pass along the fees to the tenants if doing so would result in an increase exceeding the annual limit or banked limit.

- Resources to adequately deliver the ARO in its current interim status, including additional contracted hearing officers for providing timely dispute resolution, as well as additional Program staff to perform lower level dispute resolution; scheduling and coordination of hearings and referrals; enforcement activities; and outreach;
- Staff to fulfill the increased demand for services that will result from improved outreach to the public;
- Funding for the contributions of the Department of Planning, Building and Code Enforcement;
- Resources for implementing a rent registry and the additional staff to administer the registration system and proactive enforcement for ARO units, if the City Council chooses to proceed those programs (costs would be significantly lower for a unit registry);
- Contracted services with service providers to serve tenants and landlords seeking assistance and advice;

The additional staff and resources are necessary to administer the Anti-Retaliation and Protection Ordinance, the local Ellis Act ordinance, and the pilot voluntary mediation program, as well as the additional costs of extending these stabilization policies to the Multiple Housing Programs 84,319 apartment units – beyond the 45,820 rent control units.

Exhibit 27 summarizes the staffing resources in place through FY 2015-16 ($655,000), the approved resources for FY 2016-17 ($277,000), and potential additional resources to help the Housing Department improve the effectiveness of the ARO (costs to be determined). "Additional auditor-identified resources" are meant to address staffing shortfalls under the current program. Additional staffing needs associated with the modified ARO and additional rental housing policies are discussed elsewhere in this report.

Exhibit 27: Existing, New, and Potential Additional Apartment Rent Ordinance Resources

Position	Customer Service	Customer Advice	Dispute Resolution	Outreach	Investigation and Enforcement	Administration	Supervision	Other	Cost
Resources in place through FY 2015-16									
Analyst II	•	•	*•	•		•			$708,000
Staff Specialist	•	•				•			
Hearing Officers		•	•						
Senior Development Officer						•	•	•	
Senior Systems Programmer								•	
Demographic Consultant (1-time)								•	
Additional resources approved for FY 2016-17									
Policy and Planning Administrator						•	•		$277,000
Analyst II						•			
Implementation Consultant						•		•	
Additional auditor-identified resources									
Dedicated FT Staffing from City Attorney					•	•		•	TBD
In-House Trained Mediator	•	•	•		•	•			
Outreach Professional				•					

Source: Audit team summary based on analysis of Rental Rights and Referrals Program staffing, budget documents, contracts, and job specifications.

Note: FY 2015-16 Costs of the Apartment Rent Ordinance totaled $655,000 as recorded in the City's financial management system. In City Council-approved budget proposal documents, the Housing Department identified $277,000 in FY 2016-17 costs. Costs of additional auditor-identified resources are estimates based on budget data, personnel costs, and job specifications.

*Housing Department staff only provide dispute resolution in some cases that don't require hearing officers.

The Housing Department and the City Council will need to address the additional resources needed to move forward with the rent stabilization suite through updated fee structures, cost recovery targets, and funding sources.

Recommendation #19: To fund existing and new Rental Rights and Referrals Program services, and ensure the availability of those services across different customer groups, the Housing Department should:

a) **Restructure fees based on services for which units are eligible,**

b) **Calculate new fees to include the full costs of services including those provided by other departments,**

c) **Review cost recovery targets, and**

d) **Consider penalty structures whereby "problem landlords" pay fees in proportion to their burden on the City.**

Conclusion

The Housing Department has been assisting San José tenants and landlords in one of the least affordable rental housing markets in the United States. In 2015 and 2016 – due to public concerns – the Department proposed significant modifications to its Apartment Rent Ordinance. Modifications were approved by the City Council in April 2016, but the means by which they will be implemented have not yet been finalized. The Rental Rights and Referrals Program is currently challenged to provide the level of service needed to fulfill current expectations, let alone the additional demands of the modified ordinance. The Department needs to increase its capacity to provide more timely advice and dispute resolution services to its customers. In addition, to ensure maximum effectiveness of the modified ordinance, the Department needs to augment enforcement and outreach. But the ordinance is not a magic bullet to the challenges facing tenants in the City, and the Department envisions additional "stabilization" policies intended to secure tenants and the City's rental housing stock. Moving forward, tenants, landlords, and the Department will benefit from more efficient processes, better coordination with other City departments (most notably the Department of Planning, Building and Code Enforcement), and better monitoring of its stabilization efforts. After addressing current shortcomings, the Department will need a significant investment in money, time, staff, and technological infrastructure to ensure successful implementation of the modified Apartment Rent Ordinance and other elements of its stabilization agenda.

RECOMMENDATIONS

Recommendation #1: To ensure efficient and effective customer service, the Housing Department's staffing plan should assess the need for additional dispute resolution professionals.

Recommendation #2: To ensure enforcement of the Apartment Rent Ordinance, the Housing Department's staffing plan should consider the need for dedicated staffing in the City Attorney's Office.

Recommendation #3: To improve communication and outreach, the Housing Department should:

a) Adopt a targeted approach to tenants and landlords,

b) Improve language accessibility,

c) Improve its lobby space,

d) Improve websites, and

e) Expand its online offerings including an on-line look-up tool, and the ability to file petitions online.

Recommendation #4. To fulfill increasing demand for services, the Housing Department's staffing plan should consider the additional staff required for coordinating hearings, referrals for dispute resolution and advice, investigation and enforcement activities, and improving outreach.

Recommendation #5: The Housing Department should enter unit addresses into the citywide integrated permitting system.

Recommendation #6: The Housing Department should use its live access to the citywide integrated permitting system to answer routine questions about properties and receive alerts about changes to the Multiple Housing Roster, conversion or demolition permit applications, and code enforcement cases.

Recommendation #7: The Housing Department should continue to identify the occupancy permit dates for the remaining 52 units to determine which if any of those units are subject to rent control.

Recommendation #8: The Housing Department should coordinate with the Department of Planning, Building and Code Enforcement (PBCE) regarding how the modified Apartment Rent Ordinance will impact its operations, such as complaint intake, potential workload impacts on PBCE, and the tracking of proposed demolitions and condo conversions.

Recommendation #9: To ensure the accuracy and consistency of its data, the Housing Department should standardize its customer data using common data input tools (drop downs, standard addressing conventions, etc.), and formalize data input procedures in a reference manual available to staff.

Recommendation #10: Revise the fee exemption process by:

a) Developing an online exemption option,
b) Providing receipts or acknowledgements to landlords to confirm exemption requests have been submitted and granted/not granted,
c) Establishing reasonable standards for landlords to prove eligibility for exemptions, and
d) Developing a validation process to confirm exemption eligibility against building data in the citywide integrated permitting system and other authoritative sources.

Recommendation #11: To help handle spikes in call volume, the Housing Department should:

a) Alert the City's Customer Contact Center of service changes that affect the public,
b) Provide scripts to the Customer Contact Center in advance of program and service delivery changes, and
c) Consider, as needed, directing callers to the Customer Contact Center to answer phone calls.

Recommendation #12: The City Council should consider eliminating the banking provision in the final ordinance.

Recommendation #13: To reduce costs and burdens associated with rent registries, the Housing Department should develop and implement a simpler unit registry. This could be potentially achieved through the citywide integrated permitting system.

Recommendation #14: To ensure that customers have consistent and reliable access to legal services, the Housing Department should contract with non-profit legal service agencies, and require those agencies provide the City with information regarding outcomes.

Recommendation #15: To ensure customers are provided necessary services, the Housing Department should develop a strategic plan for the Rental Rights and Referrals Program that outlines desired goals and outcomes, and establishes measures of program effectiveness.

Recommendation #16: To track customer satisfaction, and the perceived effectiveness of services, the Housing Department should develop customer satisfaction and information surveys, feedback cards, and online feedback options.

Recommendation #17: The Housing Department should provide periodic updates on the Apartment Rent Ordinance, rent stabilization efforts, and the Rental Rights and Referrals Program to the Housing and Community Development Commission.

Recommendation #18: To recognize the administrative costs associated with billing Apartment Rent Ordinance-related fees, the Housing Department should work with the Department of Planning, Building and Code Enforcement to establish fee supported staffing, and enter into the interdepartmental partnership of users of the citywide integrated permitting system.

Recommendation #19: To fund existing and new Rental Rights and Referrals Program services, and ensure the availability of those services across different customer groups, the Housing Department should:

a) Restructure fees based on services for which units are eligible,

b) Calculate new fees to include the full costs of services including those provided by other departments,

c) Review cost recovery targets, and

d) Consider penalty structures whereby "problem landlords" pay fees in proportion to their burden on the City.

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APPENDIX A

Rent Increase Limits in Other Cities

Summarized below are the rent increase limits found during our review of rent control ordinances in other California cities.

ANNUAL INCREASE TIED TO MARKET	
Los Angeles	**CPI-U plus an additional 1% for utilities.** A commission can allow for additional increases. There are different allowable increases depending on the date of the last increase. No banking provisions.
Palm Springs	**75% CPI-U.** No banking provisions.
Santa Monica	**75% CPI-U, or 85th percentile of maximum allowable rent of all controlled units.** No banking provisions.
*Richmond	**CPI.** In November 2016, voters approved Measure L, which tied rent increases to CPI.

ANNUAL INCREASE TIED TO MARKET WITH A MAXIMUM AND/OR MINIMUM	
Berkeley	**65% CPI-U All Items with 0% minimum and 7% maximum.** No banking provisions.
**Beverly Hills	**CPI-U All Items with 8% maximum, or 10% fixed.** There are two parts to this ordinance: 1) tied to CPI-U with an 8% maximum; and 2) a fixed 10% maximum. No banking provisions.
East Palo Alto	**80% CPI-U All Items with 0% minimum and 10% maximum.** Any negative CPI changes are applied at the time of the next CPI increase year. Includes banking provisions.
*Mountain View	**CPI with 2% minimum and 5% maximum.** In November 2016, voters approved Measure V, which tied rent increase limits to CPI. Until an ordinance is formally adopted, the city will continue administering without an annual increase limit. **Increases over 7.2% have been subject to dispute resolution.** Nonbinding mediation and arbitration. Landlord must prove increases above 7.2% are reasonable. No banking provisions. In November 2016, voters approved Measure V, which tied rent increase limits to CPI. Until an ordinance is formally adopted, the city will continue administering without an annual increase limit.
Oakland	**Average of CPI-U All Items and CPI-U Less Shelter with 10% maximum.** No rent increases in any 5 year period can exceed 30%, unless those increases were composed solely of CPI adjustments. Includes banking provisions.
San Francisco	**60% CPI with 7% maximum.** Includes banking provisions.
West Hollywood	**75% CPI-U All Items with 0% minimum and 7% maximum.** The city council is to review ordinance whenever CPI-U All Items is greater than 9.5% for possible amendments. No banking provisions.

ANNUAL INCREASE TIED TO FIXED PERCENTAGE	
**Beverly Hills	**CPI-U All Items with 8% maximum, or 10% fixed.** There are two parts to this ordinance: 1) tied to CPI-U with an 8% maximum; and 2) a fixed 10% maximum. No banking provisions.
Hayward	**5% with 12% maximum.** No banking provisions.
San José	**5% with 8% maximum.** Annual increases are fixed a 5%, with a maximum of 8% for additional allowable increases. Includes banking provisions.

ANNUAL INCREASE TIED TO MARKET OR FIXED PERCENTAGE	
Los Gatos	**70% CPI-U or 5%, whichever is greater.** No banking provisions.

NO ANNUAL INCREASE LIMIT	
Alameda	**Committee hearing for increases of 5% or greater.** Committee decisions can be binding or nonbinding. No banking provisions.
Campbell	**Voluntary Mediation.** Mediation and committee decisions are nonbinding. No banking provisions.
Fremont	**Dispute resolution for "reasonableness" of rent increases.** Rent dispute resolution for rent increases. Arbitration decisions are binding. No banking provisions.
San Leandro	**Rent review for increases above 7%.** Final decision can be appealed as far as the City Manager, which does not appear to be binding. No banking provisions.

Sources: Audit team summary based on review of rent control ordinances and ballot measures in California.
*Voters in Richmond and Mountain View approved rent control ballot measures in November 2016.
**Beverly Hills has two parts to its ordinance, depending on which population is served.

APPENDIX B

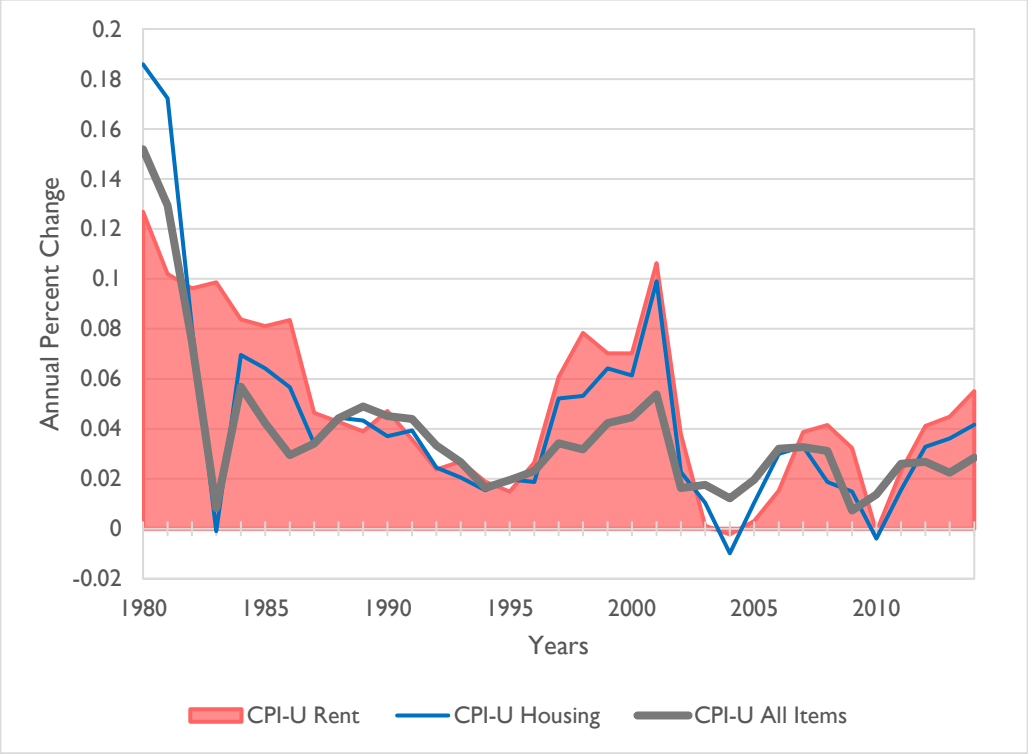
Three Inflation Indexes for Analyzing the Rental Housing Market

To analyze the City's rent limits on annual rent changes on the rental market between 1980 and 2014, we turned to the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Indexes for the San Francisco-Oakland-San Jose, CA area – specifically, CPI-U Rent as a Primary Residence (CPI-U Rent). We believe the inflationary changes measured by CPI-U Rent are our best proxy to measure annual changes in rent prices.

Exhibit B.1 compares three common measures of inflation:

- CPI-U Rent (described above).
- CPI-U Housing includes both the rental market and the homeowner market.
- CPI-U All Items is a common standard for calculating allowable rent increases; it weights rental housing data relative to other items included in its measure.

Exhibit B.1: Annual Percent Changes: CPI-U Rent Versus CPI-U Housing Versus CPI- U All Items, 1980 to 2014



Source: Auditor analysis of CPI-U data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics.

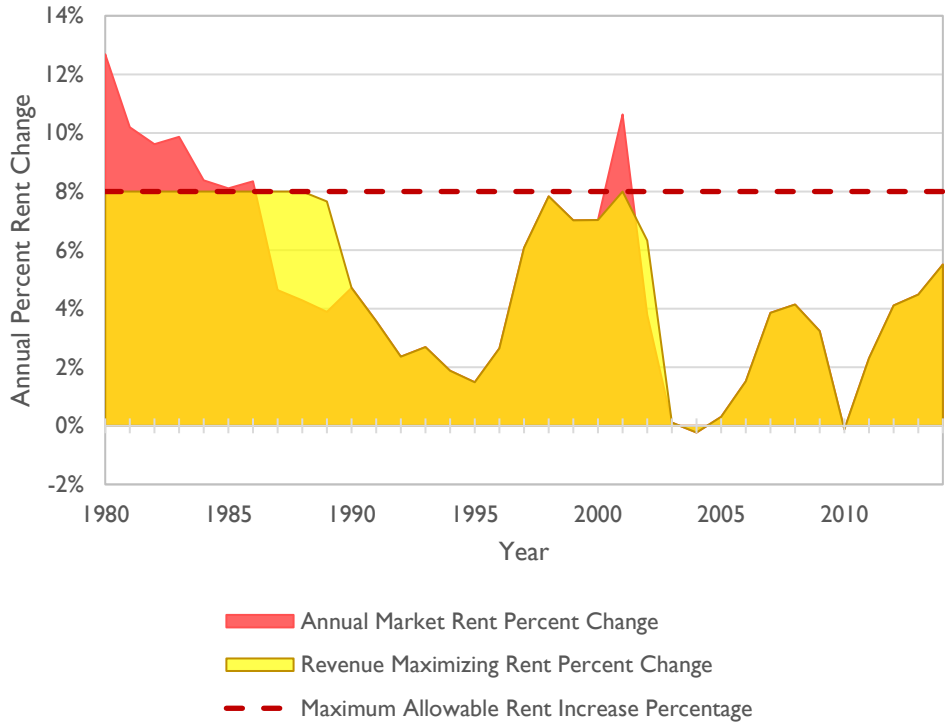
APPENDIX C

The 8 Percent Limit on Annual Rent Increases Affected Rents Sporadically

As part of our review, we modeled the impacts of the previous 8 percent limits as well as the recently adopted 5 percent limits which are shown in Finding 3 of this report. In both cases, some landlords might have wanted to increase rents to the maximum rate allowed, but they operated in a rental market, and we assume that their increases would be limited by market rents (which we illustrate using CPI-U Rent, as described in Appendix B).

Exhibit C.1 shows how a "revenue maximizing" landlord could have raised rents by the maximum allowable rent increase (in this case 8 percent) until their rents were equal to the market rent price. The exhibit also demonstrates the natural "banking" that the market provided. In other words, when the allowable rent increase exceeds the increase in market rents, ARO rents adjusted to market rates, **just at a slower pace**. This eases the burden of sudden increases in rents borne by tenants, with the tradeoff being less revenue to landlords.

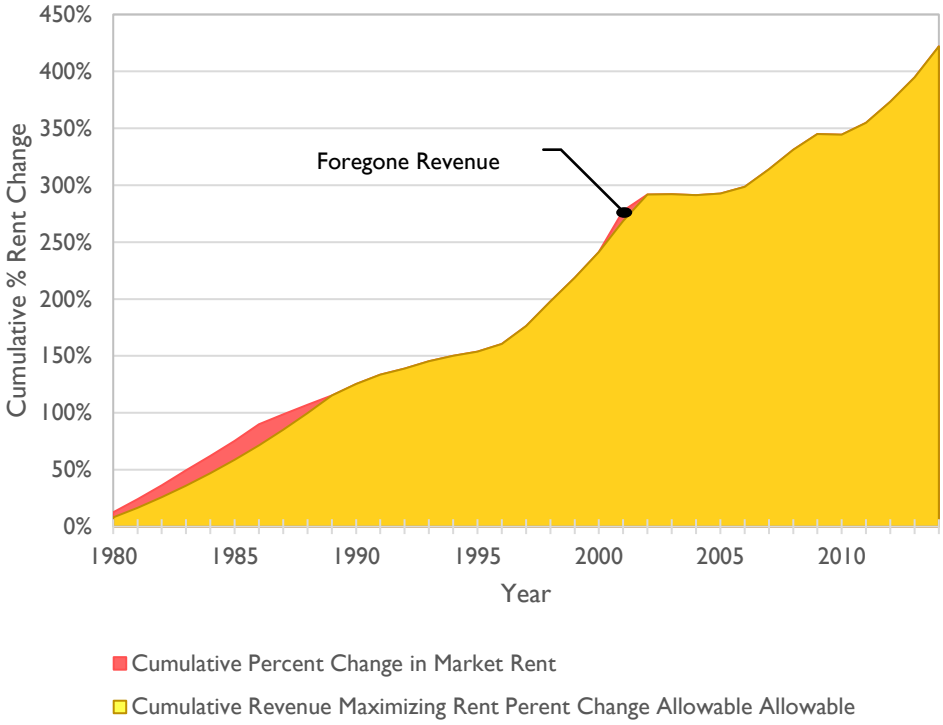
Exhibit C.1: Annual Changes in CPI-U Rent Versus 8 Percent Rent Cap Versus Hypothetical "Highest Attainable Rent" 1980-2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

Exhibit C.2 below displays our model's estimate of the cumulative foregone revenue for a "revenue maximizing" ARO landlord who remained in the rental housing business with the same tenant in place between 1980 and 2014. This analysis assumes that their ARO units met (but did not exceed) market prices. Due to the effects of rent decontrol that occur when a tenant voluntarily leaves a lease, this analysis will vary for each landlord and tenant. It also varies depending on when the landlord enters and leaves the market.

Exhibit C.2: Cumulative Percent Rent Change: Market Rents Versus Rents Controlled at 8 Percent Rents, 1980-2014



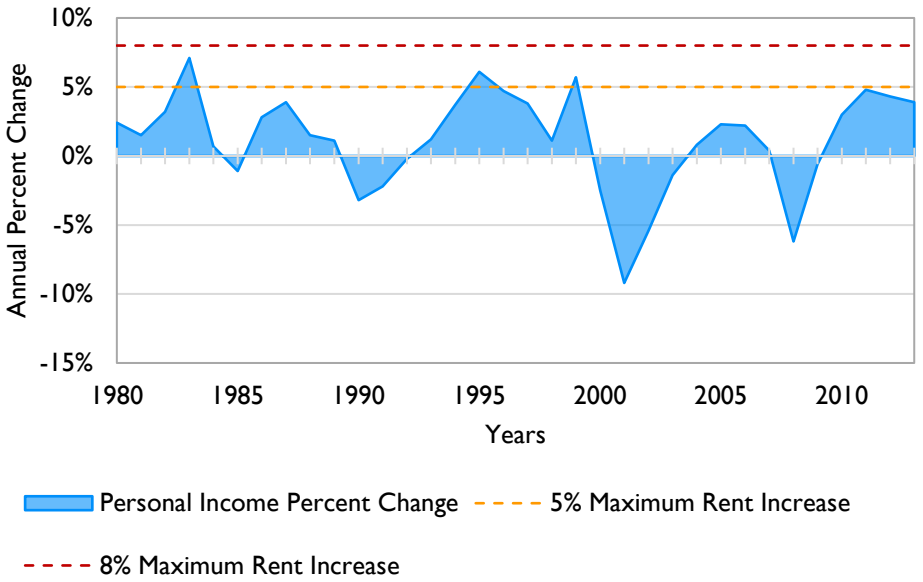
Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

APPENDIX D
Changes in Rents Compared to Wages

Our modeling showed wide variations in the effective rent increases felt by tenants when considering allowable annual rent increases (8 percent and 5 percent) against their effects on personal income.

To understand the effects of the annual allowable rent increase limits, we examined those limits within the context of annual changes in personal income and CPI-U Rent. In Exhibit D.1 below, we plotted annual changes in personal income over that time period. While the area's aggregate personal income increase at an average of 1.3 percent annually, the graph clearly shows the volatility in those changes on a year to year basis.

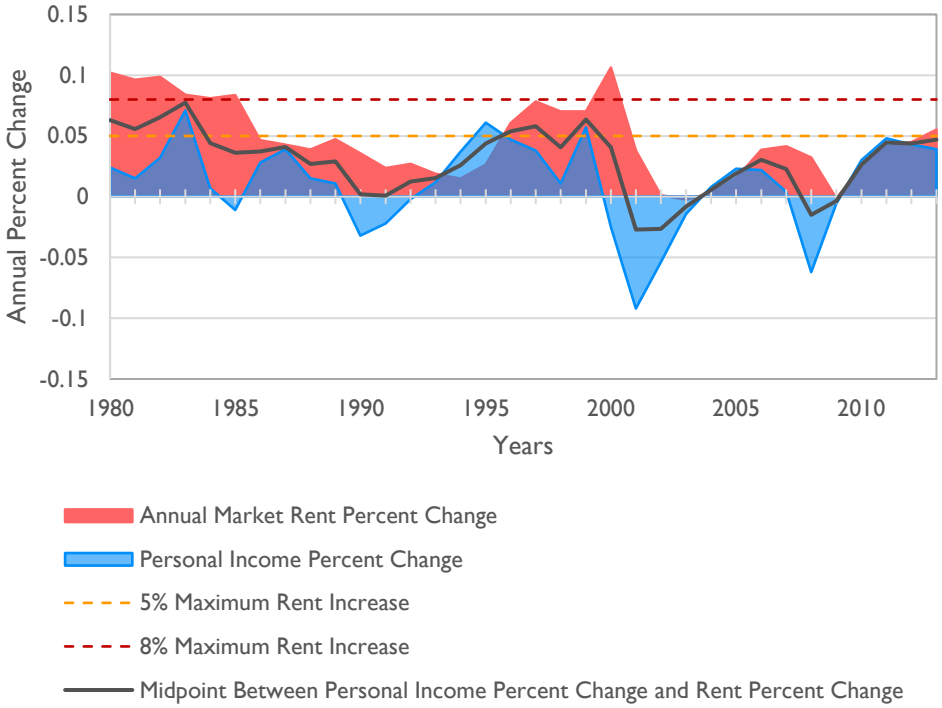
Exhibit D.1: 8 Percent and 5 Percent Annual Rent Increases Relative to Changes in Personal Income, 1980-2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and Personal Income data for the San José-Sunnyvale-Santa Clara, CA Metropolitan Statistical Area from the U.S. Department of Commerce, Bureau of Economic Analysis.

A reasonable measure of the affordability of rents can be approximated by quantifying the difference between changes in market rents and changes in personal income. In Exhibit D.2 below, we overlaid those changes in personal income with the annual changes in CPI-U Rent, to see the two independent forces acting upon the affordability of rents to both counteract and amplify each other.

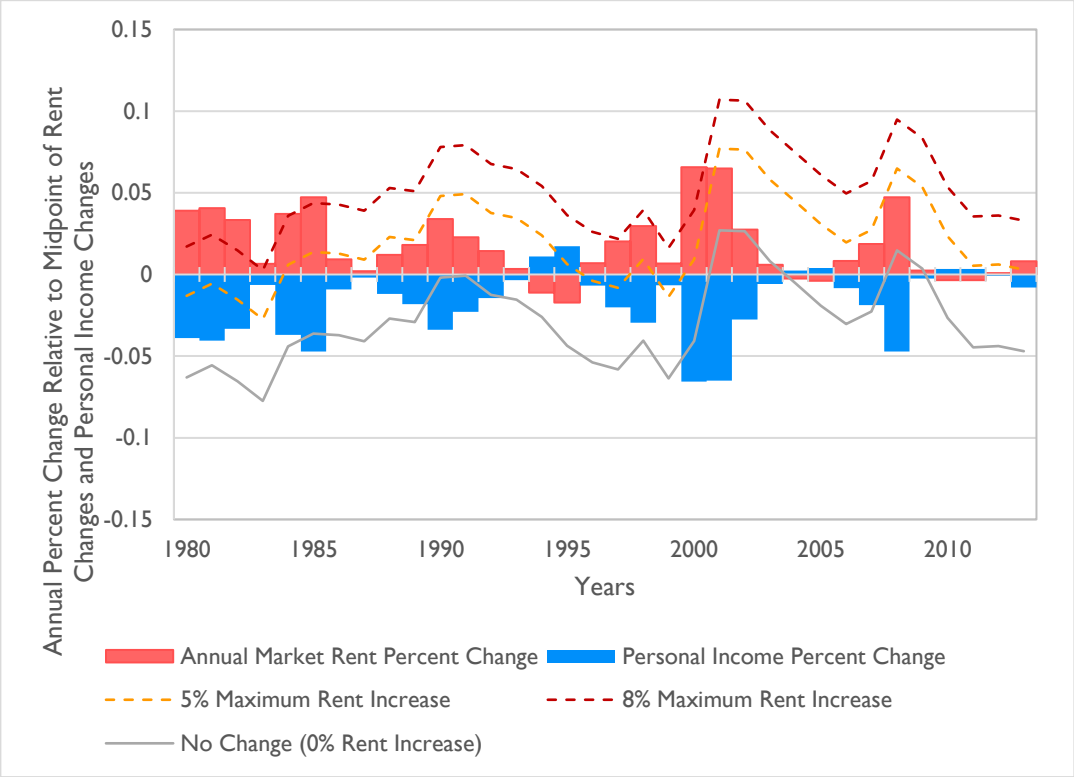
Exhibit D.2: Midpoint Analysis of 8 Percent and 5 Percent Annual Rent Increases Relative to Changes in Personal Income, 1980-2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and Personal Income data for the San José-Sunnyvale-Santa Clara, CA Metropolitan Statistical Area from the U.S. Department of Commerce, Bureau of Economic Analysis.

Exhibit D.3, below, shows that the midpoint between the annual percent change in market rents and the percentage change in personal income never exceeded the 8-percent allowable rent increase between 1980-2014. If this midpoint serves as a test of 'neutrality' between the interests of tenants and landlords, at no time between 1980 and 2014, did the 8-percent cap reduce **effective rents** for tenants. In fact, there are instances when a 0 percent rent increase still resulted in affordability dropping (because of wage decreases).

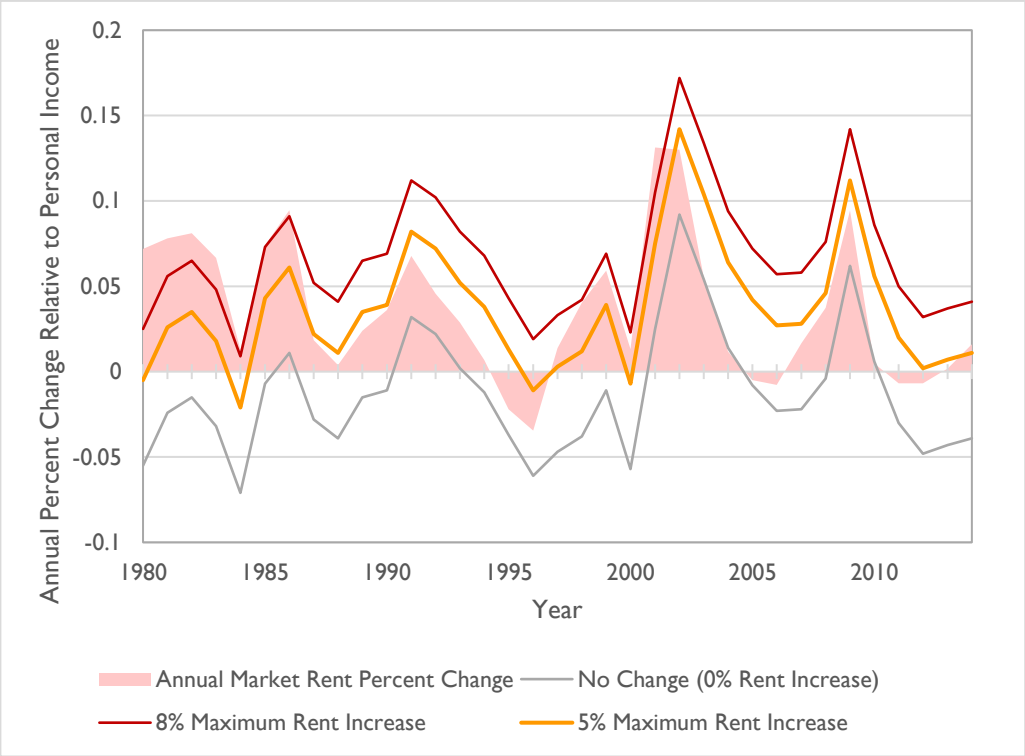
Exhibit D.3: Midpoint Analysis of Changes in Market Rents Versus Personal Income, 1980-2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and Personal Income data for the San José-Sunnyvale-Santa Clara, CA Metropolitan Statistical Area from the U.S. Department of Commerce, Bureau of Economic Analysis.

Exhibit D.4 shows variations relative to changes in personal income, over the time period between 1980 and 2014. For that period, the 8 percent cap could have produced as much as a 17.2 percent effective annual rent increase and as low as a 0.9 percent effective increase. A 5 percent cap would have produced up to a 14.2 percent effective annual rent increase, and a low of a 2.1 percent decrease.

Exhibit D.4: 8 Percent and 5 Percent Annual Rent Increases Relative to Changes in Personal Income, 1980-2014



Source: Auditor analysis of CPI-U Rent of primary residence data for the San Francisco-Oakland-San José, CA Area from the U.S. Department of Labor, Bureau of Labor Statistics; and terms of the Apartment Rent Ordinance.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Sharon Erickson
City Auditor

FROM: Jacky Morales-Ferrand

SUBJECT: **AUDIT RESPONSE - APARTMENT RENT ORDINANCE**

DATE: November 29, 2016

Approved

Date 11/30/16

BACKGROUND

This memorandum responds to the recently completed audit of the Apartment Rent Ordinance (ARO). We appreciate the professionalism of the City Auditor's Office and commend their efforts to provide recommendations supporting the City's ARO. This ordinance seeks to "limit excessive rent increase, alleviate undue hardship to tenants, and provide a fair and reasonable return to landlords." The ARO is administered by the Housing Department's Rental Rights and Referrals Program (ARO Program).

Consistent with other priority-setting processes, the Council adopted a new framework for the Administration's response to Audit recommendations in May of 2015. As with other priority processes, the green, yellow and red light system is utilized to convey the Administration's operational readiness to undertake workload demands. Green administrative responses represent items that are either in existing work plans or are part of work already underway. Yellow administrative responses represent items that would take more than 40 hours including research and policy/ordinance development or consideration as part of the annual budget process. Red administrative responses indicates that the item is not feasible. The Administration's response to each of the Audit's recommendations is presented below employing the green, yellow and red light system.

ANALYSIS

The City Auditor and Housing Department staff worked cooperatively toward the mutual goal of improving administration of the proposed revised Apartment Rent Ordinance. The Administration appreciates the data analysis completed by the City Auditor and concurs with the Auditor's conclusions that the adopted annual rent increase limit of 5% only protects tenants from the most extreme periods of rent spikes. The Administration also concurs that the conclusion that the banking provision discussed in recommendation #12 undermines the protections of the 5% rent increase and should be reconsidered by City Council.

In summary, the Administration concurs with the majority of the recommendations. Twelve recommendations are categorized as "green". Five recommendations are categorized partially green/yellow/red based on components of the recommendation that are moving forward while other portions are contingent on budget actions or City Council consideration. Ten recommendations are categorized as "yellow", with nine of those items contingent on budget actions to implement. Two of the recommendations are marked "red." The most significant area of disagreement between the Administration and the Auditor pertains to recommendation (#13) which recommends the Housing Department implement a "unit" registry rather than the proposed "rent" registry. While the City Auditor raises some legitimate concerns regarding the cost and complexity of implementation of a rent registry, the Housing Department can mitigate those concerns. Furthermore, the Housing Department must implement the rent registry to effectively administer the ARO.

AUDIT RESPONSES

The Auditor's recommendations and the Administration's response to those recommendations are provided below.

Recommendation #1: To ensure efficient and effective customer service, the Housing Department's staffing plan should assess the need for additional dispute resolution professionals.

Administration Response: The Administration concurs with the recommendation.

The Department agrees that the addition of dispute resolution professionals should be assessed. As stated in the Audit, Management Partners will assist in the staff assessment. The Housing Department supports the idea of adding staff to address issues administratively. This will reduce the time needed to schedule and resolve disputes. It will also make dispute resolution more cost effective. Staff will evaluate the merits of having staff proactively follow-up on closed cases and the additional costs associated with this service.

Green – The Housing Department will bring forward a staffing plan developed by Management Partners for consideration by the City Council alongside recommended ordinance language. Regardless of the proposed policy changes, the Housing Department will consider the need for additional dispute resolution professionals within the team.

Target Date for Completion: 3 – 7 months

Yellow - Any position addition proposals will be evaluated by the Administration as part of the 2017-2018 budget process. This evaluation will take into consideration the budgetary outlook of the impacted Housing Fund and the associated impact on the fees and charges.

Recommendation #2: To ensure enforcement of the Apartment Rent Ordinance, the Housing Department's staffing plan should consider the need for dedicated staffing in the City Attorney's Office.

Administration Response: The Administration concurs with the recommendation. Robust enforcement is a vital component of an effective ARO program. Dedicated attorney resources are a critical aspect that is absent from the existing ARO Program. These costs will be included in the Housing Department's staffing recommendations. Additionally, the new ARO should include enhanced enforcement tools, which can be implemented by ARO staff. This would result in quicker, and more cost-effective issue resolution.

Yellow - Any budget proposals will be evaluated by the Administration as part of the 2017-2018 budget process. This evaluation will take into consideration the budgetary outlook of the impacted Housing Fund and the associated impact on the fees and charges. Any General Fund impacts will also be evaluated with consideration of the City's budget outlook and other citywide and departmental funding priorities.

Target Date for Completion: 3-7 months

Recommendation #3: To improve communication and outreach, the Housing Department should:

a) Adopt a targeted approach to tenants and landlords,
b) Improve language accessibility,
c) Improve its lobby space,
d) Improve websites, and
e) Expand its online offerings including an on-line look-up tool, and the ability to file petitions online.

Administration Response: The Administration concurs with the recommendation. Now that the City has a more robust ordinance, the need for additional outreach materials and strategies is paramount. The number of documents provided in multiple languages will also be expanded. Providing additional online services is a strategy the ARO staff is currently exploring with our Information Technology team. To improve the lobby space, the Department will pursue funding of a receptionist that can provide immediate assistance to ARO customers. In addition, the Administration will work with the City Attorney's Office to address the filing of petitions online without a wet signature. While some of the tasks listed in this recommendation will be implemented in the short term, others will be dependent on the addition of program resources.

Green – The items that can be implemented in the short-term include: implementing a targeted outreach plan, expanding language accessibility; and improving the website.

Target Date for Completion: Up to 18 months

Yellow – The reallocation or addition of staffing to improve the lobby space by adding a receptionist and implementation of a database system to accept online application from tenants would be developed as budget proposals, which will be evaluated by the Administration as part of the 2017-2018 budget process. This evaluation will take into consideration the budgetary outlook of the impacted Housing Fund and the associated impact on the fees and charges. Any General Fund impacts will also be evaluated with consideration of the City's budget outlook and other citywide and departmental funding priorities.

Recommendation #4: To fulfill increasing demand for services, the Housing Department's staffing plan should consider the additional staff required for coordinating hearings, referrals for dispute resolution and advice, investigation and enforcement activities, and improving outreach.

Administration Response: The Administration concurs with the recommendation. As previously stated, the Department is working with its consultant to develop a staffing plan for City Council consideration. The staffing plan will address all of the activities sited in this recommendation. Now that the City has a more robust ARO, the need for additional resources for outreach and enforcement is justified.

Yellow - Any position addition proposals will be evaluated by the Administration as part of the 2017-2018 budget process. This evaluation will take into consideration the budgetary outlook of the impacted Housing fund and the associated impact on fees and charges.

Target Date for Completion: 3-7 months

Recommendation #5: The Housing Department should enter unit addresses into the citywide integrated permitting system.

Administration Response: The Administration agrees that unit address information should be maintained and made accessible to multiple Departments. The Administration also agrees with the City Auditor's conclusion that the current ARO address verification process is very inefficient. However, the Administration disagrees that the unit information should reside in the permit system. This information should ultimately reside in a database that is accessible to the citywide integrated permitting system, the Housing Department's database, as well as other City systems that benefit from access to this information. In consultation with the Information Technology (IT) Department and Public Works, the Administration has concluded that the best location for unit information will be the City's Master Address Database (MAD). This is a Public Works project and is expected to be completed by July 2018, according to the 2016-2017 Adopted Operating Budget. While unit information may ultimately be of use to the Department of Planning, Building and Code Enforcement (PBCE), PBCE will not be in a position to utilize the unit data for several years. Once the existing Code Enforcement Database is integrated into the new integrated permitting system, the unit information could be accessed by the permit system from the City's address database.

The Housing Department met with IT staff and determined that creating an automated user interface between the fully implemented integrated permit system, and the Housing Department database is feasible. This interface will facilitate frequent (if not real-time) address updates between systems. The automated process will eliminate the tedious manual data transfer process mentioned in the Auditor's report. Discrepancy reports and data verification processes will be created to ensure consistency between systems.
Since the Address Database is under development, the Administration will maintain this information in the Housing Department's ARO database. This will minimize the impact on the permit system implementation schedule. It will also reduce costs to the ARO program by minimizing licensing and programming costs.

Green - The Administration agrees that the addresses for all ARO units should exist in a database and should be available information to other systems.

Target Date for Completion: 9 - 12 months

Red – The Administration does not agree, however, with the recommended implementation solution utilizing the citywide integrated permitting system. Due to this disagreement in approach, the Administration is placing a red light on this recommendation. The Administration is seeking affirmation from the City Council that the Housing Department, in coordination with the Information Technology department, should determine the most optimal database solution for storing ARO unit address information.

Recommendation #6: The Housing Department should use its live access to the citywide integrated permitting system to answer routine questions about properties and receive alerts about changes to the Multiple Housing Roster, conversion or demolition permit applications, and code enforcement cases.

Administration Response: The Administration concurs with the recommendation. The Department will make sure the ARO Program staff has the necessary tools to address these types of issues going forward. Staff will be trained on how to use the permitting system. Automatic notification for Housing Department staff through the permitting system would be optimal. However, this task may be delayed due to the new permit system implementation.

Green – The Administration will fully implement this recommendation.

Target Date for Completion: 3 - 12 months

Recommendation #7: The Housing Department should continue to identify the occupancy permit dates for the remaining 52 units to determine which if any of those units are subject to rent control.

Administration Response: This action has been completed. On September 27, 2016, ARO staff communicated with staff in PBCE determining that the 52 units were not subject to the ARO based on the occupancy permit dates identified for these units. The information was reviewed by PBCE staff and updates were made to the permit system.

Green – The Administration has already completed this recommendation.

Target Date for Completion: Complete

Recommendation #8: The Housing Department should coordinate with the Department of Planning, Building and Code Enforcement (PBCE) regarding how the modified Apartment Rent Ordinance will impact its operations, such as complaint intake, potential workload impacts on PBCE, and the tracking of proposed demolitions and condo conversions.

Administration Response: The Administration concurs with the recommendation. The Department has been in discussions with PBCE and will continue to consult with them regarding program implementation and potential impact on PBCE staff. The proposed fee structure will incorporate PBCE staff resources utilized in support of the ARO Program.

Green – The Administration plans to coordinate with PBCE staff regarding the implementation of the modified ARO and potential impacts on PBCE staff.

Target Date for Completion: 3 - 7 months

Yellow – The Administration will consider the costs of PBCE staff as a part of the annual review of the Fees and Charges, an analysis included in the 2017-2018 Proposed Budget development process.

Recommendation #9: To ensure the accuracy and consistency of its data, the Housing Department should standardize its customer data using common data input tools (drop downs, standard addressing conventions, etc.), and formalize data input procedures in a reference manual available to staff.

Administration Response: The Administration concurs with the recommendation. The Housing Department agrees that there should be formalized procedures and standard naming conventions to ensure the accuracy of the customer input into the database.

Green - The Administration will fully implement this recommendation.

Target Date for Completion: 3 - 12 months

Yellow – Should the online exemption form require additional funding, any increases in funding will be evaluated by the Administration as part of the 2017-2018 budget process.

Recommendation #10: Revise the fee exemption process by:

a) Developing an online exemption option,
b) Providing receipts or acknowledgements to landlords to confirm exemption requests have been submitted and granted/not granted,
c) Establishing reasonable standards for landlords to prove eligibility for exemptions, and
d) Developing a validation process to confirm exemption eligibility against building data in the citywide integrated permitting system and other authoritative sources.

Administration Response: The Administration concurs with the recommendation to revise the fee exemption process. The Housing Department will develop an online exemption option for ARO apartment owners who reside in ARO units. For units that have recorded affordability restrictions, the Department will incorporate this data from its multifamily database so that these restricted units can be automatically exempted for the term of the restriction. For owners with Section 8 tenants, the Housing Department will seek to obtain Section 8 tenant address data from the Santa Clara County Housing Authority. If we can periodically obtain the Section 8 information in a data file, we can load it into the City's database and automatically exempt owners from paying fees on units occupied by Section 8 tenants. These actions will eliminate the need to send out exemption forms to the affected owners for them to manually complete and return to the City. The Department will, however, evaluate the need for more specific guidance in the regulations and also explore developing a cost-effective validation process for approving exemptions. Any resource increases will be evaluated by the Administration as part of the 2017-2018 budget process.

With regards to recommendation 10c, eligibility standards are specifically defined in the Ordinance and regulations. The Department will review its exception form and instructions to improve clarity on how to complete the exemption form.

Green – The administration will fully implement this recommendation.

Target Date for Completion: 6 - 12 months

Recommendation #11: To help handle spikes in call volume, the Housing Department should:

a) Alert the City's Customer Contact Center of service changes that affect the public,
b) Provide scripts to the Customer Contact Center in advance of program and service delivery changes, and
c) Consider, as needed, directing callers to the Customer Contact Center to answer phone calls.

Administration Response: The Administration concurs with the recommendation. The Housing Department has contacted the Customer Contact Center to discuss this recommendation. The Housing Department will develop scripts and provide training to Customer Contact Center staff in advance of commencing new services.

Green – The Administration will fully implement this recommendation.

Target Date for Completion: 1 - 3 months

Recommendation #12: The City Council should consider eliminating the banking provision in the final ordinance.

Administration Response: The Administration concurs with the City Auditor that the banking provision will be costly to implement and therefore should be reconsidered by City Council. Responding to daily questions from tenants regarding rent increases will require staff to determine if the rents have factored in the banking correctly. This will complicate the creation of an on-line rent registry that tenants could otherwise use to determine if they have been charged the appropriate rent. Should the City Council decide to retain the banking provision, the Department will seek to utilize a banking request form that owners would be required to submit for approval by the Housing Department. This will provide staff with a cost-effective means to ensure that rents are assessed appropriately.

Yellow – The Administration will seek policy direction from the City Council regarding this recommendation.

Target Date for Completion: 1 - 3 months

Recommendation #13: To reduce costs and burdens associated with rent registries, the Housing Department should develop and implement a simpler unit registry. This could be potentially be achieved through the citywide integrated permitting system.

Administration Response: The Administration does not agree with this recommendation. A unit registry maintains limited records that show which units fall under the ARO, but it does not require landlords to provide information on their actual rents on a regular basis (every year or upon vacancy). That means that the City has no way of knowing when a landlord is overcharging – unless a tenant files a complaint to the City. While the Housing Department acknowledges that there are additional costs associated with a rent registry, tracking lease terms and rents is a vital component of ensuring rents are appropriately charged. This is particularly true in times of high rent increases when the information is needed to ensure that residents are not given termination notices so that owners can bring in new tenants at market rates. Without the registry, the City has no way of ensuring this does not occur.

Per the existing ARO, owners are required to file tenancy termination notices when they notify tenants that they must vacate their apartments at the end of a lease term. The City Auditor noted that the Housing Department received 429 tenancy termination notices from owners in FY 2015-16. Considering the total number of ARO units is about 45,820, the limited number of notices filed suggests that there may be significant non-compliance with this requirement.

It was also noted that Housing staff did not proactively follow up on the notices received. Under the prior ordinance, rents could be increased 8% per year. As such, proactive follow-up on the notices was not an effective use of staff time. However, with rent increases now lowered to 5% annually, the termination notices will be an effective tool to assist the Department in ensuring that owners are not renewing tenants' leases to increase rents on new tenants. The Department has developed a function in its database that will allow staff to generate maximum rent notices to inform new renters of the maximum rent they should be paying. The maximum rent for the new tenant is based on the rent information provided on the termination notice for the prior tenant. Staff will then respond to any complaints received by new tenants in response to notices they received from the City.

The rent registry also provides valuable data as a means of measuring the effectiveness of the rent control program. The rent registry allows the City to compare the rents of ARO tenants against market rate units to determine if the ARO is assisting tenants or imposing an undue hardship on owners. It will also inform the City on the extent to which tenants are leaving their homes voluntarily or involuntarily. This information will provide future policy makers with additional data that they can use to modify the ARO program.

The Department acknowledges that some cities with limited staff resources have struggled to obtain rental data from owners. However, other cities have been successful in their efforts. The Housing Department plans to offer an online rent registry component that owners can use to submit the information. The Department utilizes the Salesforce database platform to manage the ARO data and workload. This cloud-based database can be quickly modified at a modest cost, to turn on the external interface to the system so that owners can complete a rent registry on-line. In addition to leveraging its existing technology, the Department will adopt practices used by other cities to impose penalties on owners that do not submit rent data. This could include the provision that owners must forgo rent increases until the rent information is provided. By using these methods, the Department will be able to manage a rent registry in a cost effective manner. This is consistent with the City Auditor's suggestion to impose costs proportionately on bad actors in order to limit costs charged to owners that consistently comply with the ARO requirements.

Red – The Administration is seeking affirmation of the existing City Council direction to establish a rent registry.

Target Date for Completion: To be determined.

Recommendation #14: To ensure that customers have consistent and reliable access to legal services, the Housing Department should contract with non-profit legal service agencies, and require those agencies provide the City with information regarding outcomes.

Administration Response: The Administration concurs that there is a need for consistent and reliable legal services for low-income clients, but there are limits on the ability of the Administration to fund those services. The City itself does not represent or provide legal advice

to individual members of the public and many of the persons that are referred to outside entities have disputes regarding state landlord-tenant law, that cannot be addressed under the ARO. Additionally, the use of the ARO fee is limited to administration of the ARO and providing the specific services available under the ARO. Like most rent stabilized cities, the RRRP does have informational hand outs and periodic workshops for landlords and tenants, but with additional staffing, these services could be updated and expanded. Some cities do use general funds to support non-profit legal services. Also, it is possible that federal Community Development Block Grant (CDBG) funds could be used to fund eviction related legal clinics. Currently, all CDBG funds are committed for other purposes, meaning a current priority would be defunded prior to funding this new program. If General Funds would be considered for this purpose, the City would have to consider the need for this service versus other priorities for these funds.

Yellow - Any additional resources will be evaluated by the Administration as part of the 2017-2018 budget process. This evaluation will take into consideration the budgetary outlook of any impacted special funds. The use of General funds will also be evaluated with consideration of the City's budget outlook and other citywide and departmental funding priorities.

Target Date for Completion: 3 - 7 months

Recommendation #15: To ensure customers are provided necessary services, the Housing Department should develop a strategic plan for the Rental Rights and Referrals Program that outlines desired goals and outcomes, and establishes measures of program effectiveness.

Administration Response: The Administration concurs with the recommendation. The planning document will incorporate all components of the program including ARO, the Ellis Act, and Anti- retaliation and Replacement (ARPO) Ordinance.

Green – The Administration will fully implement this recommendation.

Target Date for Completion: 12 - 18 months

Recommendation #16: To track customer satisfaction, and the perceived effectiveness of services, the Housing Department should develop customer satisfaction and information surveys, feedback cards, and online feedback options.

Administration Response: The Administration concurs with the recommendation. New customer feedback surveys will be developed for the fully modified ARO.

Green – The Administration will fully implement this recommendation.

Target Date for Completion: 6 - 12 months

Recommendation #17: The Housing Department should provide periodic updates on the Apartment Rent Ordinance, rent stabilization efforts, and the Rental Rights and Referrals Program to the Housing and Community Development Commission.

Administration Response: The Administration concurs with the recommendation.

Green – The Administration will fully implement this recommendation.
Target Date for Completion: 2- 4 months

Recommendation #18: To recognize the administrative costs associated with billing Apartment Rent Ordinance-related fees, the Housing Department should work with the Department of Planning, Building and Code Enforcement to establish fee supported staffing, and enter into the interdepartmental partnership of users of the citywide integrated permitting system.

Administration Response: The Administration concurs with the recommendation. The proposed ARO fee structure will incorporate the appropriate costs for PBCE staff that assist with the invoicing process. It should be noted that the Housing Department will seek to minimize costs it needs to pass on to ARO apartment owners by maximizing the use of its existing technology and minimizing its use of the permitting system. To the extent that PBCE and IT staff are impacted, the Housing Department will included these costs in the proposed ARO fees.

Yellow – The Administration will consider the costs of PBCE staff and use of the citywide integrated permitting system as a part of the annual review of the Fees and Charges, an analysis included in the 2017-2018 Proposed Budget development process.

Target Date for Completion: 3 - 7 months

Recommendation #19: To fund existing and new Rental Rights and Referrals Program services, and ensure the availability of those services across different customer groups, the Housing Department should:

a) Restructure fees based on services for which units are eligible,
b) Calculate new fees to include the full costs of services including those provided by other departments,
c) Review cost recovery targets, and
d) Consider penalty structures whereby "problem landlords" pay fees in proportion to their burden on the City.

Administration Response: The Administration concurs with the recommendation. The proposed fee structure will incorporate all costs associated with staff involved with administering the ARO program. The Department will continue to review cost recovery targets and adjust fees accordingly on an annual basis.

The Department concurs that the problem landlords who violate terms of the ordinance should be assessed penalties in proportion to their burden the City. Under the prior ordinance, the available enforcement tools required the involvement of the City Attorney's Office. The prior ordinance did not include mechanisms to enable staff to enforce the ordinance in a cost effective manner. When developing the proposed fee structure, the Housing Department will contemplate the use of late fees, administrative citations, penalties and other provisions that are cost effective and encourage self-enforcement of the ARO.

Yellow – The Administration will consider the recommendations as a part of the annual review of the Fees and Charges, an analysis included in the 2017-2018 Proposed Budget development process.

Target Date for Completion: 3 - 7 months

In closing, I want to thank the City Auditor's Office once again for their efforts to improve the Department's ability to manage the Apartment Rent Ordinance. The Audit provided new ideas and bolstered previously identified strategies that will aid the Department in the fulfillment of its mission. Most importantly, these actions will help ensure that the City has an effective rent stabilization program so that thousands of current and future residents will continue to have a safe apartment in which to live.

This memo has been coordinated with the Department of Planning Building and Code Enforcement, Information Technology Department, City Manager's Office, Budget Office and City Attorney's Office.

/s/
Jacky Morales-Ferrand
Director of Housing

For questions, please contact Jacky Morales-Ferrand, Housing Director at (408) 535-3855.