



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember
Donald Rocha

SUBJECT: APARTMENT RENT ORDINANCE

DATE: April 14, 2016

Approved

Date

4/14/16

RECOMMENDATION

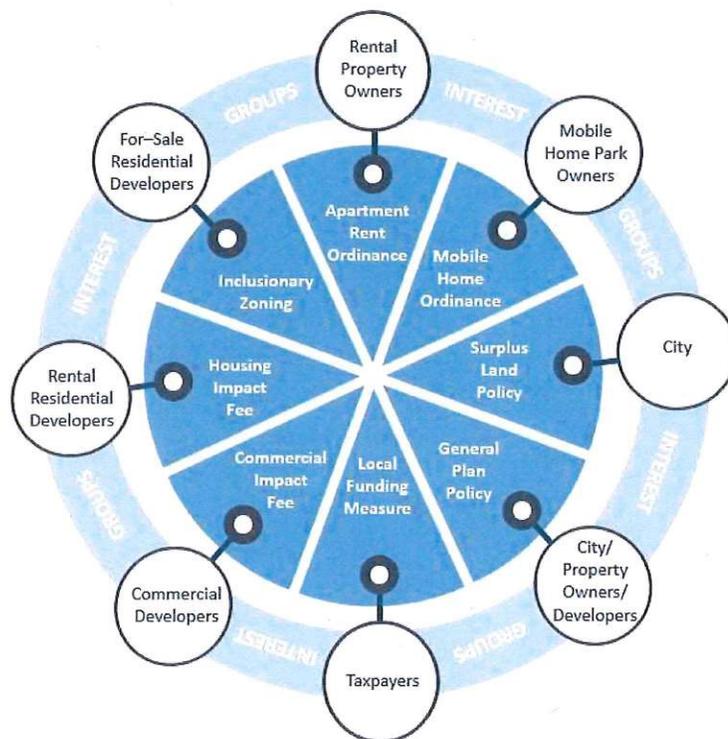
1. Approve the staff recommendation for modifications to the Apartment Rent Ordinance with the following amendments:
 - a. **Duplexes:** Direct staff to bring the issue of whether or not duplexes should be included under the Apartment Rent Ordinance back to City Council for further consideration after having conducted any additional work that may be needed to fully vet the issue, such as an evaluation of the time and staffing that may be needed for implementation, any additional analysis of the effects of including duplexes under the ordinance as may be possible, and any additional outreach as may be necessary.
 - b. **Displacement:** Approve staff recommendations 8, 9, and 10, which recommend further ordinance development around displacement issues, and provide additional direction for staff to analyze the proposed displacement ordinance outlined in recommendation 8 of Councilmember Jones' memo dated April 8, in addition to any other policy options staff or Council may wish to recommend.
 - c. **Maximum Allowable Rent Methodology:** Use a maximum allowable rent methodology instead of a banking methodology to track unused rent increase capacity. The maximum allowable rent methodology would set a maximum allowable rent for each unit based on the base year rent, plus the accrued maximum allowable increases for all subsequent years. Landlords would be allowed to charge up to the maximum allowable rent, provided that rent increases each year are consistent with the 8% ceiling proposed in the staff recommendation. This method achieves the same outcome as the banking methodology in an administratively simpler fashion, as it eliminates the need to track how much the landlord has banked for each unit.
 - d. **Outreach:** As part of implementation of the Anti-Retaliations & Protection Ordinance, direct staff to conduct outreach in multiple languages to educate tenants about their rights under the ordinance, with particular attention to groups that may be most vulnerable to abuse, such as immigrant communities.

2. Direct staff to return to Council in 18 months with an update on implementation of the Apartment Rent Ordinance. As part of this update, staff should provide the Council with any data they may have collected on no-cause evictions through implementation of the Apartment Rent Ordinance, and should assess whether the Rent Ordinance is effective in the absence of a good cause eviction ordinance.
3. Request that either staff or the Rules Committee agendaize a Council item for the May 3, 2016 council meeting for the purpose of allowing the Council to direct staff to conduct a nexus study and feasibility study for a commercial impact fee in San Jose.

ANALYSIS

The high cost of housing is causing great suffering in San Jose. From the young professional who can't afford to buy a house, to the homeless person living along a freeway, to the parent who gives up time with her child to work a second job, to a retiree worrying about the next rent increase, our residents feel the pain of the housing crisis every day. It threatens their economic stability, forces them into overcrowded housing, prevents them from saving for the future, and in some cases threatens their health and ability to survive. In my opinion, the housing crisis is the single most serious problem we face in San Jose; it has dire consequences for thousands upon thousands of people. With this memo, I propose to address this crisis by not only approving modifications to the Apartment Rent Ordinance, but also by asking that the commercial impact fee be brought back to Council so that we can direct staff to study that issue.

I feel strongly that we need to pursue both the amendments to the Rent Ordinance as recommended by staff and the commercial impact fee because no one strategy is enough to solve the housing crisis on its own; the only way we can make significant progress is to pursue every strategy available to us. Most of these strategies impact an engaged constituency—the housing impact fee affects residential developers, the commercial impact fee affects commercial developers, the Apartment Rent Ordinance affects rental property owners—but the only fair and effective way to deal with this problem is to ask that all parts of our community (including our voters, through a potential local funding measure) do their part to address the problem. The chart at right demonstrates how many different interests must all contribute to addressing the problem.

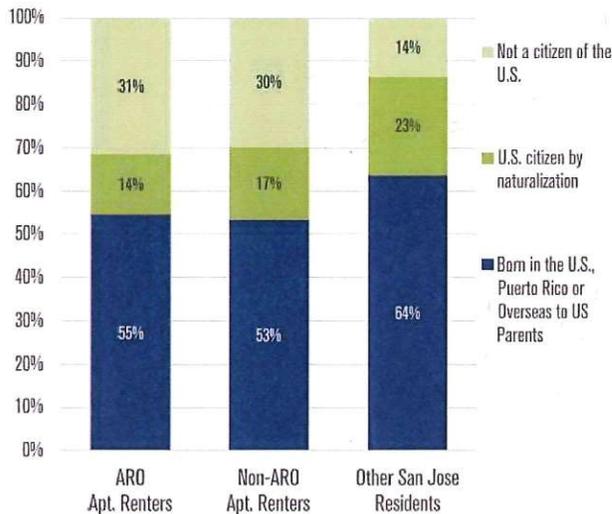


Apartment Rent Ordinance

Let me speak to the Apartment Rent Ordinance first, and then discuss the commercial impact fee. The Apartment Rent Ordinance is not a silver bullet—it won't expand our supply of housing, or even apply to all rental units within the city—but I do believe that it can make a difference for some renters. Our current rent ordinance can allow up to an 8% rent increase every 12 months and a 21% increase provided there has been no other increase for 24 months. In a hot rental market, large increases can disrupt the lives of renters, upending their personal finances and potentially forcing them to find a new home. Landlords have a right to a fair return on their property, but I also think the City has an interest in providing some measure of stability to those who rent. Thus, I recommend approval of the staff recommendation.

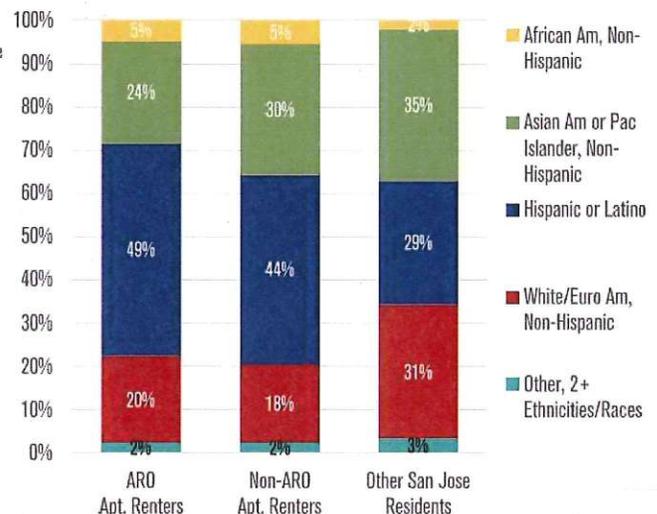
It may sometimes be difficult for those of us who own homes to fully appreciate the struggles that renters face. Property ownership can confer a degree of stability that renters simply do not enjoy. I believe we have an obligation to take the struggles of renters seriously, even if we do not experience those struggles ourselves. The Apartment Rent Ordinance Study shows that renters in San Jose are comprised of groups that tend to be most vulnerable and historically have had the least influence in City Hall. For example, the below charts (taken from the ARO Study) show that about a third of ARO renters are not citizens and about half are Hispanic.

Figure 3.14 – Citizenship Status of San José Renter Residents, by ARO status



Source: Economic Roundtable analysis; U.S. Census Bureau, 2009-2013 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of the CIT (Citizenship Status) variable. Universe: Total population.

Figure 3.6 – Race-Ethnicity of San José Renter Residents, by ARO status



Source: Economic Roundtable analysis; U.S. Census Bureau, 2009-2013 5-Year American Community Survey, Public Use Microdata Sample (PUMS). Based upon recoding of RAC1P and HISP variables.

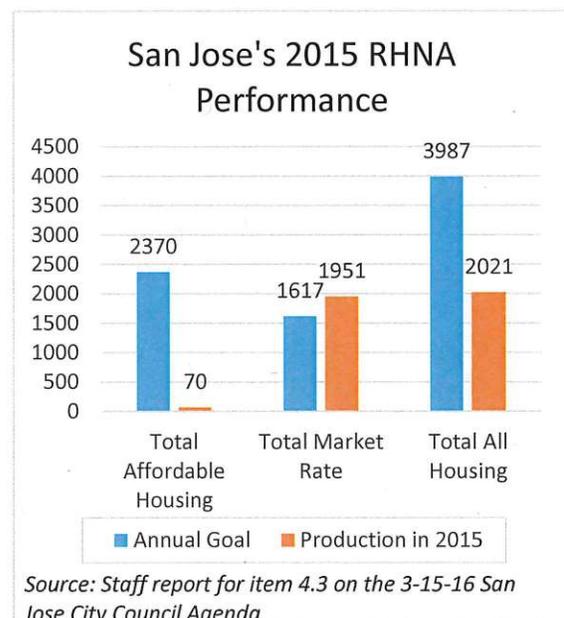
I also propose a few additions to the staff recommendation. First, I recommend further consideration of including duplexes under the ordinance, given that they represent around 11,000 additional units. Our current Rent Ordinance applies to only one slice of the rental market—the bigger we can make that slice the more stability we can provide for tenants. Second, I recommend directing staff to pursue displacement policies, and as part of that effort direct them to analyze the displacement program proposed by Councilmember Jones. I'm open to considering Councilmember Jones's proposal, but believe that in the interests of thoughtful policymaking we should allow staff to do additional work before making a final decision on which model to use. Third, instead of using an unlimited banking methodology,

I propose that we simply establish a maximum allowable rent for each unit. This method would achieve the same outcome as unlimited banking, as proposed by staff, but would be administratively simpler as staff would not need to track how much is banked for each unit. Finally, I propose that we direct staff to conduct multilingual outreach to ensure renters are aware of their rights under our proposed anti-retaliation provisions.

Commercial Impact Fee

Last December, we had the opportunity to conduct both a nexus study and a feasibility study for a potential commercial impact fee, but the Council ended up declining to study the issue. Many points were made about the dire consequences of approving a commercial impact fee—it would kill commercial development, it would harm the City’s fiscal future. In my opinion, passing judgement on an idea before you even study it is a backwards approach to policymaking. The feasibility study proposed by staff back in December would have attempted to analyze the effect of a fee on the development market in San Jose. With that analysis we would have had a factual basis to make judgements about the consequences of a fee, instead of merely speculating from the dias. We might have learned that a relatively modest fee would have had little to no impact on development decisions. Given the great need, even a relatively small amount of money from a modest fee is worth pursuing.

Even when inclusionary zoning and the housing impact fee are implemented, it’s unlikely we will have adequate affordable housing funding to meet the need. According to Housing Department data, only 70 affordable housing units were built in San Jose during 2015, out of the 2,370 needed according to San Jose’s Regional Housing Needs Allocation (RHNA). In my opinion, 70 out of 2,370 is a failing grade. We may do better when our housing fees start coming in, but getting all the way to 2,370 units per year is a very tall order. If we start taking potential funding sources off the table without even studying them, it will be very difficult to hit that target.



Whenever the issue of RHNA allocations and housing production comes up, there’s a tendency in San Jose to start pointing the finger of blame—principally at other cities who aren’t doing their fair share to produce housing. It’s possible to debate whether this blame is deserved. During Mayor Gonzales’ administration San Jose built more housing than the rest of the County, but during Mayor Reed’s administration we fell behind other cities, as the chart on the next page demonstrates. To be fair, the changes between the two administrations have multiple explanations, some of which were under the City’s direct control and some of which were not (the elimination of redevelopment, for example, was out of our control.)

The point I want to make here is that it really doesn't matter whether other cities are to blame. Yes, we all want them to do more, but we don't have control over policymaking in other cities. We do have control over what we do in our City to help our residents. At its core, pointing fingers and blaming other people is a way of saying "I'm not responsible," and justifying our failure to take action. The fact is, *we are responsible*. We are responsible for considering every option to address this problem, including the commercial impact fee.

Conclusion

I'd like to close by reiterating the importance of taking responsibility for this problem. It is hard to ask constituency after

constituency to do more on affordable housing—whether it's residential developers, commercial developers, mobile home park owners, rental property owners, or taxpayers, it's always a tough conversation. What we can't do, however, is exempt any one group from pitching in. When we ask one group to help out, we have to be able to say that we've asked everyone else to do their part too.

