

District 1— Vacant
District 3— Barry Del Buono
District 5— Ruben Navarro
District 7— Melissa Medina
District 9— Julie Quinn
Mayor — Nhi Nguyen

(VC) Alex Shoor — District 2
Huy Tran — District 4
Andrea Wheeler — District 6
Lee Thompson — District 8
Michael Fitzgerald — District 10
Martha O’Connell — CAAC-MR
(C) Mike Graves — CAAC ML

**Commissioners are appointed by corresponding Council Members, but do not represent the Council District.*

***REVISED* SPECIAL MEETING AGENDA**

5:45PM

March 22, 2018

San José City Hall
Wing Rooms 118-120

- I. Call to Order & Orders of the Day**
- II. Introductions**
- III. Consent Calendar**
 - A. Approve the Minutes for the Regular Meeting of March 8, 2018
ACTION: Approve the March 8, 2018 action minutes
- IV. Reports and Information Only**
 - A. Chair
 - B. Director
 - 1. Recent and future City Council items
 - a. March 13, 2018 City Council Motions on Mobilehome Opt-In Updates
 - 2. Other updates
 - C. Council Liasion
- V. Old Business**
 - None.
- VI. New Business**
 - A. Potential Amendment to the Tenant Protection Ordinance Regarding Criminal Activity
(R. VanderVeen, Housing Department)**

ACTION: Accept the Staff’s report and provide recommendations to staff on potentially amending the Tenant Protection Ordinance to:

Include “Criminal Activity” as a separate just cause basis for eviction to allow a landlord to serve a Notice of Termination of Tenancy when a tenant has been held to answer pursuant to Penal Code Section 872, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), that was committed during his or her tenancy and on the

premises. Include an “opportunity to cure” that would require that landlords, prior to serving a Notice of Termination of Tenancy, provide tenant households a written notice to remove the tenant who was held to answer from the unit or the tenant’s name from the lease agreement within a reasonable time, using one of the following methods:

- a. Filing a restraining order or providing evidence of similar steps being taken to remove them from the household; OR
- b. Removing the member of the household who was held to answer and providing written notice to the landlord that said tenant has been removed.

**B. Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance)
(R. VanderVeen, Housing Department)**

ACTION: Accept staff report and provide recommendations to staff on potential changes to the Ellis Act Ordinance, including:

1. Amending the re-control provisions to:
 - a. Subject the greater of either 50% of new apartments built *or* the number of apartments removed from the market, to the Apartment Rent Ordinance (ARO);
 - b. Allow an exemption from the re-control provisions if at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:
 - i. Develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; and
 - ii. Develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.
2. Include apartments buildings with three units under the Ellis Act.
3. Require apartments with three units or more built after 1979 to provide 120-day notification to their tenants and the City and to provide relocation consultant services to impacted tenants.

C. Consideration of a request from Commissioner O’Connell for Commission authorization pursuant to Council Policy 0-4 Part IV to hold meetings during 2018 using her title as HCDC Mobilehome Park Resident Representative in order to obtain feedback from park residents on mobilehome park-related matters and to provide a report back to the Commission after the conclusion of such meetings.

(K. Clements, Housing Department) (No memo)

ACTION: Motion to authorize.

- D. Consideration of a request from Commissioner Graves for Commission authorization pursuant to Council Policy 0-4 Part IV to hold meetings during 2018 using his title as HCDC Mobilehome Parks Owner Representative in order to obtain feedback from park residents owners on mobilehome park-related matters and to provide a report back to the Commission after the conclusion of such meetings.**
(K. Clements, Housing Department) (No memo)

ACTION: Motion to authorize.

- E. Consideration of a request from Commissioner Fitzgerald for Commission authorization pursuant to Council Policy 0-4 Part IV to hold meetings during 2018 using his title as HCDC Apartment Rent Ordinance Landlords Representative in order to obtain feedback from landlords on Apartment Rent Ordinance-related matters and to provide a report back to the Commission after the conclusion of such meetings.**
(K. Clements, Housing Department) (No memo)

ACTION: Motion to authorize.

F. Commission Workplan Status

- VII. Open Forum** (*Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the Commission. Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Commission.*)
- VIII. Meeting Schedule**
The next Special meeting will be Thursday, April 12, 2018 at 5:45PM, in the San Jose City Hall Wing Rooms 118-120.
- IX. Adjournment**

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

You may speak to the Commission about any discussion item that is on the agenda, and you may also speak during Open Fourm on items that are not on the agenda and are within the subject matter jurisdiction of the Commission. Please be advised that, by law, the Commission is unable to discuss or take action on issues presented during Open Forum.

Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the Commission unless listed on the agenda, which has been posted not less than 72 hours prior to meeting.

Agendas, Staff Reports and some associated documents for the Commission items may be viewed on the Internet at <http://www.sanjoseca.gov/hcdc>.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk, 200 East Santa Clara Street, 14th Floor, San José, California 95113, at the same time that the public records are distributed or made available to the legislative body. Any draft resolutions or other items posted on the Internet site or distributed in advance of the commission meeting may not be the final documents approved by the commission. Contact the Office of the City Clerk for the final document.

On occasion the Commission may consider agenda items out of order.

The Housing & Community Development Commission meets every Second Thursday of each month (except for July and December) at 5:45pm, with special meetings as necessary. If you have any questions, please direct them to the Commission staff. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 as soon as possible, but at least three business days before the meeting.

Please direct correspondence and questions to:

City of San José
Attn: Viviane Nguyen
200 East Santa Clara Street, 12th Floor
San José, California 95113
Tel: (408) 975-4462
Email: viviane.nguyen@sanjoseca.gov

Para residentes que hablan español: Si desea mas información, favor de llamar a Theresa Ramos al 408-975-4475.

Riêng đối với quý vị nói tiếng Việt : Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Viviane Nguyen, Đ.T. 408-975-4462.

對於說華語的居民: 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

Para sa mga residente na ang wika ay tagalog: Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Shirlee Victorio sa 408-975-2649. Salamat Po.

HOUSING & COMMUNITY DEVELOPMENT COMMISSION
REGULAR MEETING ACTION MINUTES
MARCH 8, 2018

MEMBERS PRESENT:

| | |
|--------------------|-------------------------------|
| Mike Graves | Chair |
| Alex Shoor | Vice Chair (Arrived 6:00 PM) |
| Melissa Medina | Commissioner |
| Lee Thompson | Commissioner |
| Martha O’Connell | Commissioner |
| Huy Tran | Commissioner |
| Andrea Wheeler | Commissioner |
| Barry Del Buono | Commissioner |
| Michael Fitzgerald | Commissioner |
| Julie Quinn | Commissioner |
| Ruben Navarro | Commissioner |
| Nhi Nguyen | Commissioner (Exited 9:35 PM) |

MEMBERS ABSENT: None

STAFF:

| | |
|-------------------|--------------------------------|
| Viviane Nguyen | Housing Department |
| Selena Copeland | Housing Department |
| Rachel VanderVeen | Housing Department |
| Adam Marcus | Housing Department |
| Kristen Clements | Housing Department |
| Helen Chapman | Councilmember Jimenez’s Office |

(I) Call to Order/Orders of the Day – Chair Graves opened the meeting at 5:47 PM.

(II) Introductions – Commissioners, staff, and audience introduced themselves.

(III) Consent Calendar

A. Approve the Minutes for the February 8, 2018 Regular Meeting.

Commissioner Navarro made the motion to approve the action minutes for the March 8, 2018 regular meeting with a second by Commissioner Tran. The motion passed unanimously (12-0).

(IV) Reports and Information Only

A. **Chair** – Chair Graves and Commissioners request the ability to get items appropriate for the Commission’s scope added to agendas, and requested that staff distribute copies of the workplan periodically to monitor status.

B. **Director’s Report** – Due to her new role as staff to the Commission, Ms. Clements gave information on her background, and discussed her goals and vision for the Commission in the

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future. Ms. Clements also provided ideas on how the Commission workplan could be managed to provide a timeline for priority housing policy issues.

- C. **Council Liaison** – Helen Chapman provided an update about upcoming Council Meeting on March 13, 2018 with Mobilehome Opt-in. Ms. Chapman will send memos from Councilmember Jimenez’s office to Ms. Nguyen to distribute to the Commissioners.

(V) Old Business - None

(VI) New Business

**A. Amendments to the Apartment Rent Ordinance Regarding Utility Pass Throughs to Tenants
(R. VanderVeen, Housing Department)**

ACTION: Accept the report on submetering, submetering incentives, and pass throughs of utility costs, including Ratio Utility Billing System (RUBS), and provide recommendations to staff on:

- a. A proposal to amend the Apartment Rent Ordinance to include the following regarding utility charges:
 - 1) Clarifying that the pass through of utility charges to tenants via RUBS or other unmetered allocations is not allowed.
 - 2) Allow landlords with written utility pass through contracts in place prior to January 1, 2018, to seek a one-time rent increase equal to the lesser of the average monthly charges passed through to the Tenant over the prior twelve-month period or the 2018 Santa Clara County Multifamily Utility Allowance rates for water, sewer and garbage costs.
- b. A proposal for City Council direction to staff to present the City Manager an amendment to the Regulations describing the limited term one-time rent increase petition process.

Commissioner Shoor made the motion to approve staff recommendation with a second by Commissioner Del Buono. The motion passed 10-2 by roll call vote.

Yes: Tran, Quinn, Thompson, O’Connell, Shoor, Medina, Nguyen, Navarro, Del Buono, Wheeler

No: Graves, Fitzgerald

**B. Tenant Source of Income Policy
(K. Clements, Housing Department)**

ACTION: Accept the staff report and provide the Housing Department with feedback on the policy framework related to source of income discrimination.

Commissioner Del Buono made the motion to approve staff recommendation, with a request to see the policy framework again before going to City Council, with a second by Commissioner Navarro. The motion passed unanimously (12-0).

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Commissioner Thompson made the motion to recommend incorporating and researching incentives for landlords to participate in Section 8 with a second by Commissioner Wheeler. The motion passed unanimously (12-0).

Commissioner Tran made the motion to recommend staff to conduct research on ways to prequalify landlord units for Section 8 consideration, with a second by Commissioner Fitzgerald. The motion passed unanimously (11-0).

C. Meeting Adjournment Curfew (K. Clements, Housing Department)

ACTION: Discuss the possible establishment of a meeting adjournment curfew for Commission meetings. (No memo)

Commission discussed the idea of a possible curfew for meeting adjournment, but no motion was made to establish such curfew.

(VII) Open Forum

Commissioner Martha expressed concerns about how mobilehome opt-in item was not on the agenda, and explained that three commissioners are charged by the Ordinance to represent a constituency.

Commissioner Fitzgerald presented the book "Evicted" by Matthew Desmond and recommended Commissioners to read the book.

(VIII) Meeting Schedule

The next Special meeting will be on Thursday, March 22 2018 at 5:45 PM, in the San José City Hall Wing Rooms 118-120.

(IX) Adjournment

Chair Graves adjourned the meeting at 9:45 PM.



Memorandum

TO: HOUSING & COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: March 15, 2018

Approved

Date

**SUBJECT: POTENTIAL AMENDMENT TO THE TENANT PROTECTION
ORDINANCE REGARDING CRIMINAL ACTIVITY**

RECOMMENDATION

Accept the Staff's report and provide recommendations to staff on potentially amending the Tenant Protection Ordinance to:

Include "Criminal Activity" as a separate just cause basis for eviction to allow a landlord to serve a Notice of Termination of Tenancy when a tenant has been held to answer pursuant to Penal Code Section 872, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), that was committed during his or her tenancy and on the premises. Include an "opportunity to cure" that would require that landlords, prior to serving a Notice of Termination of Tenancy, provide tenant households a written notice to remove the tenant who was held to answer from the unit or the tenant's name from the lease agreement within a reasonable time, using one of the following methods:

- a) Filing a restraining order or providing evidence of similar steps being taken to remove them from the household; OR
- b) Removing the member of the household who was held to answer and providing written notice to the landlord that said tenant has been removed.

BACKGROUND

On May 9, 2017, the City Council adopted the Tenant Protection Ordinance (TPO) which established 12 separate "just cause" basis a landlord must use to terminate a tenancy and pursue an Unlawful Detainer. Prior to the adoption of the TPO, tenants could be given notices of termination of tenancy without any stated reason (no-cause evictions). The 12 Just cause reasons for eviction are listed below.

Table 1: Twelve Just Cause Reasons Included in the Tenant Protection Ordinance

| # | Reason |
|----|---|
| 1 | Nonpayment of Rent |
| 2 | Material or Habitual Violation of the Lease (Tenancy) |
| 3 | Damage to the Apartment |
| 4 | Refusal to Agree to Similar or New Rental Agreement |
| 5 | Nuisance - Disorderly Behavior Disturbing the Peace |
| 6 | Refuse Access to the Apartment |
| 7 | Unapproved Holdover Subtenant |
| 8 | Substantial Rehabilitation of the Apartment |
| 9 | Removal of Apartments from the Rental Market Under Elli |
| 10 | Owner Move-In |
| 11 | City Code Enforcement Actions Requiring a Move Out |
| 12 | Convert an Unpermitted Apartment for Permitted Use |

At the May 9, 2017 meeting, the City Council “directed the City Attorney to return to Council subsequent to implementation with an amendment to the ordinance to make changes in the ordinances: Amend ‘17.23.1250 Just Cause Termination’ to ensure that criminal activity committed on or near the premises shall provide an independent basis for tenant’s eviction, without requiring neighbors to testify or provide other evidence that the criminal conduct constitutes a legal ‘nuisance’.”

Additionally, City Council approved Mayor Liccardo and Councilmember Jones’ memo pertaining to criminal activity. This memo directed staff to:

- Establish a list of specific crimes or types of crimes that could serve as the basis for an eviction.
- Require that the tenant be provided “written notice to cease” before an eviction. Such notice would allow the tenant an opportunity to remedy the problem before being evicted.
- Establish specific criteria as to the timeframe and location of the criminal activity, to ensure that tenants are not evicted for crimes committed in the past or which are not related to their tenancy.

This memorandum addresses the direction from the City Council regarding criminal activity in the TPO. Related issues and concerns regarding the TPO are not included in this report.

ANALYSIS

The TPO regulates landlord and tenant relations by promoting fair dealings between landlords and tenants in recognition of the importance of residential housing and the landlord-tenant relationship as components of a healthy, safe, and vibrant city. The TPO protects tenants from unwarranted evictions by requiring just cause reasons for termination of tenancy, while providing landlords a means to remove tenants for the 12 just causes established.

Addressing Criminal Activity Through the Adopted TPO

As currently adopted, Material or Habitual Violation of the Lease and Nuisance Behavior are the two primary just cause terminations in the TPO that are available to landlords to address criminal activity. The TPO defines these two causes as stated below.

- a. **Material or Habitual Violation of the Lease:**
After a written notice, tenant continues to commit material or habitual violation of the rental agreement. After receiving a written notice to cease violating a material term(s) of the rental agreement and being given a reasonable time to fix the issue identified in the notice to cease, tenant continues to engage in conduct identified in the notice to cease or has engaged in a habitual or material violation of the rental agreement.
- b. **Nuisance Behavior:** After receiving a written notice to cease, the tenant continues to cause nuisance which includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the landlord or other tenants living within the apartment complex.

Owners can utilize these causes by serving a notice to cease the behavior, followed by a notice of termination of tenancy. For example, a tenant was served with a notice of termination of tenancy by the landlord who documented a violation of a lease term in the rental agreement which stated “Residents and covered Persons may not create or permit any condition that results in a risk to the health, safety, property, or quiet enjoyment of other residents, or the community as a whole.” This tenant received both written and verbal warnings to discontinue smoking in their unit and to stop yelling at the property manager. Subsequently, the tenant assaulted another tenant on the property and the landlord ultimately served the tenant with a notice of termination of tenancy based on a Material or Habitual Violation of the Lease.

Similarly, the Nuisance Cause was used to serve a notice of termination of tenancy to a tenant who had been warned multiple times for yelling at other tenants and ultimately for threatening a tow truck driver in the parking lot.

Since the TPO went into effect on June 16, 2017, through February 28, 2018, the Rent Stabilization Program received 31 notices of termination filed under the Nuisance Behavior just cause. In reviewing these notices, staff found approximately 40% of the notices of termination cited a criminal activity as the reason for the termination of tenancy. Although the data set is limited, it suggests landlords are able to use the Nuisance Behavior just cause to address criminal activity.

The Housing Department completed the following tasks to inform the policy recommendations directed by the City Council:

- Evaluated the criminal activity provisions of other cities with just cause protection ordinances;
- Convened a working group created to discuss criminal activity with the San José Police Department and Mayor’s Gang Prevention Task Force; and

- Reviewed input received from landlords and tenants through the public outreach process.
- Reviewed the results of the City's previous work on the Crime-Free Concept

The following sections summarize the research and analysis conducted by the Housing Department regarding establishing a separate Just cause basis for eviction based on criminal activity.

Research on Agencies Using Criminal Activity as a Just cause for Eviction

In order to inform its recommendation to City Council, staff completed an analysis of other California cities with Just cause eviction ordinances to determine how they address criminal activity. This analysis included:

- How the different cities address criminal activity;
- How the cities define the type crime that can be used as a Just cause basis for eviction;
- The notification required for evicting tenants engaged in criminal activity; and
- The location of the criminal activity as it pertains to evictions.

The Housing Department focused its research on Los Angeles, Santa Monica, Berkeley, San Francisco, and Oakland. **Attachment A** summarizes the provisions related to Just cause for these jurisdictions. The provisions of each City have distinguishing characteristics. Some key aspects are highlighted below.

- **Los Angeles** does not have a separate criminal conviction or illegal use cause of action. Its nuisance cause of action is descriptive in defining the list of crime included in the nuisance reason, and provides for a 1,000-foot boundary for nuisances committed outside the premises.
- **Santa Monica** has a criminal conviction provision which requires a conviction of the crime committed in the rental unit.
- **Berkeley** relies on the nuisance Just cause reason to address unwanted behavior. The Berkeley ordinance does not have a criminal conviction cause of action. Nor does it have specific crimes described in its nuisance cause of action.
- **San Francisco** has a cause of action for use of the apartment for an illegal purpose and requires a warning.
- **Oakland** has a cause of action for use of the apartment or on the premises for an illegal purpose which does not require a warning and includes provisions to address drug-related crimes.

The information gathered from other cities shows that some cities utilize the nuisance cause and others established a separate reason for criminal activity. In discussions with cities that have a separate criminal activity cause, staff have stated that the criminal activity reasons are not used frequently by landlords. Instead, landlords typically utilize the nuisance reason to address unwanted behaviors. Cities that use the nuisance cause have been able to use it effectively to evict tenants for criminal activity. Additionally, the information gathered from other cities

demonstrates a range of basis for eviction including a police report and conviction for the crime committed.

City Working Group Input

In addition to conducting research on other cities, the Housing Department convened a working group with the San José Police Department and Mayor's Gang Prevention Task Force. The working group reviewed the criminal activity provisions in jurisdictions with Just cause protections. This included: the definition of crime; the notification required; evidence required for eviction; and the location of criminal activity. As part of the discussion, the working group considered the work that the City previously did in evaluating the Crime Free Concept.

Crime Free Multiple-Housing Concept

In March and June of 2016, staff provided information to the Rules and Open Government Committee regarding the Crime Free Multiple-Housing Concept. At its core, the concept would have created a lease agreement between tenants and landlords that would authorize eviction based on the suspicion of criminal activity. This concept was not supported by the City Council Committee for the following reasons:

- Household Impacts – Many households in San José contain large families. Because evictions are often based on a single household member's actions and result in the removal of the entire household, all family members could be at risk of losing their housing if one individual committed a crime.
- Due Process – The concept allowed an eviction for an arrest related to a misdemeanor or felony crime. This would not allow a tenant the due process necessary to determine if they were guilty of a crime.
- Fair Housing Concerns – The proposal could have a disproportionate impact on tenants with disabilities (including mental health disabilities) who may be arrested more frequently than other groups.

Instead, the City Council Committee determined that a more effective approach to addressing crime is to engage community members to identify and address criminal activity. One example of this method is the Responsible Landlord Engagement Initiative (RLEI) program which engages community members and data from the police department to identify problem apartment complexes, then engages property owners to take actions to address the crime. When considering these issues, the City Council Committee directed staff to develop and implement the *Safe Communities Multi-Housing Pilot Program* as an alternative to the Crime Free Program.

Based on review of the research from other cities and discussion regarding the challenges faced by families living in our community, the working group recommended moving forward with a just cause for a conviction of a violent crime committed on the premises. The group determined violent crimes should not require a warning, while non-violent crimes should be given a warning (if included in the cause.)

Summary of Public Input Received through the Public Outreach Process

The Department completed an extensive public outreach process to help inform its recommendations. The meetings held are listed in the Public Outreach Section of this Memorandum. The input of the public meetings is included in **Attachment B**. Participants in the public meetings raised concerns regarding crime in our neighborhoods. Generally, both tenants and landlords were interested in more support from the City in programs designed to address crime in ARO neighborhoods such as the RLEI and the *Safe Communities Multi-Housing Pilot Program*. There was also a general concern for victims of domestic violence when addressing criminal activity in apartments. Consistent with state and federal law, eviction protections should exist for victims of domestic violence. When tenants and landlords were asked if a criminal activity just cause should be added to the TPO, the majority of landlords supported the action, while tenants did not think the change was necessary.

Owner Input

Landlords were presented with the proposal from the working group to develop a new Just cause based on a conviction for a violent crime committed on the premises. Landlords expressed concern with the requirement for a conviction. Landlords stated convictions may take several months and the tenant may return to the apartment during this period of time, increasing fear and potential for additional crimes to take place at the apartment complex. In consideration of the proposal, landlords stated the new cause for termination based on conviction would not be effective in providing a tool for landlords to address crime at their properties. Instead, landlords would be resigned to continue using the nuisance cause to address unwanted behavior.

Tenant Input

During the public outreach process, tenants were specifically concerned about creating another version of the “Crime Free Multiple-Housing Program” that may result in evictions of vulnerable populations. As mentioned, the City Council previously took action not to pursue this concept. Tenants were not interested in allowing a version of Crime Free Multiple-Housing to be incorporated into the TPO.

Additionally, tenant advocates submitted a letter stating their position on whether to include a criminal activity just cause basis for eviction. The tenant advocates stated there was no need to add a separate just cause basis for eviction based on criminal activity, as the TPO’s nuisance just cause basis sufficiently addresses criminal behavior. They continued to explain that if the City were to move forward with a just cause for criminal activity, the landlord should be required to provide an opportunity to cure the situation by either removing the offending household member or by filing a restraining order against the individual who has been convicted of committing the crime.

Staff Conclusions

Staff considered the pros and cons of the alternatives for each aspect of criminal activity. Careful consideration was made regarding research from other cities, input from the working group and input from landlords and tenants. The following section summarizes staff's conclusion regarding the type of crime, notification, basis for eviction and location of crimes that build the proposed criminal activity Just cause for the TPO.

The Type of Crime

The first element of criminal activity that must be considered is the type of crime committed. In the context of the TPO, the penalty for committing a crime is displacement from someone's home. Staff was mindful of connecting the severity of the crime with the severity of the loss of housing in our community.

Staff analyzed the State's definition of crime and found that the California State Penal Code defines hundreds of crimes. Some of these crimes have a greater impact to a community living in an apartment building. For example, if a tenant convicted of shoplifting, the activity may not impact the neighbors living around them. However, if a neighbor is threatened with a weapon by a tenant, there may be a greater impact on the apartment community. Taking these scenarios into consideration, staff concluded that the definition of crime for the purposes of the ordinance should be based on serious felony and violent felony as defined in state law including crimes such as murder, mayhem, lewd or lascivious acts, sexual assault, kidnapping, arson, and selling drugs (**Attachment C**). These crimes include severe behaviors that would impact the community.

The City Attorney has drafted specific language proposed for the Ordinance. This is provided in **Attachment D**.

Basis for Eviction

Staff analyzed the option for the basis of eviction. Examples of options for the basis for eviction include a police report (used by Los Angeles) or a conviction (used by Santa Monica). The working group recommended that a conviction should be required as the basis for the eviction. As discussed by the working group, a conviction is a formal declaration that someone is guilty of a criminal offense, made by the verdict of a jury or the decision of a judge in a court of law. Therefore, a landlord would need to demonstrate that a tenant was convicted of a crime to establish a basis for eviction.

However, when this proposal was discussed with landlord stakeholders, landlords indicated convictions take extended periods of time prior to an actual decision by the court. Due to this delay in timing, landlords expressed concern that the proposed just cause would be ineffective. These comments were taken into consideration and staff began reviewing additional alternatives to conviction of a crime. Staff reviewed the process for punishment of a felony as described on the Santa Clara County Court website (**Attachment E**) and considered using the preliminary

hearing for an individual facing a felony charge as a more immediate step in the legal process. Generally, a preliminary hearing is held within 10 days from the day the defendant enters a not guilty plea. At the preliminary hearing, a judge will determine whether there is enough evidence that the defendant committed the crime to “hold the defendant to answer” for trial on the charges presented. The preliminary hearing is a public hearing that a landlord could access if they wanted to pursue a notice of termination based on the outcome of the preliminary hearing.

Location of the Criminal Activity

Staff considered options for the location of crime committed. Options included crimes committed within a 1,000-foot radius (used by Los Angeles), on the premises (used by Berkeley and Oakland) or within the apartment (used by Santa Monica and San Francisco). Staff discussed the arbitrary nature of the proximity option and had concerns that the distance of a criminal act from the tenant’s apartment did not provide a clear nexus between the crime committed and the notice to terminate the tenant’s tenancy.

On the other hand, when considering the types of crimes that may take place in the common areas or on the premises of an apartment complex, staff determined that limiting the crime to inside of the unit may be too restrictive; because it would not allow the landlord to address criminal activity that occurs on the premises (outside of the apartment). For example, if a tenant is convicted of assaulting another tenant in the courtyard of their apartment complex, the landlord could serve a notice of termination in order to create a safe common area space for the tenants living in the apartment community.

Notification Required

Staff considered the type and level of notification that should be provided to a tenant. As discussed above, some cities utilize the nuisance provision that requires a notice to cease be served prior to a notice of vacate. The issue of notification is sensitive to our community because the impact of displacement on families is significant. When a notice of termination of tenancy is served to a tenant followed by an unlawful detainer, all tenants in the apartment are displaced. Finding alternative housing following a notice to terminate may result in moving into a less desirable neighborhood or paying higher rent. For example, if a grandmother is living in an apartment with her granddaughter and grandson and the grandson is convicted of a crime. The community has expressed a concern that other members of the household should not lose their housing due to actions of an individual. If a warning is given, the grandson could move out of the apartment allowing the grandmother and granddaughter to retain their apartment. However, the landlord and surrounding community may want to ensure the grandson does not return to his former home, in which case a notice to vacate without a warning would be the desired tool for this situation.

Additionally, a proposal was made by tenant advocates to require landlords to serve a notice to quit asking the family to remove the individual from the household or issuing a restraining order to remove the individual from the apartment. This would provide additional protections to family members from displacement. Staff is recommending that this practice be included in the TPO.

Summary of Staff Conclusions

After analysis of other cities Just cause language, convening the working group, meeting with various stakeholders, and holding public meetings, staff is recommending an amendment to the Tenant Protection Ordinance to include a criminal activity just cause for a tenant who is held to answer for a serious or violent felony committed on the premises. In order to alleviate the possibility of an innocent household member from being displaced, tenants will be provided with the “opportunity to cure” if a tenant household does the following:

- 1) Removes the member of the household charged of criminal activity and provide written notice to the landlord within 10 days of receiving a just cause termination notice, that the household member has been removed: OR
- 2) Files a restraining order or provides evidence of similar steps being taken to remove them from the household.

POLICY ALTERNATIVES

Alternative #1: *Do not establish a separate Just cause category for criminal activity. Landlords would continue to use a nuisance cause to evict for criminal activity.*

Pros: Research demonstrates that the nuisance and material or habitual lease violations are effective in removing tenants that have engaged in criminal activity. Using existing language would not require an amendment to the TPO.

Cons: Landlords have expressed concerns that the TPO does not allow them to take immediate action to address criminal activity.

Reason for not recommending: The proposed modification provides an additional tool for owner and clarifies noticing requirements.

Alternative #2: *Use “Conviction” of a violent felony as the basis for eviction.*

Pros: Provides greater protection to tenants. Ensures that a person has complete due process before they are evicted.

Cons: Using this standard could lengthen the amount of time it would take to evict a violent tenant.

Reason for not recommending: Potentially creates situation for owners and other tenants in which a dangerous person remains in the apartment for an extended period of time.

EVALUATION AND FOLLOW-UP

Staff intends to bring the amendments to the TPO to the City Council for consideration in Spring, 2018. If the amendment is approved, a second reading will be held by the City Council two weeks later. The amendments to the Ordinance then would be effective 30 days following the City Council’s second reading.

March 15, 2018

Subject: Potential Amendment to the Tenant Protection Ordinance Regarding Criminal Activity

Page 10

PUBLIC OUTREACH

The Housing Department met with a wide range of stakeholders while developing amendments to the Tenant Protection Ordinance. With the assistance of the California Apartment Association, Bay Area Homeowners Network, and the Renters' Coalition, and the working group, the Housing Department met with property landlords and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. Staff met with any individual or group that requested a meeting during the public comment period.

The Department hosted public meetings on the amendments to the Ordinance listed in **Attachment F**.

/s/

Jacky Morales-Ferrand
Director of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8231.

ATTACHMENTS:

Attachment A – Summary of Jurisdictions with Provisions Related to Criminal Activity

Attachment B – Tenant Protection Ordinance Public Comments

Attachment C – California State Law and Definition of Serious Felony and Violent Felony

Attachment D – Proposed Amendments to the Tenant Protection Ordinance

Attachment E – Santa Clara County Court Process for Punishment of a felony

Attachment F – Tenant Protection Ordinance Public and Stakeholder Meetings

Summary of Jurisdictions with Provisions Related to Criminal Activity

| Jurisdiction | Provision Related to Criminal Activity |
|---------------|--|
| Los Angeles | <p data-bbox="337 296 971 331"><i>Ordinance No. 180449 [Nuisance cause of action]</i></p> <ul data-bbox="358 331 1498 926" style="list-style-type: none"> <li data-bbox="358 331 1498 506">• The tenant is committing or permitting to exist a nuisance in or is causing damage to, the rental unit or to the unit’s appurtenances, or to the common areas of the complex containing the rental unit, or is creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other residents of the rental complex or within a 1,000-foot radius extending from the boundary line of the rental complex. <li data-bbox="358 506 1498 779">• The term “nuisance” as used in this subdivision includes, but is not limited to, any gang-related crime, violent crime, unlawful weapon or ammunition crime or threat of violent crime, illegal drug activity, any documented activity commonly associated with illegal drug dealing, such as complaints of noise, steady traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in Health and Safety Code Section 11532, or other drug related circumstances brought to the attention of the landlord by other tenants, persons within the community, law enforcement agencies or prosecution agencies. <li data-bbox="358 779 1498 926">• Violent crime is any crime which involves use of a gun, a deadly weapon or serious bodily injury and for which a police report has been completed. A violent crime under this subdivision shall not include a crime that is committed against a person residing in the same rental unit as the person committing the crime. |
| Santa Monica | <p data-bbox="337 961 1409 1024"><i>Article XVIII. Rent Control Section 1806 (A)(4) [Separate criminal conviction cause of action]</i></p> <p data-bbox="337 1024 1425 1094">Section 1806 (a)(4) The tenant is convicted of using or expressly permitting a controlled rental unit to be used for any illegal purpose</p> |
| Berkeley | <p data-bbox="337 1129 1417 1192"><i>Rent Stabilization and Eviction for Good Cause Ordinance Berkeley Municipal Code (B.M.C.) Ix. Rent Stabilization Chapter 13.76 [Nuisance cause of action]</i></p> <p data-bbox="337 1192 1458 1339">The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161</p> |
| San Francisco | <p data-bbox="337 1375 1336 1438"><i>Chapter 37 of the San Francisco Administrative Code the Residential Rent Stabilization and Arbitration Ordinance [Separate illegal use cause of action]</i></p> <p data-bbox="337 1438 1458 1501">The tenant is using or permitting a rental unit to be used for any illegal purpose, provided however that a landlord shall not endeavor to recover possession of a rental unit solely:</p> <ul data-bbox="418 1501 1458 1717" style="list-style-type: none"> <li data-bbox="418 1501 1458 1564">(A) as a result of a first violation of Chapter 41A that has been cured within 30 days written notice to the tenant; or, <li data-bbox="418 1564 1458 1717">(B) because the illegal use is the residential occupancy of a unit not authorized for residential occupancy by the City. Nothing in this Section 37.9(a)(4)(B) prohibits a landlord from endeavoring to recover possession of the unit under Section 37.9(a)(8) or (10) of this Chapter. |
| Oakland | <p data-bbox="337 1753 987 1789"><i>Just Cause for Eviction Ordinance (Measure EE)</i></p> <p data-bbox="337 1789 1401 1841">The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs.</p> |

Tenant Protection Ordinance

City of San José – Department of Housing

Public Comments Received as of February 2, 2018

Policy Development Meeting Series

February 7, 2018 to February 22, 2018

Dot Activity for Public Comments

ARO #1: If Ratio Utility Billing is not allowed under the updated Apartment Rent Ordinance: How should ratio utility billing be phased out? Select one.

| | Tenant | Landlord |
|---|--------|--|
| Effective immediately | 29 | |
| All RUBS contracts sunset after one year | | |
| All RUBS contracts sunset after two years | | 3 |
| No new RUBS contracts; existing contracts remain in place | | 1 |
| Provide a one-time rent increase to combine rent with utility costs | | 4 |
| Other ideas? Post it! | | Have City provide interest-free or grant financing for landlords to meter individually |

ARO #2: If ratio utility billing is allowed and parameters are developed, which items should be included? Select all that apply.

| | Tenant | Landlord |
|---|--------|----------|
| Cap for the maximum charged per month | | |
| Utility costs included are all unmetered utilities including water, garbage and sewer | 1 | 7 |
| Common area costs are not charged to tenants | | 4 |
| All utility bills are available for review by tenants | 1 | 4 |
| No RUBS allowed | 34 | |
| Other ideas? Post it! | | |

TPO #1: Should a new just cause reason be added to the Tenant Protection Ordinance for criminal activity?

| | Tenant | Landlord |
|-----|--------|----------|
| Yes | | 6 |
| No | 22 | |

TPO #2: Do you think a criminal conviction would be necessary as a basis for an eviction?

| | Tenant | Landlord |
|-----|--------|----------|
| Yes | 3 | |
| No | 9 | |

| | | |
|-------|--|--|
| Other | It has nothing to do with housing. The judicial system can take care of itself. Don't need vigilantes. | |
|-------|--|--|

TPO #3: If yes, what documentation should be necessary for criminal activity? Please select all that apply.

| | Tenant | Landlord |
|----------------------------|--------|----------|
| Property manager testimony | | 4 |
| Police report | | |
| Conviction of a crime | | 5 |
| Photo or video evidence | | 7 |
| Other | | |

TPO #4: If yes, what types of crime could result in an eviction? Please select all that apply.

| | Tenant | Landlord |
|---------------|---|----------|
| Embezzlement | | |
| Shoplifting | | 1 |
| Drug crime | 3 | 5 |
| Violent crime | 2 | 6 |
| Traffic Crime | 1 | |
| Other | 14: This should not be added to ordinance | Any 1 |

TPO #5: If yes, a crime committed in which of the following areas could result in an eviction? Please select all that apply.

| | Tenant | Landlord |
|--|-----------------------|----------|
| In the apartment | 3 | |
| On the rental property | | 5 |
| 1,000-foot radius around the rental property | | |
| Anywhere | 1 | 5 |
| Other | 11: None of the above | |

Ellis #1: How many of the new apartments should be covered by the Apartment Rent Ordinance? Select one.

| | Tenant | Landlord |
|--|--------|----------|
| All new apartments | 16 | |
| All new apartments are re-controlled, with some apartments limited to 5% and the other apartments limited to 10% rent increase | | 1 |

| | | |
|--|--|------|
| Two times the number of apartments destroyed are covered | | 1 |
| The number of apartments destroyed are covered | | 4 |
| If the new building includes 20% affordable units, the entire building would be exempt from rent control | 9 | |
| Other | <ul style="list-style-type: none"> • Define what type of affordable • Why not more than 20% • Affordable should be for low income, very low income • At least 50% should be affordable | None |

Source of Income #1: Have you or someone you know had trouble finding a landlord who will accept housing vouchers or other forms of housing subsidies such as security deposit assistance?

| | Tenant | Landlord |
|-----|--------|----------|
| Yes | 23 | 5 |
| No | | |

Source of Income #2: If the City were to create a “source of income” ordinance, what housing units should it apply to? Select all that apply.

| | Tenant | Landlord |
|---|---|----------|
| Single-family homes | | |
| Duplexes | | |
| Secondary dwelling units | | |
| Bedrooms for rent | | |
| All rental housing | 22 | 3 |
| None – there should not be an SOI ordinance | | 6 |
| Other ideas? Post it! | All the city geniuses never ask how the unhoused people for any input over the ideas they always try to lend from their cities’ comfortable position. I’m so sick of working within this system and | |

switching back and forth on policies and being discriminated against. Let's build our own community.

2-7-18 Public Meeting Comments Summary

Criminal Activity

- The Housing Dept. should take more active of a role to regarding neighborhood issues. Recent shooting in the Cadillac neighborhood. How can Housing assist landlords in these type of situations? TPO makes addressing crime more challenging.
- “Responsible Landlord Engagement Initiative (RLEI)” available for landlords that are fearful of retaliation.
- “Crime Free” is an approach used by many other cities. Why not try crime free in San Jose?
- When did the City Council discuss crime free housing?
- What proof is required by landlord for the 12 Just Cause?

RUBs

- Master metered electricity and gas – all references to RUBs assume landlords are only using RUBs for water, sewer and garbage. Landlords of older buildings also allocate gas and electric.
- Idea: Certified RUBs provider.
- Idea: Create parameters for monthly fluctuations in RUBs charges.
- Cost of submetering for water is prohibitive. Landlords have called contractors and they are either not willing to bid because they often to not get the work because the cost is so high.
- A landlord stated when the tenants have to pay for the water bill, they are more likely to inform the landlord of a leak so they problem gets resolved much faster, he has had tenants use a vice-grip with a leaky faucet and paid additional water and repair costs from the neglect.

Ellis Act

- One for one seemed common practice – what do other cities do?

Source of Income

- A landlord mentioned that he is working with a Section 8 tenant and it has taken 2 to 3 weeks for a deposit and rent, if the program was faster with onboarding he would consider more often.
- Another landlord mentioned he does not have the time to accommodate the additional work required for Section 8 tenants and felt that the word “discriminating” should not be used regarding landlords screening process.
- Participant mentioned if more landlords knew that they could get closer to market rate for their ARO rental units, they might be more willing to take on the programs.

2-12-18 Public Comments Summary

Tenant Protection Ordinance

- If there is 1 issue, having a gun, would landlord and other tenant want that person with the conviction still living in the unit? Would this be a material lease violation?
- Material violation - what is an example or designate an issue that is material? Example, starting a fire in a backyard. Does lease must specify "criminal activity" or "fire" in the lease?
- If someone is arrested for domestic violence, can a landlord serve a notice?
- What is the City of San Jose's position on criminal activity? Tolerant or zero? 3 day notice? not required and go directly to evict?
- The warning is significant, should a 3 day notice still be allowed or evict right after the 1 instance?
- Someone (for example, son or daughter) can be evicted for a conviction and automatically move in with his mom without approval from the landlord, they/tenant are protected. The roommate clause allows for harboring of criminals.
- Landlord should be able to do a review to be aware of a conviction and maximum number of tenants move in? Landlords need some type of help with this issue/check.

Apartment Rent Ordinance

- Some landlord also do their own RUBs, not only just 3rd parties doing to calculations.
- There should be a RUBs allowed option for consideration by the City Council.
- Will electricity be considered a part of RUBS - all utilities should be considered?
- HUD utility rates, how do they factor or calculate? HUD rates should be removed because nobody can determine their factor.
- What about an alternative for a landlord to charge an additional 1% in rent if their building is master metered, similar to LA?
- Landlord feels is RUBS is not allowed, an angry tenant will leave the water running so landlord must pay bill and lose money, no conservation.
- If you remove storage and lose rent, will the rent ever be increased or will it be lost income going forward?

Ellis Act

- Will there be a separate outreach for Ellis Act with developers? This issue is less significant for ARO property owners.
- How is relocation defined or determined? Chart available for calculation per number of bedrooms, how was the cost determined?
- Regarding which units are covered by the Ellis Act, why 1979 when 1985 is when Ellis went into effect?

Source of Income

- What is the Housing Department's position on Source of Income, is it neutral or direction to create an Ordinance? Housing will be bringing a framework to Council and wait for direction.
- Given a mandate, the Housing Department's position does not appear neutral.
- What is the reason for the source of income policy issue? City Council asked Housing to explore.
- Source of Income issue is not Section 8 voucher holders, instead the deterrence for landlords is the logistics, time, and cost for using Section 8. Housing is painting the wrong picture about landlords.
- A landlord indicated never used Section 8 because the heard the program was a zoo and has created more problems, does not believe in program.

2-12-18 Public Comments Summary

- Had a Section 8 tenant, has lost thousands of dollars, many lawsuits, and they know how to gain the system.

General questions

- What is the definition of Affordable Housing? Is there special funding for developers if they build Affordable Housing?
- Is there a special property tax relief for Affordable Housing?
- Public Notice is done through ARO; would landlords be notified for specifically for Ellis Outreach?
- Participant feels their input falls on deaf ears, rules appear to be protecting tenants, not landlords.
- Landlords do not want to file a Capital Improvement petition, does not want to ask Housing an allowance to increase rents.

2-22-18 Tenant Input Public Comments Meeting

ARO - RUBS

- PG&E approx. \$28 per month
- PG&E \$70 per month, lights never turn off in common area
- PG&E approx. \$120 per month due to mold problem and leaving on fans
- PG&E approx. \$70 per month to \$150, summer to winter
- Pays water or garbage, other than electricity
- Pays water, sewer, and trash, rent, and split with all water, sewer, and trash and a service charge
- Rent and split with all water, sewer, and trash
- \$50 for water, \$40 PG&E
- Rent and water, sewer, and trash
- Has sat through several cases and RUBS is illegal and a violation of the ordinance, Council is considering it legal, should put in a complaint right now, will automatically get changed. Problem with RUBS, tenant pays more, landlord can make it more complicated and to track what is being paid for utilities. File a petition if paying RUBS.
- Prefer separate rent from utilities, due to utilities being varied
- Don't want to pay for others' utilities and know what utilities you are using, keep rent separate, landlords make it sound like they are getting a better deal having it combined rent/utilities and misleading.
- What happens when there are fines for excessive usage, landlords will be able to shift the costs to tenants? During last drought, scare notices were sent out for excessive usage, they did not bill.
- If there's broken pipes or irrigation and does not get fixed, they will pass that on to tenants.
- How does the RUBS get calculated with the 5% increase factor?
- Landlord/management prefer not to pay additionally on rent, has been told that they have attorneys and RUBS is legal. 3 day notice to pay rent or quit only includes rent, does not include utilities/RUBS.

TPO – Criminal Activity - Nuisance

- Neighbor that made noise and she got a lease violation for putting a note on the neighbor's door.
- HUD came out with a ruling in 2006 to circumvent the prior law. Why are they playing around with the wording now?
- Landlord has gardeners showing up at 7am making loud noises and that should be seen as a crime.
- Actual conviction or proof of the crime, otherwise should be considered discrimination.
- How would a landlord or tenant even know if their neighbor committed a crime?
- Crime should not be allowed anywhere for eviction.
- Neighbor had an issue with wildlife and feared retaliation. Finally called the police and not escalating.
- Biggest issue, landlords not evicting tenants that disturb other tenants. City not holding landlord accountable for multiple issues.

2-22-18 Tenant Input Public Comments Meeting

Ellis Act

- Not enough resources available for a tenants to move or relocated while development of property.
- Better option is for lower rents for low income tenants.
- Tenant moved to affordable housing, not able to find affordable housing with good paying job.
- Tenant in affordable housing got an increase of \$250 this year, should not be considered affordable.
- It should be very expensive to evict tenants living in ARO units.

Source of Income

- Large percentage of attendees have seen ads posting that states no Section 8, had difficulty finding housing.
- Tenant's rent kept increasing until the amount was not covered under Section 8. Once tenant left, the rent had decreased for following tenant.
- Need an ordinance like this to assist and prevent homelessness.
- How long will it take for the Rent Registry to provide analysis for these types of issues?

Nguyen, Viviane

From: Nguyen, Viviane
Sent: Tuesday, February 20, 2018 11:08 AM
To: Nguyen, Viviane
Subject: RE: Comments on the mtg held 2/12/18

From: [REDACTED]
Sent: Friday, February 16, 2018 4:08:17 PM
To: RSP
Subject: Fwd: Comments on the mtg held 2/12/18

-----Original Message-----

From: seigitado <[REDACTED]>
To: rsp <rsp@sanjose.gov>
Cc: ireneken <[REDACTED]>; jeff <[REDACTED]>; yzhao1017 <[REDACTED]>; cherylxoo <[REDACTED]>
Sent: Wed, Feb 14, 2018 10:39 pm
Subject: Comments on the mtg held 2/12/18

Following are my comments on items discussed at the meeting held at the 7 trees community on 2.12.18 and a few more.

TPO:

1. Rachel said that "Material" violations are subject to termination based on 1 time occurrence. Definition of "Material" violation is not clear to me
2. Criminal activities should be a separately listed "cause" for eviction. One time occurrence should qualify for "cause" eviction. Consequence of criminal activities will deter thoughts of such activities from the tenants. Housing and the city should adopt a zero tolerance to any criminal activities, Is Housing interested in abating crime and slum conditions in San Jose rentals?
3. Only tenant who is guilty of criminal activity should be evicted; not the entire tenant(s) occupying the unit legally.
3. Tenants who are evicted due to criminal activities should not be automatically allowed to be an occupant to a related tenant renting another unit or apt.

RUBS:

1. All utilities should be included which are water, gas, electricity, and sewer.
2. Tenants pay utilities if the units are metered for the utilities If not metered, it is unfair and discriminatory to impose financial burden solely on the provider for the tenants entire usage of the utilities. Just because master metered utilities may be more difficult to administer, RUBS should not be eliminated to dodge the problem.

SOURCE of INCOME;

1. Speaking for myself but I feel others share the same thought. Housing providers are not reluctant to accept section 8 applicants. The reluctance is from the onerous policies associated with renting to them. I would like to see a policy that states that if the Section 8 renters do not adhere to the rental agreement then they can be evicted and any damages caused by the tenants will be paid by the city and that the tenant loses all future vouchers for rental assistance. Housing annual inspection of the unit should not be necessary.

RENT REGISTRY(RR)

1. RR is an egregious invasion of privacy of a private business which is not receiving any assistance or benefits from the City. Why does Housing want the entire rental financial data of

- a Housing provider visible to everyone? To what end is such information necessary? Housing providers do not need City assistance to advertise vacancy.
2. Why should only the rent controlled housing providers be burdened with the cost associated with RR?

HOUSING SERVICES;

1. Additional services, like storage for example, are allowed one time charge of \$50.00. Yet when services are reduced the monthly rent is subject to reduction. So if the Housing providers gets a one time charge of \$50 for storage and then they remove the storage the MONTHLY rent is reduced by the removal of that storage. I fail to see the fairness and logic of this.

Let's all direct our resources and effort toward solving rental shortage for low income family: not to add more and more control on those Housing providers that already serve the lower tiered income families. More controls will not solve shortage!

Respectfully submitted for your consideration.

Seigi Tadokoro, San Jose Rent controlled Housing provider.

Nguyen, Viviane

From: VanderVeen, Rachel
Sent: Monday, March 5, 2018 12:14 PM
To: Nguyen, Viviane
Subject: FW: Meeting to talk about criminal reason to JCE
Attachments: criminal_LA_just_cause.docx

Tenant Protection Ordinance public comment

Rachel VanderVeen

Program Manager
408.535.8231

From: Cheryl [REDACTED]
Sent: Monday, March 5, 2018 11:39 AM
To: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Sean Rhinehart <[REDACTED]>
Subject: Re: Meeting to talk about criminal reason to JCE

Hi Rachel,

I liked what you've spelled out:

"Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct **includes violations of state and federal criminal law** that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager. "

But, our concern is that it does not specifically include the state law, CPP 1161(4).

We would like this added to your description. This would make it clear that City regulation is not preempted by State Law.

OR the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

For reference, Berkeley includes this in their Good Cause reason #5:

https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Ordinance_Rent_Stabilization_and_Eviction_for_Good_Cause.aspx

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises **OR** the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

Here is CCP 1161(4); it is specific to weapons, ammunitions, and controlled substances in Section 3485 subdivision(c) and Section 3486 subdivision(c).

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision (c) of Section 3486 of the Civil Code, or uses the premises to

As a side note:

I've attached the criminal reason from Los Angeles, which covers gang activity, drugs, and weapons.

I don't know the full scope of gang activity in San Jose, or if this would be helpful in keeping our tenants safe.

But, I do like that they have spelled out protections for victims of domestic abuse.

Thanks,
Cheryl

Los Angeles Ordinance:

[http://library.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode/chapterxvrentstabilizationordinance?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:lamc_ca\\$sanc=JD_151.09](http://library.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode/chapterxvrentstabilizationordinance?f=templates$fn=default.htm$3.0$vid=amlegal:lamc_ca$sanc=JD_151.09).

3. **(Amended by Ord. No. 180,449, Eff. 2/5/09.)** The tenant is committing or permitting to exist a nuisance in or is causing damage to, the rental unit or to the unit's appurtenances, or to the common areas of the complex containing the rental unit, or is creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other residents of the rental complex or within a 1,000 foot radius extending from the boundary line of the rental complex.

The term "nuisance" as used in this subdivision includes, but is not limited to, any gang-related crime, violent crime, unlawful weapon or ammunition crime or threat of violent crime, illegal drug activity, any documented activity commonly associated with illegal drug dealing, such as complaints of noise, steady traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in Health and Safety Code Section 11532, or other drug related circumstances brought to the attention of the landlord by other tenants, persons within the community, law enforcement agencies or prosecution agencies. For purposes of this subdivision, gang-related crime is any crime motivated by gang membership in which the perpetrator, victim or intended victim is a known member of a gang. Violent crime is any crime which involves use of a gun, a deadly weapon or serious bodily injury and for which a police report has been completed. A violent crime under this subdivision shall not include a crime that is committed against a person residing in the same rental unit as the person committing the crime. Unlawful weapon or ammunition crime is the illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or giving away of ammunition or any weapon listed in subdivision (c)(1)-(5) of Section 3485 of the Civil Code.

Threat of violent crime is any statement made by a tenant, or at his or her request, by his or her agent to any person who is on the premises or to the owner of the premises, or his or her agent, threatening the commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this section shall not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity of affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code, except that "electronic communication"

for purposes of this definition shall not be limited to electronic communication that affects interstate or foreign commerce.

Illegal drug activity is a violation of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400) of the Health and Safety Code.

4. The tenant is using, or permitting a rental unit, the common areas of the rental complex containing the rental unit, or an area within a 1,000 foot radius from the boundary line of the rental complex to be used for any illegal purpose. **(Amended by Ord. No. 171,442, Eff. 1/19/97.)**

The term "**illegal purpose**" as used in this subdivision includes, but is not limited to, violations of any of the provisions of Division 10, Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code, and does not include the use of housing accommodations lacking a legal approved use or which have been cited for occupancy or other housing code violations. **(Amended by Ord. No. 184,822, Eff. 4/30/17.)**

3-13-18 Guadalupe Washington Neighborhood Association Meeting Public Comments

TPO

- My neighbor had families living in his garage, seemed to be illegal, I called Code Enforcement and they removed the family. Now he does not say hi or speak to me
- Please explain how a commissioner is placed on the HCDC?
- What is the next processes after HCDC and Council meeting for TPO Criminal activity?
- We have homeless encampments near the river and there seems to be times where the City or Police can't assist
- Police has a "coffee with a cop" evening event where the Chief of Police and 2 or 3 other officers will attend
- The night walk helps because it lets neighbors no there is an effort that the association is trying and keeping an eye out
- When will the new Criminal Activity updates for TPO be finalized and effective?
- There was a car jacking in the neighborhood, would that constitute an eviction?

3-15-18 Madres y Madres Washington Elementary Tenant Input Public Comments Meeting

TPO

- Regarding to violation #2, Material and habitual violation of lease, there are neighbors that smoke tobacco and marijuana on the premises in the common area or near tenant's windows and/or doorway causing smoke to filter through the apartments. We have do not smoke and have small children
- Neighbor's friend is frequently visiting and parks car in front of her window and smokes marijuana while waiting for his friends. There are either no rules or the rules are ignored
- If the act is violent, that should be grounds to terminate tenancy
- If a grandma lives in an apartment and the adult grandson commits a violent crime, only the grandson should be evicted

Nguyen, Viviane

From: VanderVeen, Rachel
Sent: Thursday, March 15, 2018 4:22 PM
To: Nguyen, Viviane
Subject: FW: follow-up to discussion about TPO criminal activity

TPO Public Comment

Rachel VanderVeen

Program Manager
408.535.8231

Hi Rachel,

This is follow-up to our meeting last week on 3/9 about the TPO.

Our request is that you add this statement to the Nuisance Behavior reason:

OR the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

This is the same that Berkeley has done in their Good Cause Ordinance.

https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Ordinance_Rent_Stabilization_and_Eviction_for_Good_Cause.aspx

It would make it clear that City regulations are not pre-empted by State Law wrt written notice.

5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager **OR** the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

Here is CCP 1161(4); it is specific to weapons, ammunitions, and controlled substances in Section 3485 subdivision(c) and Section 3486 subdivision(c).

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision

(c) of Section 3486 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

If you don't agree that this is a feasible for your recommendation, will you please include it as an option for Council?

Thanks,
Cheryl & Sean

??wu???



BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

March 12, 2018

SENT VIA EMAIL

Rachel Vanderveen
City of San Jose Housing Department
200 E. Santa Clara St.
San José, CA 95113

RE: TENANT PROTECTION ORDINANCE – Criminal Activity Provision

Dear Ms. Vanderveen,

The Law Foundation of Silicon Valley and Bay Area Legal Aid write to express concern about the potential harmful consequences of adding a specific “criminal activity” cause to the Tenant Protection Ordinance (TPO), specifically to those who are survivors of domestic violence, communities of color, and individuals with disabilities. We also write to caution that any “criminal activity” provision adopted as an amendment to the TPO must be limited to convictions for crimes on the property that affect the health and safety of residents, and must allow families to remain in place if the “bad actor” is removed from the property.

I. The Current TPO Sufficiently Addresses Concerns about Evicting Tenants who Engage in Criminal Activity.

As currently drafted, the TPO allows landlords to evict tenants for criminal activity. The nuisance provision of the TPO specifically permits eviction for “violations of state and federal law that destroy the peace, quiet, comfort or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit.” Tenant Protection Ordinance, section 17.23.150. Additionally, the TPO allows for eviction based on material lease violations and many leases bar criminal activity. In our experience, we have seen both bases used to evict tenants when there are allegations that a tenant has engaged in criminal activity.

Any additional basis that would allow landlords to evict tenants for criminal activity must be considered with caution. On a daily basis, we see the struggles families in eviction proceedings face, and specifically impacts that evictions have on families with children. It is extremely difficult for tenants to find housing in this tight rental market, and the number of affordable units is dwindling. While the TPO limits evictions for good cause, we have seen tenants evicted for seemingly pretextual reasons. We have witnessed tenants evicted for minor lease violations, including for storing a toolshed outside. Despite zealously representing tenants in such cases, the reality is, oftentimes tenants lose.

From our experience, concerns raised by landlords about the difficulty that landlords would have proving underlying criminal activity is a nuisance is misplaced within the reality of Santa Clara County's eviction Court. For example, if a landlord could show that a tenant was selling drugs on the property, a Court would not also require the landlord to prove that such drug activity was also affecting the health and safety of other residents – it is assumed that drug activity is nuisance. Moreover, Courts routinely allow landlords to evict for criminal activity with little evidence aside from the landlord's testimony.

II. A Criminal Activity Provision Will Have Negative Effects on Protected Groups.

A criminal activity provision as an independent just cause in San José's Tenant Protection Ordinance may cause real harm to survivors of domestic violence, communities of color, and individuals with disabilities. It may also violate the First Amendment right to petition, the Fair Housing Act, and other anti-discrimination laws. As a result, such a provision has the potential to expose housing providers and the City to liability. If a criminal activity provision is enacted, it should be tailored to promote the health and safety of all individuals, families, and communities, and prevent discrimination and displacement.

A. *An Independent Criminal Activity Just Cause Will Produce a Chilling Effect on Domestic Violence Survivors Seeking Emergency Assistance.*

A criminal activity provision is likely to undercut the health and safety of domestic violence survivors by deterring survivors from contacting police and seeking emergency assistance. This chilling effect exposes localities and landlords to liability for violating a tenant's First Amendment right to petition their government, which includes the right to contact law enforcement, and undermines both the safety and housing stability of victims of domestic violence.¹ For example, in *Briggs v. Borough of Norristown et al.*, a tenant faced eviction from her home after requesting police protection from an abusive ex-boyfriend.² Ms. Brigg's fear of seeking police assistance prevented her from calling the police even as her ex-boyfriend was stabbing her.³ After a lawsuit was filed on the basis that the ordinance violated the tenant's First Amendment right to petition the government for assistance and her rights under the Violence Against Women Act, the ordinance was rescinded and the case was settled for half a million dollars in damages and fees. Implementing additional barriers by penalizing those who seek assistance is detrimental to the health and safety of domestic violence survivors. Although there are domestic violence protections in place pursuant to State and federal laws, we are concerned about the unnecessary chilling effect a criminal activity provision may cause.

¹ ACLU, *Briggs v. Borough of Norristown et al.*, (Sep. 18, 2014), <https://www.aclu.org/cases/briggs-v-borough-norristown-et-al>

² Complaint at 9–17, *Briggs v. Borough of Norristown et al.*, No. 2013 C 2191 (E.D. Pa. Apr. 24, 2013), http://www.aclu.org/files/assets/norristown_complaint.pdf; Lakisha Briggs, *I Was a Domestic Violence Victim. My Town Wanted Me Evicted for Calling 911*, GUARDIAN, (Sep. 11, 2015), <https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911>

³ *Id.*

B. A Criminal Activity Provision Will Have a Disparate Impact on Communities of Color and Individuals with Disabilities.

An independent criminal activity just cause provision may violate the Fair Housing Act if it has an unjustified discriminatory effect, and thus must be limited to convictions.⁴ Communities of color and individuals with disabilities are likely to be disparately impacted by a criminal activity provision due to law enforcement's interaction with these protected groups. Accordingly, a criminal activity provision should require more than an arrest, and be limited to crimes that affect the health and safety of others.

For instance, individuals of color are arrested at disproportionate rates relative to their share of the population and their actual level of participation in criminal conduct.⁵ Additionally, individuals of color are more likely to be detained pre-trial due to income inequality and as a result more likely to be convicted.⁶ Studies have also shown that individuals with mental illness are more likely to be seen by police as suspected offenders, although for relatively minor offenses.⁷ And individuals with mental illness are re-arrested more frequently.⁸ Yet, an arrest does not prove criminal activity.⁹ Therefore, any criminal activity provision should substantiate criminal activity with more than a mere arrest. It should also limit the criminal activity provision to crimes that endanger the safety and health of others.

III. A Criminal Activity Provision Will Have Disproportionately Harsh Penalties.

We caution the City of San José to not include a criminal activity provision in the TPO because of the disproportionately harsh penalties such a provision will likely have. Such a provision can add the penalty of homelessness to the penalties imposed by the criminal justice system. San José's TPO should not impose additional penalties, especially in instances where crimes do not affect the health and safety of other residents or family members, and where those crimes are committed off the premises. Moreover, given the tight rental market and the dearth of affordable housing in San Jose, evictions oftentimes lead to homelessness.

Additionally, forcing homelessness upon a household as a punishment to innocent family members is too drastic. Causing innocent family members to be homeless and displacing entire families due to any criminal activity will likely lead to further instability.¹⁰ A criminal activity

⁴ 24 C.F.R. § 100.500

⁵ Emily Werth, Sergeant Shriver National Center on Poverty Law, *The Cost of Being "Crime Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinance* 13 (2013), <http://povertylaw.org/files/docs/cost-of-being-crime-free.pdf>.

⁶ Ashley Nellis, Ph.D., The Sentencing Project Research and Advocacy Reform, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* 10 (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

⁷ See, e.g., INT'L ASSOC. OF CHIEFS OF POLICE, BUILDING SAFER COMMUNITIES:IMPROVING POLICE RESPONSE TO PERSONS WITH MENTAL ILLNESS 6 (2010), available at <http://www.theiacp.org/portals/0/pdfs/ImprovingPoliceResponsetoPersonsWithMentalIllnessSummit.pdf>

⁸ *Id.*

⁹ *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006) (“[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.”).

¹⁰ Werth, *supra*, note 7, at 12.

provision should not threaten a family's housing stability, or be a basis for an entire family to lose their home. Providing an opportunity to cure by removing the criminally charged household member will allow a household the ability to retain their housing. Therefore, "criminal activity" should be limited to crimes that affect the health and safety of others and crimes that occur on the premises, and the provision should allow innocent household members the opportunity to cure.

A. If a Criminal Activity Provision is Enacted, a Criminal Activity Provision Should be Limited to Crimes Affecting the Health and Safety of Others on the Premises

It is important to distinguish a nexus between the crime and the punishment. A crime that does not affect the health and safety of others should not be punished by both the criminal justice system and the Tenant Protection Ordinance. For example, a tenant who knowingly writes a check with insufficient funds engages in criminal activity, however, this type of criminal activity likely does not result in threatening the health and safety of family members or neighboring residents. While such criminal activity is punishable by the criminal justice system, the Tenant Protection Ordinance should not further punish it with homelessness. Therefore, a criminal activity provision should be limited to crimes endangering the health and safety of others.

A criminal activity provision should be tailored to crimes committed on the premises because those are the crimes that affect the quiet enjoyment and safety of other residents. In tenancies with broad anti-crime provisions, we have seen actual scenarios where minor crimes committed off the premises were used as a basis for rendering a whole family homeless. For example, we represented a client who had lived in a subsidized unit for many years and was threatened with eviction because her grandson had shoplifted from a corner store down the street. Because the crime occurred within 500 feet of the property, the landlord was able to use it as a legal basis under the lease's "criminal activity" provision to evict the whole family. Not only was it clear that the grandson's alleged criminal activity did not threaten the health and safety of other residents, but it was also a clear indication of the disproportionate penalty renting families (which are more likely to be low-income) pay under such policies. If a 14-year-old from a well-to-do family of homeowners is caught shoplifting, the bank does not cancel the family's mortgage. But, because of the policy, the entire family renting the subsidized apartment lost their housing. Therefore, a criminal activity provision should not only be limited to crimes affecting the health and safety of others, but also to crimes that occurred on the premises.

B. If Member of the Household Commits a Crime that Forms a Valid Basis for a Notice to Quit Pursuant to the Criminal Activity Provision, the Remaining Household Members Should Be Given an Opportunity to Cure.

A criminal activity provision should not seek to punish innocent household member for actions outside their control. If a member of the household commits a crime that forms a valid basis for notice under the criminal activity provision, innocent members of the household should be given an opportunity to cure by removing the family member with a criminal conviction. In San Jose, multiple generations live with one household. Allowing a family to remove a bad actor would prevent the remaining family members from being displaced. This prevents an entire household from losing their housing for actions outside their control. Possible ways to cure include the following language:

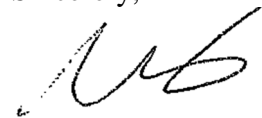
“A landlord may not proceed with an eviction on the basis of criminal activity if the tenant household does the following:

- a. Remove the Member of the household convicted of criminal activity and provide written notice to the landlord within the notice period (i.e. 10 days) that the household member has been removed; OR**
- b. Files a restraining order against the household member convicted of criminal activity or provides evidence of similar steps being taken to remove them from the household;”**

Allowing a household to voluntarily remove the bad actor gives the household the ability to help remove the person and aid the housing provider in ensuring the health and safety of others. Alternatively, if getting the offending household member to leave voluntarily is unsuccessful, a household is given an opportunity to cure through whatever legal recourse might be available to forcibly remove them. By allowing a household to initiate the process of involuntary removal, the family is given the ability to retain their housing and also ensure that the health and safety of others will be protected.

We welcome the opportunity to discuss these recommendations further with you. You can contact us by contacting Nadia Aziz at [REDACTED] or by phone at [REDACTED]

Sincerely,



Nadia Aziz
Supervising Attorney
Law Foundation of Silicon Valley

/s/
Lara Verwer
Staff Attorney
Bay Area Legal Aid

**State of California****PENAL CODE****Section 1192.7**

1192.7. (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, “serious felony” means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a

peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(Amended by Stats. 2010, Ch. 178, Sec. 73. (SB 1115) Effective January 1, 2011. Operative January 1, 2012, by Sec. 107 of Ch. 178. Note: This section was added on June 8, 1982, by initiative Prop. 8, and amended on March 7, 2000, by initiative Prop. 21.)

State of California

PENAL CODE

Section 1192.8

1192.8. (a) For purposes of subdivision (c) of Section 1192.7, “serious felony” also means any violation of Section 191.5, paragraph (1) of subdivision (c) of Section 192, subdivision (a), (b), or (c) of Section 192.5 of this code, or Section 2800.3, subdivision (b) of Section 23104, or Section 23153 of the Vehicle Code, when any of these offenses involve the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon, within the meaning of paragraph (8) or (23) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature, in enacting subdivision (a), to codify the court decisions of *People v. Gonzales*, 29 Cal. App. 4th 1684, and *People v. Bow*, 13 Cal. App. 4th 1551, and to clarify that the crimes specified in subdivision (a) have always been, and continue to be, serious felonies within the meaning of subdivision (c) of Section 1192.7.

(Amended by Stats. 2007, Ch. 747, Sec. 9. Effective January 1, 2008.)

State of California

PENAL CODE

Section 667.5

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended. A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow mandatory supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in

Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of Section 220.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.
 - (d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody, including any period of mandatory supervision, or until release on parole or postrelease community supervision, whichever first occurs, including any time during which the defendant remains subject to reimprisonment or custody in county jail for escape from custody or is reimprisoned on revocation of parole or postrelease community supervision. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.
 - (e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison or in county jail under subdivision (h) of Section 1170.
 - (f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under subdivision (h) of Section 1170 if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for

an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the Division of Juvenile Justice, that incarceration shall be deemed to be a term served in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

(Amended by Stats. 2014, Ch. 442, Sec. 10. (SB 1465) Effective September 18, 2014. Note: This section was amended on March 7, 2000, by initiative Prop. 21, and on Nov. 7, 2006, by initiative Prop. 83.)

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
PART 12 TO CHAPTER 17.23 OF TITLE 17 OF THE
SAN JOSE MUNICIPAL CODE TO**

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
SAN JOSE:

SECTION 1. Section 17.23.1250 of Chapter 17.23 of Title 17 of the San José Municipal
Code is hereby amended to read as follows:

“17.23.1250 Just Cause Termination

- A. Just Cause Terminations. If a Landlord can show any of the following
circumstances with respect to a termination of tenancy, the termination will
qualify as a "Just Cause Termination." Nothing in this subsection shall
abrogate the protections afforded to survivors of violence consistent with
California Code of Civil Procedure Section 1161.3, as amended, and the
Violence Against Women Act, Public Law 103–322, as amended.

ATTACHMENT D

1. Nonpayment of Rent. After being provided with written notice of the identity and mailing address of the Landlord, and the amount of rent due, the Tenant has failed to pay rent to which the Landlord is legally entitled pursuant to any written or oral rental agreement and under the provisions of state or local law, unless the Tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the Tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. Material or Habitual Violation of the Tenancy.
 - a. The Tenant has failed to cure a violation of any material term of the rental agreement within a reasonable time after receiving written notice from the Landlord of the alleged violation or has committed Habitual violations of the rental agreement, but only if either clause (i) or (ii) applies:
 - i. The demand to cure is based on terms that are legal and have been accepted in writing by the Tenant or made part of the rental agreement; or
 - ii. The demand to cure is based on terms that were accepted by the Tenant or made part of the rental agreement after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

 - b. The following potential violations of a tenancy can never be considered material or Habitual violations:

ATTACHMENT D

- i. An obligation to surrender possession on proper notice as required by law.
 - ii. An obligation to limit occupancy when the additional Tenant(s) who join the Tenant Household are any of the following: a dependent child or foster child, a minor in the Tenant's care, the spouse, domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom, or in the case of a studio unit, two adults. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, a minor in the Tenant's care, spouse, domestic partner, or parent of a Tenant, provided that the approval is not unreasonably withheld.
3. Substantial Damage to the Rental Unit. The Tenant, after written notice to cease and a reasonable time to cure, causes substantial damage to the Rental Unit, or common area of the structure or rental complex containing the Rental Unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such damage and to cease engaging in the conduct identified in the notice to cease.
4. Refusal to Agree to a Like or New Rental Agreement. Upon expiration of a prior rental agreement the Tenant has refused to agree to a new rental agreement that contains provisions that are substantially identical to the prior rental agreement as may be further described in the regulations

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adopted by the City Manager, and that complies with local, state and federal laws.

5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.
6. Refusing Access to the Unit. The Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code section 1954, as amended.
7. Unapproved Holdover Subtenant. The Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.
8. Substantial Rehabilitation of the Unit. The Landlord after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, provided that:
 - a. The repairs costs not less than the product of ten (10) times the amount of the monthly rent times the number of Rental Units upon which such work is performed. For purposes of this subsection, the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and

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- b. The repairs necessitate the relocation of the Tenant Household because the work will render the Rental Unit uninhabitable for a period of not less than thirty (30) calendar days; and
 - c. The Landlord gives advance notice to the Tenant of the ability to reoccupy the unit upon completion of the repairs at the same rent charged to the Tenant before the Tenant vacated the unit or, if requested by Tenant, the right of first refusal to any comparable vacant Rental Unit which has been offered at comparable rent owned by the Landlord; and
 - d. In the event the Landlord files a petition under the Apartment Rent Ordinance within six (6) months following the completion of the work, the Tenant shall be party to such proceeding as if he or she were still in possession, unless the Landlord shall submit with such application a written waiver by the Tenant of his or her right to reoccupy the premises pursuant to this subsection; and
 - e. The Landlord shall have provided relocation assistance as required by subsection B of Section 17.23.1250, below.
9. Ellis Act Removal. The Landlord seeks in good faith to recover possession of the Rental Unit to remove the building in which the Rental Unit is located permanently from the residential rental market under the Ellis Act and, having complied in full with the Ellis Act and Ellis Act Ordinance, including the provision of relocation assistance as required by subsection B of Section 17.23.1250, below.
10. Owner Move-In. The Owner seeks in good faith, honest intent, and without ulterior motive to recover possession for: (a) the Owner's own use

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and occupancy as the Owner's principal residence for a period of at least 36 consecutive months commencing within three months of vacancy; or (b) the principal residence of the Owner's spouse, domestic partner, parent(s), child or children, brother(s), or sister(s) (each an "authorized family member") for a period of at least 36 consecutive months and commencing within three months of vacancy, so long as the Rental Unit for the Owner's authorized family member is located in the same building as the Owner's principal residence and no other unit in the building is vacant. It shall be a rebuttable presumption that the Owner has acted in bad faith if the Owner or the Owner's qualified relative for whom the Tenant was evicted does not move into the Rental Unit within three months from the date of the Tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least thirty-six (36) consecutive months. The Owner shall have provided relocation assistance as required by subsection B of Section 17.23.1250, below.

11. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the San Jose Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as required by subsection B.3 of Section 17.23.1250, below.
12. Vacation of Unpermitted Unit. The Landlord seeks in good faith to recover possession of an Unpermitted Unit in order to end the unpermitted use. The Landlord shall have provided relocation assistance as required by subsection B.3 of Section 17.23.1250, below.

13. Criminal Activity and Removal of Violating Tenant(s): The Tenant Household, after receiving a written notice to remove the Violating Tenant from the household, fails to remove the Violating Tenant from the household or, where necessary, fails to amend the lease to remove the Violating Tenant's name within a reasonable time, by one of the following methods as further described in the regulations:

- a. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.
- b. Removing the Violating Tenant from the household and providing written notice to the landlord that the Violating Tenant has been removed.

For purposes of this subsection 13, a Violating Tenant shall mean a Tenant that is held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within the Rental Unit, the structure or rental complex containing the Rental Unit, or the property on which the Rental Unit is located. The term "property" shall mean "Lot", as defined in Section 20.200.660 of the San Jose Municipal Code.

B. Relocation Assistance.

- 1. Tenants who receive a Notice of Termination that relies on subsections A.8 or A.10 of Section 17.23.1250 as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide the following relocation assistance to the Tenant Household. The relocation assistance must be provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.

ATTACHMENT D

- a. Relocation Assistance. An amount equal to the Base Assistance provided for in the Ellis Act Ordinance, as set by resolution of the City Council.
 - b. Refund of Security Deposit. Owner must refund to the Tenant Household any security deposit paid by the Tenant Household, provided, however, that the Owner may withhold any properly itemized deductions from the security deposit pursuant to California Civil Code section 1950.5, as amended.
2. Tenants who receive a Notice of Termination that relies on subsection A.9 of Section 17.23.140 as the just cause rationale to terminate the tenancy must have received, and the Landlord must have provided, all applicable Relocation Assistance provided for in the Ellis Act Ordinance.
3. Tenants who receive a Notice of Termination that relies on subsection A.11 or A.12 of Section 17.23.1250 as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide, Relocation Assistance as defined in Part 11 of Chapter 17.20, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance.”

ATTACHMENT D

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA



Select Language ▼

FELONIES

The punishment for a felony crime is usually:

a year or more in state prison, or
a death sentence

Examples of felony violations are:

murder
possession of dangerous drugs for sale
robbery
rape

Felony cases are usually processed like this:

1. [Arrest](#)
2. [Arraignment](#)
3. [Preliminary Hearing](#)
4. [Jury Trial or Court Trial](#)

1. **Arrest**

The police arrest the defendant and take him or her to jail.

Then, one of 3 things happens:

The jail lets the defendant out without filing charges, or

The defendant posts bail/bond or is released on his/her own recognizance ("OR").
If this happens, the authorities tell the defendant when to go to court for arraignment, or

The defendant stays in jail. Law enforcement officers transport the defendant to the court for arraignment.

2. **Arraignment**

The arraignment is the first time the defendant appears in court.

A judge (or judicial officer) tells the defendant:

what the charges are,
about his/her constitutional rights, and
that if s/he doesn't have enough money to hire a lawyer, the court will appoint one.

The defendant enters a plea of guilty, not guilty or no contest (also known as "Nolo Contendere").

Here's what the pleas mean:

Not Guilty means the defendant says s/he did not commit the crime.

Guilty means the defendant admits s/he committed the crime. The judge finds the defendant guilty and enters a conviction in the court record.

No Contest means the defendant does not contest (disagree with) the

charge. This plea is the same as a guilty plea, except the conviction cannot be used against the defendant in a civil lawsuit.

In some cases, the judge will let the defendant out of jail on his/her "Own Recognizance".

Or, the judge can set bail and send the defendant back to the jail.

3. Preliminary Hearing

At the preliminary hearing, the judge will decide if there is enough evidence that the defendant committed the crime to "hold the defendant over" for trial.

If the judge holds the defendant "to answer," the prosecutor will file a document called the Information. Then, the defendant will be arraigned on the Information. At that time, the defendant will enter a plea and proceed to trial.

4. Jury Trial or Court Trial

Jury Trial

The law says how soon a defendant charged with a felony must be brought to trial. (See [Section 1382 of the Penal Code](#) .)

The prosecutor must file the Information within 15 days of the date the defendant was "held to answer" at the preliminary hearing.

The trial must start within 60 days of the arraignment on the Information.

The defendant can "waive" the right to a speedy trial (called a waiver or "waives time"). This means s/he agrees to have the trial after the 60-day period.

Before the trial starts, the lawyers choose a jury. During the trial, witnesses may testify and the lawyers present evidence. After all the evidence is presented and the lawyers give their arguments, the jury decides if the defendant is guilty or not guilty.

If the jury finds the defendant not guilty, s/he will be released. The defendant can never be tried again for the same crime.

If the defendant is found guilty, the case will be continued for sentencing, or the defendant may be sentenced right away.

If the defendant doesn't agree with the guilty verdict, s/he can appeal to the District Court of Appeals (or State Supreme Court if it is a death penalty case).

Court Trial

Sometimes, defendants agree to have a court trial instead of a jury trial. This means a judge, and not a jury, hears the evidence and arguments and decides if the defendant is guilty or not guilty.

**Tenant Protection Ordinance –
Community and Stakeholder Meetings for Immigration and Criminal Activity**

Policy Development Community Meetings

| Meeting | Date & Time | Location |
|---|-------------------------------------|---------------------------------|
| Policy Development Community Meeting | February 12, 2018 6:30 – 8:30 pm | Seven Trees Community Center |
| Housing & Community Development Commission | February 8, 2018 5:45 pm | San José City Hall - Wing Rooms |
| Policy Development Community Meeting | February 7, 2018 9:00 – 11:00 am | San José City Hall - Wing Rooms |
| Community Meeting | July 18, 2017 6:30 – 8:30 pm | Seven Trees Community Center |
| Community Meeting | July 12, 2017 9:00 – 11:00 am | San José City Hall - Wing Rooms |
| Community Meeting | July 11, 2017 6:30 – 8:30 pm | Cypress Community Center |
| Community Meeting | June 26, 2017 6:30 – 8:30 pm | San José City Hall - Wing Rooms |

Stakeholder Meetings

| Stakeholder Meeting | Date & Time | Location |
|----------------------------|------------------------|---|
| Stakeholder – Community | March 15, 2018 | Los Madres (Washington Elementary School) |
| Stakeholder – Community | March 13, 2018 | Guadalupe Washington Neighborhood Association Meeting |
| Stakeholder - Landlords | March 9, 2018 | Landlord |
| Stakeholder - Landlords | March 8, 2018 | Bay Area Homeowners Network (BAHN) |
| Stakeholder – Tenants | February 28, 2018 | Law Foundation & Bay Area Legal Aid |
| Stakeholder – Government | February 26, 2018 | Santa Clara County District Attorney’s Office |
| Stakeholder - Tenants | February 20, 2018 | Renters' Coalition |
| Stakeholder - Landlords | February 15, 2018 | California Apartment Association |
| Stakeholder - Landlords | February 12, 2018 | California Apartment Association |
| Stakeholder - Government | February 12, 2018 | Environmental Services Department |
| Stakeholder - Tenants | February 6, 2018 | Renters' Coalition |
| Stakeholder - Landlords | January 29, 2018 | California Apartment Association |
| Stakeholder - Landlords | January 16, 2018 | California Apartment Association |
| Stakeholder - Tenants | January 10, 2018 | Renters' Coalition |
| Stakeholder - Landlords | December 15, 2017 | California Apartment Association |
| Stakeholder - Tenants | December 13, 2017 | Renters' Coalition |



Memorandum

TO: HOUSING & COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: March 15, 2018

Approved

Date

**SUBJECT: AMENDMENTS TO PROCEDURES FOR REMOVAL OF
RENTSTABILIZED UNITS FROM THE RENTAL MARKET (ELLIS ACT
ORDINANCE)**

RECOMMENDATION

Accept staff report and provide recommendations to staff on potential changes to the Ellis Act Ordinance, including:

1. Amending the re-control provisions to:
 - a. Subject the greater of either 50% of new apartments built *or* the number of apartments removed from the market, to the Apartment Rent Ordinance (ARO);
 - b. Allow an exemption from the re-control provisions if at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:
 - i. develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; and
 - ii. develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.
2. Include apartments buildings with three units under the Ellis Act.
3. Require apartments with three units or more built after 1979 to provide 120-day notification to their tenants and the City and to provide relocation consultant services to impacted tenants.

BACKGROUND

On May 10, 2016, the City Council directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market that applied to buildings with four or more apartments. The Council gave this direction as part of the policies adopted to strengthen the ARO.

On April 18, 2017, City Council approved an Ellis Act Ordinance that would provide procedures on the control of rents for apartments constructed or returned to the rental market within five years of withdrawal. The full report to the City Council may be viewed here:

http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2680&meta_id=628023. As a part of the City Council action to approve the Ellis Act Ordinance, further direction was provided:

1. Direction to the City Manager to complete additional research regarding the impact of subjecting all replacement units to re-control by the Ellis Act; and
2. Direction to provide the City Council with additional research regarding existing Ellis Act Ordinances throughout California.

Ellis Act Ordinance

The Ellis Act Ordinance establishes a process by which a property owner can remove their apartments from the rental market. It should be noted that Ellis Act provisions only apply to apartments under rent control. In San José, all apartments of three or more units built and occupied prior to September 7, 1979, are subject to the City's Apartment Rent Ordinance (ARO).

The City's Ellis Act Ordinance also provides benefits to tenants living in rent stabilized apartments that will be withdrawn from the market. A summary of the Ordinance requirements is provided below:

- **Noticing** – All households must be provided with a minimum of 120 days' notice prior to the removal of the property from the rental market. Special populations including residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children must be given up to one-year notice.
- **Relocation Benefits** – All tenants are eligible to receive relocation benefits. Special populations including low-income residents, residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children are eligible for additional relocation benefits.
- **Right to Return** – If the apartments return to the rental market within ten years, tenants have a right to return to their apartments.
- **Re-control** – If a property owner demolishes existing rent-stabilized apartments, all new apartments built at the same location within five years will be subject to the City's Apartment Rent Ordinance.

Property owners that remove rent-stabilized apartments from the market are subject to the re-control provisions above. In addition, all new housing built on the site is subject to the City's Inclusionary Housing Ordinance.

Inclusionary Housing Ordinance

The Inclusionary Housing Ordinance (IHO), Chapter 5.08 of the San José Municipal Code, was adopted on January 12, 2010. The IHO requires all residential developers who create new, additional, or modified or-Sale or Rental units to provide 15% of housing on-site that is affordable to income qualified buyers/renters. If the residential project is a rental development and the owner chooses to meet this obligation by providing the affordable apartments on-site, 9% of the apartments must be restricted at 80% Area Median Income (AMI) and 6% of the apartments must be restricted at 50% AMI.

The City of San José had previously adopted a program that applied to rental developments called the Affordable Housing Impact Fee (AHIF). On December 19, 2017, the City Council approved a transition from the AHIF to the IHO for projects with 20 units or more. As a result, those rental projects have the time-limited option to remain under the AHIF program if certain criteria are met. More information on the Inclusionary Housing Ordinance Program can be found on the following webpage: www.sjhousing.org/IHO.

All new apartment projects with 20 units or more are subject to the Inclusionary Housing Ordinance. If a development removes ARO apartments from the rental market, it would be subject to both the Inclusionary Housing Ordinance and the Ellis Act Ordinance. This memorandum satisfies the City Council's direction to address the re-control issue and provides options regarding the owner's requirement to re-control under the Ellis Act. It also satisfies the re-control provision by providing on-site units under the IHO, plus a voluntary additional 5% of 100% AMI units.

ANALYSIS

This memo addresses three items:

- Address the re-control issue as currently delineated in the Ellis Act Ordinance and provide options,
- Include apartments with three units under the Ellis Act, and
- Address noticing requirements for apartments being removed from the market that were built after September 7, 1979.

1. Re-Control of Apartments

As the demand for housing in San José increases, pressure to redevelop rent stabilized apartments continues to rise. There are approximately 40,000 apartments subject to the ARO and the City's Ellis Act Ordinance. Many these apartments are located in areas that are likely to be redeveloped in the coming years. The City's General Plan designates areas of growth by

urban village areas. These areas allow for higher densities where redevelopment of existing ARO apartments may occur. A table indicating the number of ARO apartments located in these areas is provided as Table 1.

Table 1: Number of ARO Apartments in Urban Village Areas

| Urban Villages | Number of ARO Apartments | Urban Villages | Number of ARO Apartments |
|---|--------------------------|------------------------------------|--------------------------|
| Winchester Bl | 3,471 | Hamilton Av/Meridian Av | 112 |
| Southwest Ex | 1,952 | Camden Av/Branham Ln | 108 |
| Saratoga Av | 1,145 | Little Portugal | 98 |
| Rincon South 2 | 512 | The Alameda (East) | 86 |
| Stevens Creek Bl (West) | 430 | Santa Teresa Bl/Cottle Rd | 84 |
| S. De Anza Bl | 407 | Alum Rock | 60 |
| Monterey Rd/Chynoweth Av | 372 | Five Wounds BART | 58 |
| S. Bascom Av (North) | 341 | Kooser Rd/Meridian Av | 52 |
| Paseo de Saratoga | 340 | Diridon Station Area | 48 |
| Tully Rd/S. King Rd | 332 | Santana Row/Valley Fair | 47 |
| N. 1st St | 243 | Roosevelt Park | 41 |
| E. Santa Clara St (West of 17th St) | 229 | W. San Carlos St (East) | 36 |
| N. Capitol Av/Berryessa Rd | 220 | S. 24th St/William Ct | 25 |
| Camden Av/Kooser Rd | 187 | The Alameda (West) | 22 |
| S. Bascom Av (South) | 181 | Race St Light Rail (West of Sunol) | 21 |
| Camden Av/Hillsdale Av | 170 | McKee Rd/White Rd | 8 |
| Almaden Ex/Hillsdale Av | 120 | W. San Carlos St (West) | 7 |
| Branham Ln/Meridian Av | 120 | Alum Rock Av (East of 680) | 6 |
| Oakridge Mall and Vicinity (Cambrian/Pioneer) | 116 | E. Capitol Ex/Foxdale Dr | 5 |
| Stevens Creek Bl (East) | 115 | W. San Carlos St (Mid) | 4 |
| Total Number of ARO Apartments in Urban Villages | | | 11,931 |

As indicated from Table 1, almost 12,000 (30%) of these areas are in urban villages. Staff has experienced an increase in inquiries regarding redevelopment in these areas. This is likely to increase in the future as the urban village plans are adopted. Therefore, the need for re-control of some or all the units built when ARO units are destroyed by this redevelopment is critical to preserving rent-stabilized housing.

Staff has received inquiries from developers, since May 2017, who are interested in demolishing existing ARO apartments to build new housing. The potential projects are in various stages of the planning process and developers have approached the City to discuss future steps in the development process. A list of these inquiries is included as **Attachment A**.

Existing Re-Control Provisions

The Ellis Act provides requirements for apartments being either rehabilitated or demolished and returned to the market within five years after being withdrawn through the Ellis Act. The Ordinance requires that all new apartments be subject to the City's ARO (re-control). For example, under the current ordinance, if 10 apartments were removed and 20 apartments were constructed on the same property, all 20 new apartments would be subject to the ARO.

The Housing Department looked at two factors when examining the issue of re-control. These include: stakeholder meetings with developers and research on re-control provisions in other cities. A summary of this information and analysis is provided below.

Developer Stakeholder Meetings

Staff met with developers to discuss the re-control options for the Ellis Act Ordinance. Throughout this discussion, developers spoke of communities in the region that are struggling with the housing crisis and are introducing requirements such as inclusionary and rent stabilization restrictions. Developers indicated deed-restricted affordable housing is predictable and understood by lenders and developers. This is because the deed-restriction ties rents to a predictable scale for an extended time. Rent stabilization, however, is unpredictable because a local governing body could make a decision to change the rent stabilization requirements at any time. According to the developers, this lack of predictability increases risk for the development of new housing subject to rent stabilized requirements.

Research of Other Cities with Ellis Act Ordinances

The Housing Department researched the different re-control provisions in cities with Ellis Act ordinances. A review of San Francisco, Berkeley, West Hollywood, Los Angeles, and Santa Monica showed that their requirements resemble the City's current requirements in that all new housing developments following an Ellis Act withdrawal is subject to the rent control provisions of that jurisdiction. Los Angeles provides an exemption to developers who replace the new units with 20% restricted affordable units. These developers may apply for an exemption of the newlyconstructed units from rent control provisions. Table 2 summarizes these provisions below.

Table 2: Summary of Cities with Ellis Act Provisions

| | San Francisco | Berkeley | West Hollywood | Santa Monica | Los Angeles |
|--|-----------------|----------|--|--------------|-----------------|
| What is covered by Ellis? | 3 units or more | All | 2 units or more, includes single family homes when tenant occupied | All | 5 units or more |
| How many replacement units will be subject to re-control? | All | All | All | All | All |
| Are there exemptions to re-control? | N/A | N/A | N/A | N/A | Yes |

The Housing Department also looked at the impact of Ellis Act Ordinance provisions in these jurisdictions. The Department found that, in some jurisdictions which require that all new apartments be covered by rent control provisions, the overall number of rent stabilized apartments erodes over time due to the withdrawal under the Ellis Act, even if the jurisdiction requires re-control of all new units. For example, Santa Monica has the longest standing Ellis Act in the State. According to the 2016 Santa Monica Rent Control Board Consolidated Annual Report, Santa Monica has lost over 2,000 rent controlled apartments through Ellis Act removals. A summary of the apartments withdrawn from the rental market versus those added under the re-control provisions is provided in Table 3.

Table 3: Santa Monica Apartments and Properties Withdrawn 1986-2016

| | Apartments | Properties |
|---|--------------|------------|
| Withdrawn | 2,975 | 609 |
| Returned to the Market | 852 | 163 |
| Net loss of Covered Apartments due to withdraw | 2,123 | 446 |

Source: 2016 Santa Monica Rent Control Board Consolidated Annual Report, p. 32

Although all newly constructed apartments built within five years are required to be covered by Santa Monica's rent control provisions, Santa Monica's staff has observed properties do not always return to the market. One reason for this is because apartments are often replaced with for-sale housing, commercial use, and/or mixed use development. In addition, developers building rental housing sometimes do not bring the apartments into the rental market until the five-year re-control period required under the Ellis Act has lapsed. These factors have led to the net loss of apartments covered by Santa Monica's rent control provisions.

1. Re-Control Options

The Housing Department reviewed several options for the number of new apartments that will be re-controlled under the Ellis Act. After reviewing controls in other cities and meeting with stakeholders, the following options received the most consideration:

Table 3: Alternatives for Re-Control Provisions

| Alternatives | Example | Considerations |
|--|---|---|
| All Units – All new apartments are re-controlled. | 20 apartments removed 60 apartments built <i>All 60 apartments covered</i> | <ul style="list-style-type: none"> Consistent with all other California jurisdictions |
| 50% of New Development – The greater of the number of apartments destroyed or 50% of the new apartments constructed | 20 apartments removed 60 apartments built <i>30 apartments covered</i> | <ul style="list-style-type: none"> Potential gain of apartments covered by the ARO |
| One-for-One – The number of apartments destroyed is re-controlled on a one-for-one basis. | 20 apartments removed 60 apartments built <i>20 apartments covered</i> | <ul style="list-style-type: none"> No net loss of apartments covered by the ARO |
| 20% Restricted Affordable – If inclusionary obligations are met by building 20% restricted affordable apartments on-site, the project may be exempted from re-control requirements. | 20 apartments removed 60 apartments built 12 apartments affordable <i>0 apartments covered</i> | <ul style="list-style-type: none"> Incentive to build affordable housing on-site Provides lower rents for 20% of the apartments |

After evaluating these alternatives, the Housing Department recommends that the re-control provision of the Ellis Act be modified to subject the greater of either 50% of new apartments built *or* the number of apartments removed from the market, to the Apartment Rent Ordinance (ARO). The Housing Department further recommends that exemption from the re-control provisions be allowed if 20% of the new apartments are deed-restricted, affordable apartments and built onsite. The development would be required to provide 15% of the newly constructed apartments as on-site affordable rental apartments consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance. Additionally, the developers would provide an additional 5% of the newly constructed apartments as on-site affordable rental apartments restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines. It is the Department's conclusion that this approach helps preserve rent-stabilized apartments and provides developers with viable options to meet the Ellis Act requirements and provide new housing opportunities.

2. ARO Apartments with Three Units

After the Ellis Act Ordinance came into effect on May 26, 2017, staff immediately received calls from developers interested in redeveloping triplex apartment buildings covered by the ARO. Aside from being covered by the ARO, triplexes are also covered by the Tenant Protection Ordinance (TPO). The TPO eliminates no-cause evictions and gives specific reasons under

which landlords can evict tenants. However, due to the discrepancy between the units covered by the TPO (three units or more) and the Ellis Act Ordinance (four units or more), developers removing tri-plexes from the market are not able to cite an Ellis Act reason to provide tenants with the required notice to vacate. In addition, tenants cannot receive relocation assistance benefits required under the Ellis Act Ordinance.

There are 345 triplexes subject to the ARO with a total of 1,035 apartments. A change to the Ellis Act to include buildings with three apartments or more would increase the number of apartments covered by 1,035 apartments.

The Housing Department recommends an amendment to the Ellis Act Ordinance so that it applies to apartment complexes with three units or more. This would align the Tenant Protection Ordinance and Ellis Act Ordinance. An additional 1,056 apartments will be covered by the local Ellis Act Ordinance. This modification will provide clarity for owners, tenants and staff charged with implementing the ordinance.

3. Apartments Built After 1979

After the Ellis Act Ordinance came into effect on May 26, 2017, staff received an inquiry from a developer who wanted to remove an eight-unit apartment building built in 2005. The purpose of removal was to assemble land for new development. All apartments are subject to the Tenant Protection Ordinance. However, apartments built after September 7, 1979 are not subject to the ARO or the Ellis Act Ordinance. In this case, the property owner did not have a viable reason to evict the tenants living in the eight-unit apartment building.

In order to address this issue, the Housing Department recommends that owners be required to provide a 120-day notification to tenants of apartments being removed from the market that were built after 1979. The Housing Department also recommends that the owner be required to offer relocation consultant services to impacted tenants, given the shortage of housing in the San José area.

If adopted, this would provide owners with a practical alternative to removing tenants for properties they wish to remove from the rental market and redevelop. Without this option, owners would have to negotiate individual voluntary agreements with tenants or find some other means to legally evict them. The requirements for these apartments would be limited to the 120-day noticing requirements and providing access to a relocation specialist.

The proposed revisions to the Ellis Act Ordinance regarding re-control provisions, number of apartments covered and coverage of apartments built after 1979 are included in **Attachment B**.

EVALUATION AND FOLLOW-UP

Staff intends bring the amendments to the Ellis Act to the City Council for consideration in Spring 2018. The City Council will hold a second reading of amendments two weeks following its first reading. The updated Ordinance then would be effective 30 days following the City Council's second reading.

PUBLIC OUTREACH

Staff met with a wide range of stakeholders while developing the proposed Ellis Act Ordinance. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with property owners and managers of both small and large properties, as well as a variety of tenants and tenant advocates on multiple occasions. **Attachment C** summarizes the public and stakeholder meetings related to this issue, and public comments are included as **Attachment D**.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

/s/

Jacky Morales-Ferrand
Director of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8231.

ATTACHMENTS:

Attachment A – Potential Projects Subject to Removal under Ellis Act Ordinance

Attachment B – Proposed Ellis Act Ordinance Revisions

Attachment C – Ellis Act Ordinance Community and Stakeholder Meetings

Attachment D – Ellis Act Ordinance Public Comments

Potential Projects Subject to Removal under Ellis Act Ordinance

| # | Property Address | Permit # | Comment |
|---|-------------------------|------------------------|-----------------|
| 1 | 4094 Hamilton | CP15-081 | Permit approved |
| 2 | 373 E. San Fernando St. | CP17-013 | Inquiry |
| 3 | 7201 Bark Ln. | PDC17-035 PRE16-153 | Inquiry |
| 4 | 2050 Southwest Expwy. | PDC17-059 | Inquiry |
| 5 | 439 and 451 S. 4th St. | H17-004 | Inquiry |
| 6 | 51 Glen Eyrie Ave | N/A | Inquiry |
| 7 | 1605 Parkmoor Ave | H17-001 | Inquiry |

As of 3/15/18

RD:SSG
3/14/2018

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 11 OF CHAPTER 17.23 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY RE-CONTROL PROVISION, TO ADD THREE UNIT BUILDINGS, TO MODIFY RE-CONTROL PROVISIONS, AND TO PROVIDE THAT OTHER MULTIFAMILY UNITS ARE DEEMED TO HAVE MET OBLIGATIONS UNDER THIS PART AFTER COMPLIANCE WITH NOTICE AND RELOCATION SPECIALIST OBLIGATIONS

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 17.23.1130 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

“17.23.1130 General

- A. Fees. The City shall establish fees for City-incurred costs which shall be paid by any Owner who exercises the privilege to withdraw Covered Units from rent or lease. The City shall set the fee so as to recover all costs of administering this Part. The fees shall be paid to the City prior to the service of the Notice of Intent to Withdraw on any Tenant. Failure to pay the fees prior to service of the Notice of Intent to Withdraw shall invalidate such notice.

- B. Copies of Forms. Owner shall make copies of notices and forms available if a Tenant indicates the items have been misplaced or lost or are otherwise needed.

- C. New Tenants During the Withdrawal Process. If the Owner desires to rent a Covered Unit to a new occupant after delivery of the Notice of Intent to Withdraw, the Owner shall comply with this subsection). Owner shall first comply with all requirements of this Part 11, including but not limited to the delivery of notices to the City and Tenants, and the provision of Relocation Assistance in accordance with Section 17.23.1150 with respect to the unit to be rented. Prior to such rental, Owner shall also provide a Notice of Pending Withdrawal on a City approved form to any new potential occupant of the Covered Unit for acknowledgement. If the Owner complies with this subsection, the new occupant shall not be entitled to Relocation Assistance or other benefits under this Part. If the Owner fails to comply, the new occupant of the Covered Unit shall be entitled to Relocation Assistance under this Part.

D. City Approved Forms. Director may adopt such forms as are necessary or convenient for the administration of this Part 11, subject to review and approval of the City Attorney.

E. Every Owner must provide to each Tenant of a Covered Unit a notice of Tenant rights to extend the tenancy on a form specified by the City, which may include contact information for the City and shall include the following statement:

“In accordance with the State’s Ellis Act, the City of San José requires landlords to allow certain tenants to extend their tenancy beyond the minimum one hundred twenty (120) day notice period when a landlord intends to withdraw the dwelling unit from the residential rental market. The elderly, disabled, and households with a child enrolled in kindergarten through 12th grade may be eligible for extended tenancies if requested.”

F. Withdrawal of less than an entire building is not allowed under this Part.

G. The City Manager may adopt regulations for the administration of this Part.

H. ~~Three Unit Properties. Notwithstanding any other provision of this Part, this Part shall not apply to properties with a total of no more than three (3) Covered Units.~~

Non-Rent Stabilized Properties. Property with three (3) or more units that does not contain any Covered Units may be permanently withdrawn from the residential rental market. Such a permanent withdrawal made in good faith will be consistent with this Part, if the Owner has completed all of the following as described this Part and the Regulations: (i) served Notices of Intent to Withdraw on the Tenants and the City, (ii) complied with the provisions of Section 17.23.1160 requiring 120 day notice for all Tenants and Extended Notice for certain Tenants prior to termination of tenancy, and (iii) paid the filing fee including the fee for Relocation Specialist Services described in Section

17.23.1150.E. Upon completion of these requirements and expiration of the notice periods, the Owner will be considered to have met the relocation obligations of this Part for the purposes of evaluation for demolition permits under Section 20.200.460 and for the purposes of satisfying the requirements for relocation under the Tenant Protection Ordinance, Sections 17.23.1250.A.9 and 17.23.1250.B.2. These properties shall not be subject to the requirement to pay Base or Qualified Assistance, to provide the Tenant Qualification forms, to record a memorandum regarding re-control, or to provide a right of return.

SECTION 2. Section 17.23.1180 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

17.23.1180 Re-Control

- A. If a building containing a Covered Unit is withdrawn from the residential rental market and is returned by an Owner to the residential rental market within five (5) years, then that unit must be offered and rented or leased at the lawful rent in effect at the time the Notice of Intent to Withdraw was delivered to the City, plus any annual adjustments authorized by Title 17, Chapter 23 of this Code. This Section applies regardless of the occupancy status of each Covered Unit when the building was withdrawn from the residential rental market and regardless of whether a displaced Tenant exercises a Right to Return.
- B. If a building containing a Covered Unit is demolished and new unit(s) are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building containing the Covered Unit, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance, Title 17, Chapter 23 of this Code. ~~The City Council may, by resolution, adopt a rule to~~

~~exempt some or all of the new units in excess of the number of demolished Covered Units from the requirement for re-control.~~

C. Waiver for Projects with On-Site Affordable Units. If at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:

- (i) develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San Jose Municipal Code and its implementing guidelines; and
- (ii) develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.

RD:SSG
3/14/2018

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk

Ellis Act Ordinance Community and Stakeholder Meetings

Community Meetings

| Meeting | Date | Time | Location |
|---|-------------------|---------------|---------------------------------|
| Policy Development Community Meeting – Tenant Meeting | February 22, 2018 | 6:30-8:30 pm | Westminster Presbyterian Church |
| Policy Development Community Meeting | February 12, 2018 | 6:30-8:30 pm | Seven Trees Community Center |
| Housing & Community Development Commission | February 8, 2018 | 5:45 pm | San José City Hall – Wing Rooms |
| Policy Development Community Meeting | February 7, 2018 | 9:00-11:00 am | San José City Hall – Wing Rooms |
| ARO & TPO Educational Outreach | January 25, 2018 | 6:30-8:30 pm | Cypress Community Center |
| ARO & TPO Educational Outreach | January 19, 2018 | 2:00-4:00 pm | San José City Hall – Wing Rooms |
| ARO & TPO Educational Outreach | January 10, 2018 | 9:00-11:00 am | San José City Hall – Wing Rooms |

Stakeholder Meetings

| Stakeholder Meeting | Date | Location |
|--------------------------|-------------------|----------------------------------|
| Stakeholder – Developers | March 16, 2018 | Developer Roundtable |
| Stakeholder – Landlords | March 8, 2018 | Bay Area Housing Network |
| Stakeholder – Developers | March 2, 2018 | Greystar |
| Stakeholder – Developers | February 22, 2018 | Silicon Valley Synergy |
| Stakeholder - Tenants | February 20, 2018 | Renters' Coalition |
| Stakeholder - Landlords | February 15, 2018 | California Apartment Association |
| Stakeholder - Landlords | February 12, 2018 | California Apartment Association |
| Stakeholder - Tenants | February 6, 2018 | Renters' Coalition |
| Stakeholder - Landlords | January 29, 2018 | California Apartment Association |
| Stakeholder - Landlords | January 16, 2018 | California Apartment Association |
| Stakeholder - Tenants | January 10, 2018 | Renters' Coalition |
| Stakeholder - Landlords | December 15, 2017 | California Apartment Association |
| Stakeholder - Tenants | December 13, 2017 | Renters' Coalition |

Ellis Act Ordinance

City of San José – Department of Housing

Public Comments Received as of February 2, 2018

Policy Development Meeting Series

February 7, 2018 to February 22, 2018

Dot Activity for Public Comments

| ARO #1: If Ratio Utility Billing is not allowed under the updated Apartment Rent Ordinance: How should ratio utility billing be phased out? Select one. | | |
|--|---------------|--|
| | Tenant | Landlord |
| Effective immediately | 29 | |
| All RUBS contracts sunset after one year | | |
| All RUBS contracts sunset after two years | | 3 |
| No new RUBS contracts; existing contracts remain in place | | 1 |
| Provide a one-time rent increase to combine rent with utility costs | | 4 |
| Other ideas? Post it! | | Have City provide interest-free or grant financing for landlords to meter individually |

| ARO #2: If ratio utility billing is allowed and parameters are developed, which items should be included? Select all that apply. | | |
|---|---------------|-----------------|
| | Tenant | Landlord |
| Cap for the maximum charged per month | | |
| Utility costs included are all unmetered utilities including water, garbage and sewer | 1 | 7 |
| Common area costs are not charged to tenants | | 4 |
| All utility bills are available for review by tenants | 1 | 4 |
| No RUBS allowed | 34 | |
| Other ideas? Post it! | | |

| TPO #1: Should a new just cause reason be added to the Tenant Protection Ordinance for criminal activity? | | |
|--|---------------|-----------------|
| | Tenant | Landlord |
| Yes | | 6 |
| No | 22 | |

| TPO #2: Do you think a criminal conviction would be necessary as a basis for an eviction? | | |
|--|---------------|-----------------|
| | Tenant | Landlord |
| Yes | 3 | |
| No | 9 | |

| | | |
|-------|--|--|
| Other | It has nothing to do with housing. The judicial system can take care of itself. Don't need vigilantes. | |
|-------|--|--|

TPO #3: If yes, what documentation should be necessary for criminal activity? Please select all that apply.

| | Tenant | Landlord |
|----------------------------|--------|----------|
| Property manager testimony | | 4 |
| Police report | | |
| Conviction of a crime | | 5 |
| Photo or video evidence | | 7 |
| Other | | |

TPO #4: If yes, what types of crime could result in an eviction? Please select all that apply.

| | Tenant | Landlord |
|---------------|---|----------|
| Embezzlement | | |
| Shoplifting | | 1 |
| Drug crime | 3 | 5 |
| Violent crime | 2 | 6 |
| Traffic Crime | 1 | |
| Other | 14: This should not be added to ordinance | Any 1 |

TPO #5: If yes, a crime committed in which of the following areas could result in an eviction? Please select all that apply.

| | Tenant | Landlord |
|--|-----------------------|----------|
| In the apartment | 3 | |
| On the rental property | | 5 |
| 1,000-foot radius around the rental property | | |
| Anywhere | 1 | 5 |
| Other | 11: None of the above | |

Ellis #1: How many of the new apartments should be covered by the Apartment Rent Ordinance? Select one.

| | Tenant | Landlord |
|--|--------|----------|
| All new apartments | 16 | |
| All new apartments are re-controlled, with some apartments limited to 5% and the other apartments limited to 10% rent increase | | 1 |

| | | |
|--|--|------|
| Two times the number of apartments destroyed are covered | | 1 |
| The number of apartments destroyed are covered | | 4 |
| If the new building includes 20% affordable units, the entire building would be exempt from rent control | 9 | |
| Other | <ul style="list-style-type: none"> • Define what type of affordable • Why not more than 20% • Affordable should be for low income, very low income • At least 50% should be affordable | None |

Source of Income #1: Have you or someone you know had trouble finding a landlord who will accept housing vouchers or other forms of housing subsidies such as security deposit assistance?

| | Tenant | Landlord |
|-----|--------|----------|
| Yes | 23 | 5 |
| No | | |

Source of Income #2: If the City were to create a “source of income” ordinance, what housing units should it apply to? Select all that apply.

| | Tenant | Landlord |
|---|---|----------|
| Single-family homes | | |
| Duplexes | | |
| Secondary dwelling units | | |
| Bedrooms for rent | | |
| All rental housing | 22 | 3 |
| None – there should not be an SOI ordinance | | 6 |
| Other ideas? Post it! | All the city geniuses never ask how the unhoused people for any input over the ideas they always try to lend from their cities’ comfortable position. I’m so sick of working within this system and | |

switching back and forth on policies and being discriminated against. Let's build our own community.

2-7-18 Public Meeting Comments Summary

Criminal Activity

- The Housing Dept. should take more active of a role to regarding neighborhood issues. Recent shooting in the Cadillac neighborhood. How can Housing assist landlords in these type of situations? TPO makes addressing crime more challenging.
- “Responsible Landlord Engagement Initiative (RLEI)” available for landlords that are fearful of retaliation.
- “Crime Free” is an approach used by many other cities. Why not try crime free in San Jose?
- When did the City Council discuss crime free housing?
- What proof is required by landlord for the 12 Just Cause?

RUBs

- Master metered electricity and gas – all references to RUBs assume landlords are only using RUBs for water, sewer and garbage. Landlords of older buildings also allocate gas and electric.
- Idea: Certified RUBs provider.
- Idea: Create parameters for monthly fluctuations in RUBs charges.
- Cost of submetering for water is prohibitive. Landlords have called contractors and they are either not willing to bid because they often to not get the work because the cost is so high.
- A landlord stated when the tenants have to pay for the water bill, they are more likely to inform the landlord of a leak so they problem gets resolved much faster, he has had tenants use a vice-grip with a leaky faucet and paid additional water and repair costs from the neglect.

Ellis Act

- One for one seemed common practice – what do other cities do?

Source of Income

- A landlord mentioned that he is working with a Section 8 tenant and it has taken 2 to 3 weeks for a deposit and rent, if the program was faster with onboarding he would consider more often.
- Another landlord mentioned he does not have the time to accommodate the additional work required for Section 8 tenants and felt that the word “discriminating” should not be used regarding landlords screening process.
- Participant mentioned if more landlords knew that they could get closer to market rate for their ARO rental units, they might be more willing to take on the programs.

2-12-18 Public Comments Summary

Tenant Protection Ordinance

- If there is 1 issue, having a gun, would landlord and other tenant want that person with the conviction still living in the unit? Would this be a material lease violation?
- Material violation - what is an example or designate an issue that is material? Example, starting a fire in a backyard. Does lease must specify "criminal activity" or "fire" in the lease?
- If someone is arrested for domestic violence, can a landlord serve a notice?
- What is the City of San Jose's position on criminal activity? Tolerant or zero? 3 day notice? not required and go directly to evict?
- The warning is significant, should a 3 day notice still be allowed or evict right after the 1 instance?
- Someone (for example, son or daughter) can be evicted for a conviction and automatically move in with his mom without approval from the landlord, they/tenant are protected. The roommate clause allows for harboring of criminals.
- Landlord should be able to do a review to be aware of a conviction and maximum number of tenants move in? Landlords need some type of help with this issue/check.

Apartment Rent Ordinance

- Some landlord also do their own RUBS, not only just 3rd parties doing to calculations.
- There should be a RUBS allowed option for consideration by the City Council.
- Will electricity be considered a part of RUBS - all utilities should be considered?
- HUD utility rates, how do they factor or calculate? HUD rates should be removed because nobody can determine their factor.
- What about an alternative for a landlord to charge an additional 1% in rent if their building is master metered, similar to LA?
- Landlord feels is RUBS is not allowed, an angry tenant will leave the water running so landlord must pay bill and lose money, no conservation.
- If you remove storage and lose rent, will the rent ever be increased or will it be lost income going forward?

Ellis Act

- Will there be a separate outreach for Ellis Act with developers? This issue is less significant for ARO property owners.
- How is relocation defined or determined? Chart available for calculation per number of bedrooms, how was the cost determined?
- Regarding which units are covered by the Ellis Act, why 1979 when 1985 is when Ellis went into effect?

Source of Income

- What is the Housing Department's position on Source of Income, is it neutral or direction to create an Ordinance? Housing will be bringing a framework to Council and wait for direction.
- Given a mandate, the Housing Department's position does not appear neutral.
- What is the reason for the source of income policy issue? City Council asked Housing to explore.
- Source of Income issue is not Section 8 voucher holders, instead the deterrence for landlords is the logistics, time, and cost for using Section 8. Housing is painting the wrong picture about landlords.
- A landlord indicated never used Section 8 because the heard the program was a zoo and has created more problems, does not believe in program.

2-12-18 Public Comments Summary

- Had a Section 8 tenant, has lost thousands of dollars, many lawsuits, and they know how to gain the system.

General questions

- What is the definition of Affordable Housing? Is there special funding for developers if they build Affordable Housing?
- Is there a special property tax relief for Affordable Housing?
- Public Notice is done through ARO; would landlords be notified for specifically for Ellis Outreach?
- Participant feels their input falls on deaf ears, rules appear to be protecting tenants, not landlords.
- Landlords do not want to file a Capital Improvement petition, does not want to ask Housing an allowance to increase rents.

2-22-18 Tenant Input Public Comments Meeting

ARO - RUBS

- PG&E approx. \$28 per month
- PG&E \$70 per month, lights never turn off in common area
- PG&E approx. \$120 per month due to mold problem and leaving on fans
- PG&E approx. \$70 per month to \$150, summer to winter
- Pays water or garbage, other than electricity
- Pays water, sewer, and trash, rent, and split with all water, sewer, and trash and a service charge
- Rent and split with all water, sewer, and trash
- \$50 for water, \$40 PG&E
- Rent and water, sewer, and trash
- Has sat through several cases and RUBS is illegal and a violation of the ordinance, Council is considering it legal, should put in a complaint right now, will automatically get changed. Problem with RUBS, tenant pays more, landlord can make it more complicated and to track what is being paid for utilities. File a petition if paying RUBS.
- Prefer separate rent from utilities, due to utilities being varied
- Don't want to pay for others' utilities and know what utilities you are using, keep rent separate, landlords make it sound like they are getting a better deal having it combined rent/utilities and misleading.
- What happens when there are fines for excessive usage, landlords will be able to shift the costs to tenants? During last drought, scare notices were sent out for excessive usage, they did not bill.
- If there's broken pipes or irrigation and does not get fixed, they will pass that on to tenants.
- How does the RUBS get calculated with the 5% increase factor?
- Landlord/management prefer not to pay additionally on rent, has been told that they have attorneys and RUBS is legal. 3 day notice to pay rent or quit only includes rent, does not include utilities/RUBS.

TPO – Criminal Activity - Nuisance

- Neighbor that made noise and she got a lease violation for putting a note on the neighbor's door.
- HUD came out with a ruling in 2006 to circumvent the prior law. Why are they playing around with the wording now?
- Landlord has gardeners showing up at 7am making loud noises and that should be seen as a crime.
- Actual conviction or proof of the crime, otherwise should be considered discrimination.
- How would a landlord or tenant even know if their neighbor committed a crime?
- Crime should not be allowed anywhere for eviction.
- Neighbor had an issue with wildlife and feared retaliation. Finally called the police and not escalating.
- Biggest issue, landlords not evicting tenants that disturb other tenants. City not holding landlord accountable for multiple issues.

2-22-18 Tenant Input Public Comments Meeting

Ellis Act

- Not enough resources available for a tenants to move or relocated while development of property.
- Better option is for lower rents for low income tenants.
- Tenant moved to affordable housing, not able to find affordable housing with good paying job.
- Tenant in affordable housing got an increase of \$250 this year, should not be considered affordable.
- It should be very expensive to evict tenants living in ARO units.

Source of Income

- Large percentage of attendees have seen ads posting that states no Section 8, had difficulty finding housing.
- Tenant's rent kept increasing until the amount was not covered under Section 8. Once tenant left, the rent had decreased for following tenant.
- Need an ordinance like this to assist and prevent homelessness.
- How long will it take for the Rent Registry to provide analysis for these types of issues?