



City of San José Housing & Community Development Commission

District 1— Martha O'Connell
District 3— Robert Gill
District 5— Vacant
District 7— Melissa Medina (VC)
District 9— Vacant
Mayor — Nhi Nguyen

Alex Shoor —District 2
Vacant —District 4
Andrea Wheeler —District 6
Lee Thompson —District 8
Michael Fitzgerald —District 10
Davlyn Jones – CAAC-MR
(C) Mike Graves – CAAC ML

REGULAR MEETING AGENDA

5:45PM

April 13, 2017

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 Special Meeting of March 2, 2017
ACTION: Recommend approval of the March 2, 2017 action minutes
- IV. Reports and Information Only**
 - A. Chair
 - B. Director
 1. Flood Update
 2. Upcoming HCDC agenda items
 3. Recent and Upcoming City Council agenda Items
 - C. Council Liasion
- V. New Business**
 - A. **Draft Tenant Protection Ordinance (R. VanderVeen, Housing Department)**
ACTION: Input and Recommendation to City Council to:
 1. Approve an Ordinance adding Part 12 to Chapter 17.23 of the San José Municipal Code to include a Tenant Protection Ordinance limiting no-cause evictions and establishing requirements for property owners to state a Just Cause for eviction in certain limited circumstances.
 2. Direct the City Manager to instruct staff to incorporate into the forthcoming revised Apartment Rent Ordinance a requirement that a property owner offer a renewable one-year written lease to tenants.
 3. Direct the City Manager to instruct staff to return with an amendment to Ordinance No. 28730 (the Interim Apartment Rent Ordinance) to remove the exemption for units with rental subsidies and to make that change to the forthcoming revised Apartment Rent Ordinance.
 4. Direct the City Manager to instruct staff to explore tenant benefits and administration provided by existing relocation policies in the San José Municipal Code.

VI. Public Comment (*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*).

VII. Meeting Schedule

The next regular meeting will be Thursday, May 11, 2017 at 5:45PM, in the San Jose City Hall Wing Rooms 118-120.

VIII. 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 Public Comments 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 Public Comments. 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: Robert Lopez
200 East Santa Clara Street, 12th Floor

San José, California 95113
Tel: (408) 975-4402
Email: Robert.Lopez@sanjoseca.gov

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

Riêng đối với qui vị nói tiếng Việt : Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Therese Tran, Đ.T. 408-793-5349.

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 Arlene Silverio sa 408-793-5542. Salamat Po.

DRAFT

HOUSING & COMMUNITY DEVELOPMENT COMMISSION

SPECIAL MEETING ACTION MINUTES

MARCH 2, 2017

MEMBERS PRESENT: Mike Graves Chair
 Melissa Medina Vice Chair (6:51pm)
 Davlyn Jones Commissioner
 Martha O’Connell Commissioner
 Bob Gill Commissioner (6:32pm)
 Gary Prideaux Commissioner
 Andrea Wheeler Commissioner
 Alex Shoor Commissioner (6:08pm)
 Michael Fitzgerald Commissioner
 Nhi Nguyen Commissioner

MEMBERS ABSENT: Lee Thompson Commissioner

STAFF: Dave Bopf Housing Department
 Rachel VanderVeen Housing Department
 Robert Lopez Housing Department
 Helen Chapman Councilmember Jimenez’s Liaison

(I) Call to Order/Orders of the Day— Chair Graves opened the meeting at 5:50pm.

(I) Introductions—Commissioners, staff, and audience introduced themselves.

(III) Consent Calendar

A. Approve the Minutes for the Regular Meeting of February 9, 2017

Commissioner O’Connell made the motion to approve the minutes for the February 9, 2017 regular meeting with edits to include the language “pursuant to Fair Political Practices Commission guidelines” as well as a correction to her name. The motion was seconded by Commissioner Prideaux and passed unanimously (7-0).

(IV) Reports and Information Only

- A. Chair – Chair Graves announced that this would be Commissioner Prideaux’s last meeting as he is resigning from the Commission and moving to another city.
- B. Director – Mr. Bopf gave an update on the Department’s response and assistance for the San Jose flood emergency.
- C. Council Liaison – No report.

DRAFT

(V) New Business

A. Destination Home: Homeless Prevention (D. Bopf, Housing Department)

Commissioner Wheeler made the motion to recommend to the City Council to support a Grant Agreement between the City of San Jose and the Health Trust as fiscal agent of Destination: Home in the amount of \$1,050,000 to provide funding to support homeless prevention and employment engage initiative for homeless individuals and families with a second by Commissioner Jones. The motion passed unanimously (7-0).

B. Draft Ellis Act (R. VanderVeen, Housing Department)

Commissioner Shoor made the motion to recommend to the City Council that the Notice of Intent to Withdraw from property owners should be increased to six months/180 days for all tenants with households with school aged children with a second by Commissioner Gill. **The motion passed 7-3 by roll call vote.**

Yes: Shoor, Jones, O'Connell, Medina, Gill, Prideaux, Wheeler

No: Fitzgerald, Graves, Nguyen

Commissioner Wheeler made the motion to recommend that tenants should be allowed to stay in their unit until the last date a tenant is mandated to leave with a second by Commissioner Gill. **The motion failed 5-5 by roll call vote.**

Yes: Shoor, Jones, O'Connell, Medina, Gill

No: Jones, Prideaux, Nguyen, Fitzgerald, Graves

Commissioner O'Connell made the motion to remove the language that specifies if a tenant leaves the City voluntarily and does not want relocation assistance, that the property owner does not have to make a relocation payment to the City, with a second by Chair Graves. **The motion passed 8-0-2 by roll call vote.**

Yes: Jones, O'Connell, Graves, Medina, Gill, Prideaux, Fitzgerald, Wheeler

Abstention: Shoor and Nguyen

Commissioner Shoor made the motion that all new units on a new property will have same number (1 to 1 ratio) of Apartment Rent Ordinance units as the original ARO property. Commissioner Wheeler added a friendly amendment that the new units should be comparable to the previous units. The friendly amendment was accepted by Commissioner Shoor and the motion was seconded by Commissioner O'Connell. **The motion passed unanimously (10-0).**

Commissioner O'Connell made the motion to ensure any materials distributed by the City or property owner is translated for the three most common languages spoken in San Jose. Commissioner Shoor added a friendly amendment that the City will assist property owners and the motion was seconded by Chair Graves. **The motion passed unanimously (10-0).**

Commissioner Shoor made the motion to change the five-year notification of former tenants to two years with a second by Commissioner Nguyen. **The motion failed 1-9 by roll call vote.**

DRAFT

Yes: Shoor

No: Jones, O'Connell, Graves, Medina, Gill, Prideaux, Fitzgerald, Nguyen, Wheeler

Commissioner Shoor made the motion to increase benefit type to six months' rent. Commissioner O'Connell made a friendly amendment to eliminate the security deposit. The friendly amendment was accepted by Commissioner Shoor and the motion was seconded by Commissioner Gill. **The motion failed 5-5 by roll call vote.**

Yes: Shoor, Jones, O'Connell, Medina, Gill

No: Jones, Prideaux, Nguyen, Fitzgerald, Graves

Commissioner Shoor made the motion to increase the benefit type to four months rent with a second by Commissioner O'Connell. **The motion failed 5-5 by roll call vote.**

Yes: Shoor, Jones, O'Connell, Medina, Gill

No: Jones, Prideaux, Nguyen, Fitzgerald, Graves

Commissioner Shoor made the motion to increase the benefit type of security deposit to \$750 for studios, \$1,000 for one bedroom and \$200 more per room with a second by Commissioner Gill. **The motion failed 5-5 by roll call vote.**

Yes: Shoor, Jones, O'Connell, Medina, Gill

No: Jones, Prideaux, Nguyen, Fitzgerald, Graves

Commissioner Wheeler made the motion to edit the ordinance so that tenants receive 100% of security deposit back with a second by Commissioner O'Connell. **The motion passed 8-2 by roll call vote.**

Yes: Shoor, Jones, O'Connell, Medina, Gill, Prideaux, Wheeler, Nguyen

No: Fitzgerald, Graves

Commissioner Shoor made the motion to specify relocation distance to within 50 miles with a second by Commissioner O'Connell. **The motion failed 2-8 by roll call vote.**

Yes: Shoor, O'Connell

No: Jones, Graves, Medina, Gill, Prideaux, Fitzgerald, Nguyen, Wheeler

Commissioner Shoor made the motion to increase quality assistance base levels to +50% with a second by Commissioner Jones. **The motion passed 7-3 by roll call vote.**

Yes: Jones, Medina, Gill, Prideaux, Fitzgerald, Nguyen, Wheeler

No: Prideaux, Graves, Fitzgerald

Commissioner Wheeler made the motion to accept staff's report and recommendations with the changes made by the Commission as voted. Commissioner Gill seconded the motion. **The motion passed unanimously (10-0).**

C. Tenant Protection Ordinance (R. VanderVeen, Housing Department)

Commissioner O'Connell made the motion to defer this item to the April regular meeting and for the item to be first on the agenda, with a second by Chair Graves. **The motion passed unanimously (10-0).**

DRAFT

D. Future Agenda Items (J. Morales-Ferrand, Housing Department)

None.

(VI) Public Comment

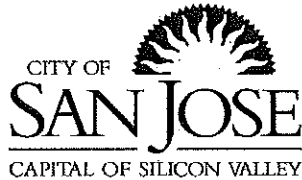
No public comment.

(VII) Meeting Schedule

The next regular meeting will be a special meeting on Thursday, April 13, 2017 at 5:45PM, in the San Jose City Hall Wing Rooms 118-120.

(VIII) Adjournment

Chair Graves adjourned the meeting at 9:45pm.



Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 7, 2017

Approved

Date

SUBJECT: ACTIONS RELATED TO TENANT PROTECTION

RECOMMENDATION

The Housing and Community Development Commission recommends that the City Council:

1. Approve an Ordinance adding Part 12 to Chapter 17.23 of the San José Municipal Code to include a Tenant Protection Ordinance limiting no-cause evictions and establishing requirements for property owners to state a Just Cause for eviction in certain limited circumstances.
2. Direct the City Manager to instruct staff to incorporate into the forthcoming revised Apartment Rent Ordinance a requirement that a property owner offer a renewable one-year written lease to tenants.
3. Direct the City Manager to instruct staff to return with an amendment to Ordinance No. 28730 (the Interim Apartment Rent Ordinance) to remove the exemption for units with rental subsidies and to make that change to the forthcoming revised Apartment Rent Ordinance.
4. Direct the City Manager to instruct staff to explore tenant benefits and administration provided by existing relocation policies in the San José Municipal Code.

OUTCOME

The adoption of the Tenant Protection Ordinance will provide time-limited protections for tenants in rent-stabilized properties from no-cause notices. The adoption of this Ordinance requires that a landlord must state a Just Cause in order to remove a tenant when a tenant is enrolled in the Tenant Protection Ordinance. The second recommendation will direct staff to incorporate a requirement that a property owner offer a renewable one-year written lease to tenants in the forthcoming Apartment Rent Ordinance. The third recommended action will direct staff to return with a revision to the Interim Apartment Rent Ordinance to remove the exemption for apartments with rental subsidies. If adopted, this revision will also be incorporated into the

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forthcoming revised Apartment Rent Ordinance. Finally, staff would be directed to research the existing tenant relocation benefits provided in the City's Municipal Code to develop a report and potential recommendations to review existing policies to simplify administration and enforcement.

EXECUTIVE SUMMARY

Under the Tenant Protection Ordinance, there will be certain circumstances in which the property owner will not be able to give tenants a no-cause notice to vacate. This is called "Just Cause for Eviction" protections. Tenants that damage the building, refuse to pay rent, or otherwise violate their lease can still be legally noticed and evicted.

The Tenant Protection Ordinance provides benefits to tenants living in apartments that are experiencing housing, building, and fire code violations, or need important repairs that are not being addressed. It also provides protections to tenants who exercise their rights to petition under the Apartment Rent Ordinance. The following is a summary of these requirements:

- **Scope** – The Tenant Protection Ordinance will apply to all apartment buildings with three or more apartments, guest rooms in a guesthouse, as well as any unpermitted housing space. This scope is recommended to ensure uniformity in the application of tenant protections for all multifamily rental owners and tenants in San José.
- **Enrollment** – The Tenant Protection Ordinance is an enrollment-based program of protections for tenants. The Ordinance provides protections to the tenant immediately upon providing written notice to the property owner or the appropriate government agency of the issue or violation of tenant/landlord law.
- **Appeal Process** – Both the property owner and tenant have access to an appeal process administered by the Housing Department. The provision of Just Cause protections can be appealed by the property owner if they believe that the basis for enrollment is invalid. This could be due to a claim that the tenant caused the damage, or the tenant refused access to the apartment for the necessary repairs to be made. The tenant can appeal the Notice of Satisfaction by notifying the City if the requested repair was not completed or was completed improperly.
- **Just Cause Protections** – In cases where a tenant is enrolled in protections under the Tenant Protection Ordinance, a tenant cannot be lawfully evicted except for the reasons outlined in this Ordinance.

Additional Tenant Protections – This memorandum includes three additional recommendations that increase tenant protections: 1) The requirement to offer a one-year written lease; 2) removal of the exemption for apartments with rental subsidies in both the Interim Apartment Ordinance and forthcoming revised Apartment Rent Ordinance; and 3) directs staff to develop a report that

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analyzes the relocation benefits imposed by other cities and establishes consistency among San Jose's existing relocation policy benefits.

BACKGROUND

On April 19, 2016, the City Council directed staff to develop an Anti-Retaliation and Protection Ordinance that created termination of tenancy protections (Just Cause protections) for tenants living in apartments that were experiencing housing, building, and fire code violations, needed important repairs, or who exercised their rights in the Apartment Rent Ordinance (ARO). After receiving feedback that the term "Anti-Retaliation and Protection Ordinance" was cumbersome and difficult for tenants to understand, staff renamed the draft ordinance to the Tenant Protection Ordinance.

Leading up to the April 19, 2016 City Council meeting, staff began tracking complaints from ARO tenants. In 2016, Housing Department staff had interactions with 111 residents who explicitly stated their concerns of retaliation from a property owner over filing a Code Enforcement or ARO complaint. This figure does not include interactions between residents and Code Enforcement staff, Police, other City official, or legal aid service provider that may interact with tenants.

When tenants indicate a fear of retaliation, Housing Department staff provides a referral to a legal aid agency to assist them if retaliation occurs. In order to defend against an eviction on the basis of retaliation as provided under State law, tenants usually must engage legal representation and must go to court. In court, the tenant must prove that that he or she exercised a right (such as complained about the condition of an apartment or requested a repair) within the six-month period and that the landlord was not acting in good faith. While the City has a contract with the Law Foundation to assist tenants with complaints regarding fair housing violations, resources to assist tenants with retaliation or violations of the ARO are virtually non-existent.

ANALYSIS

The Housing Department has developed a proposed Tenant Protection Ordinance (TPO) that conforms to the direction from City Council. The purpose of the proposed Tenant Protection Ordinance is to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, healthy, safety, and public welfare. The Ordinance is intended to enable tenants to participate in the ARO petition process, request correction of code violations and necessary repairs, and exercise their rights under local, state, and federal laws without fear of retaliation.

The City does not currently restrict no-cause notices to vacate other than to require certain noticing under the Apartment Rent Ordinance (ARO). Just Cause protections eliminate no-cause terminations of tenancy and limits the reasons that a tenant can be removed from a property. The proposed TPO would provide tenants impacted by specific circumstances with Just Cause

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protections for up to two years. The enrollment period would continue for two years from the date the complaint was resolved. Under the proposed Tenant Protection Ordinance, a property owner can still legally evict tenants for causes that are outlined in the Ordinance. These causes include damaging the building, refusing to pay rent, or otherwise violating their lease.

Staff conducted research of eight other cities in California with Just Cause protections similar to those in the proposed Tenant Protection Ordinance – see **Attachment A**. None of these cities require a tenant enrollment process because the protections are provided by-right. Some of these Just Cause protections are limited to tenants that have been occupying an apartment for a specified period of time. For example, in San Diego, a renter can be evicted without cause for the first two years of their tenancy. After successfully meeting the terms of their rental agreement for two years, the tenant receives Just Cause protections for the duration of their tenancy. If adopted, San José will be the only city in California that proposes to operate an enrollment based anti-retaliation ordinance.

The fundamental basis for this Ordinance is to provide increased protection against retaliation for tenants that assert their legal rights or report a problem in their apartment. Under state law, an owner is prohibited from taking certain actions against a tenant (termination of tenancy, significant rent increases, removal of housing services/amenities) for 180 days following the tenant's assertion of legal rights. The 180-day term of protection against retaliation may not be renewed. Owners may evict the tenant on the day after the protection ends.

Tenants often face challenges to asserting their legal rights. This may be due to lack of knowledge of state law protections, the lack of availability of low cost legal services, the amount of time taken to pursue such protections, and the limited term of six months from the retaliatory action. Furthermore, many tenants claim to be fearful of retaliation, harassment, or intimidation by their property owner should the tenant prevail in court.

The Tenant Protection Ordinance provides the basis for the six month "limited term enrollment" period that is established when the tenant makes a claim of material code violations, necessary repair and replacement needs, or violations of state and federal fair housing laws. The TPO supplements the short-term protections in State law and provides for extension of the protections under certain circumstances as described in this memorandum.

Provisions of the Proposed Ordinance

A summary of the proposed Tenant Protection Ordinance in the form of a fact sheet is provided in **Attachment B**. In developing the draft recommendations, staff considered the following sources of information: stakeholder input from tenants and landlords of varying size properties, public input, and research from other cities implementing local Tenant Protection Ordinances.

1. Scope – Section 17.23.1215

As proposed, the Tenant Protection Ordinance will regulate all apartment buildings and guesthouses required to maintain a Residential Occupancy Permit (ROP). There are about 6,772 buildings and about 97,901 apartments that meet this ROP requirement. By contrast, there are only about 43,814 apartments covered by the City's ARO. ARO is limited to apartments built and occupied prior to September 7, 1979.

The scope of this draft Ordinance expands beyond the scope of the ARO and includes all apartments covered by the Multiple Housing Roster (3-apartments or more, built at any time, excluding buildings with condominium maps). This is recommended to create consistency in the regulations that govern the multifamily rental stock, and to govern in the spirit of the Council direction that all renters should have protections when asserting their legal rights. Further, the inclusion of a significant portion of rental properties in this program allows for the achievement of significant economies of scale during program administration.

2. Enrollment – Section 17.23.1220, 17.23.1225

The proposed Tenant Protection Ordinance is an enrollment-based program of protections for tenants that allows complaint-based and status-based enrollment. The initial sections of the Ordinance detail who is provided protections through the "enrollment" process and describes the term of the enrollment.

Complaint-based Enrollment

The proposed reasons for a tenant to initiate a complaint and receive Just Cause Tenant protections against no-cause evictions include:

- An alleged Material Code Violation or the Necessary Repair or Replacement of a problem in the apartment (as defined in **Attachment C**);
- An alleged violation(s) of the Apartment Rent Ordinance including failing to register in the rent registry; and/or,
- Alleged violation(s) of state and federal fair housing laws.

Status-based Enrollment

Just Cause Tenant protections are also granted without a tenant complaint if the tenant resides in a building or apartment in which:

1. Material Code Violation: A Material Code Violation is found during a routine inspection performed by the City, or if the property owner refuses to allow the City to inspect the property, building, or apartments;
2. Refusal of Entry: The landlord refuses to allow a City official or personnel designated to inspect a structure containing an apartment and the City official or personnel obtains a warrant for inspection;

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3. Court Order: An apartment is the subject of a court order, injunction or other administrative action regarding violation of the housing, fire or building code;
4. Ellis Act: An apartment is in a building within a 12-month period prior to the removal of a rent stabilized building from the rental market under the Ellis Act;
5. Unregistered Apartment: The apartment is required to be registered under the ARO, and the apartment is unregistered;
6. Unpermitted Apartment: The living space or apartment is unpermitted; or
7. Short Term Rentals: The property owner is renting one or more apartments for short-term rentals (a violation of the Municipal Code Part 2.5 of Chapter 20.80 of Title 20).

Enrollment Term

The proposed Tenant Protection Ordinance provides protections to the tenant immediately upon the tenant providing written notification to the property owner or filing with the appropriate government agency. The protections will last for six months from the date the complaint is resolved (“limited term enrollment”).

In the case of a necessary repair or replacement, the property owner has 30 days to make the repair, or notify the City of actions taken to make the repair if the process will extend beyond 30 days. If the property owner makes the repairs within 30 days, the tenant protections will extend for six months after the repair completion. If the repairs are not made in that time, the tenant will receive full enrollment.

In the case of a material code violation, the tenant protections will extend until six months after the date of Code Enforcement inspection, and if a violation is found, until six months after the violation is addressed. Where a tenant has filed a fair housing complaint, the tenant protections last until six months or can be extended to two years if complaint held in favor of tenant after the matter is resolved (including final judgement, dismissal of the complaint, and settlement through agreement).

Staff is recommending a two-year “full term enrollment” period for the following issues:

- Material code violations or necessary repairs or replacements not completed within the 30 days provided or the extended time period allowed for the repair;
- Violations of the Apartment Rent Ordinance, including failing to register in the rent registry;
- Violations of state and federal fair housing laws;
- Failing to allow the City to inspect the property;
- Withdrawing a building under the Ellis Act (retroactive for 12 months); and
- Renting an unpermitted apartment to a tenant.

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The qualifications for Tenant Enrollment for the protection terms: commencement, limited enrollment, and full term enrollment, are outlined in the following chart:

<i>Tenant Enrollment</i>			
Issue	Commencement Immediate	6-Month Term Limited Enrollment from Resolution	2-Year Term Full Enrollment from Resolution
Material Code Violation	X	X	<i>Extends to 2 years if not completed or repair period extended within 30 days</i>
Necessary Repair or Replacement	X	X	<i>Extends to 2 years if not completed or repair period extended within 30 days</i>
Fair Housing Complaint	X	X	<i>Extends to 2 years if complaint held in favor of Tenant</i>
Violation of the ARO Petition	X	-	X
Owner refusal to allow inspection	X	-	X
Ellis Act <i>Tenants who have been given no-cause notices in the 12 months prior to an Ellis Act filing are eligible for relocation benefits.</i>	X	-	X
Unregistered Apartment <i>Effective January 1, 2020</i>	X	-	X
Unpermitted Apartment	X	-	X
Violation of City Short Term Rental Ordinance	X	-	X

3. Appeal Process – Section 17.23.1225

The tenant protections against no-cause evictions can be appealed by the property owner if the owner believes that the City's findings are inaccurate, the tenant caused the damage, or the tenant refused access to the apartment for the necessary repair to be made. The tenant will have the opportunity to notify the City if the repair that was requested was not completed, or not completed properly.

4. Eviction for Just Cause – Section 17.23.1230

The following section outlines the reasons by which a tenant that is enrolled in the Tenant Protection Ordinance may be lawfully evicted from the apartment. This list below includes issues or lease violations caused by the tenant, as well as five no-fault reasons for the tenancy to be terminated:

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I. Just Cause Terminations

The reasons for no-cause notice to vacate that signify fault on the part of the tenant are:

1. Nonpayment of rent
2. Material or habitual violation of the lease,
3. Substantial damage to the apartment
4. Refusal to agree to a like or new rental agreement
5. Nuisance behavior
6. Refusing access to the Apartment, requested in accordance in law
7. Unapproved holdover subtenant,

II. No-Fault Just Causes

Relocation benefits, as stipulated by the Ellis Act, must be paid when a Tenant is being removed from an apartment for reasons 8-12.

8. Substantial rehabilitation of the apartment
9. Ellis Act removal or demolition
10. Owner move-in
11. Order to vacate
12. Vacation of Unpermitted apartment

In cases where a tenant is enrolled in protections under the proposed Tenant Protection Ordinance, a tenant cannot be lawfully evicted except for the reasons outlined in the Ordinance. The property owner may serve a "Just Cause" notice of termination with one of the stated reasons above.

No-Fault Termination - Relocation Assistance Obligations

Tenants that receive Just Cause termination notices for one of the reasons described in the table above are entitled to relocation benefits. The type of no-fault termination will determine the level of relocation assistance benefits provided. When the tenant is being removed from the property through an Ellis Act withdrawal, they are entitled to receive relocation benefits provided by that Ordinance. Base relocation benefits provided in the Ellis Act will also be provided in the cases of evictions prompted by the owner's discretionary decision. Examples of an owner's discretionary decision include: choosing to move themselves or a close family member into an apartment; choosing to take the property out of the rental market; or the owner's election to perform substantial rehabilitation.

When a tenant is being removed from the property because the City has issued an Order to Vacate due to an unpermitted apartment or unsafe conditions, the tenant will receive the relocation benefits afforded to them under Part 11 of San José Municipal Code Chapter 17.20. Because the relocation benefit is not defined, staff is proposing to review this Chapter and will recommend potential changes.

Additional Tenant Protections to be added to the Apartment Rent Ordinance

Requirement to Offer a One-year Written Lease

Over the course of the Apartment Rent Ordinance update, staff has experienced a significant number of instances where the core issue or conflict would have been resolved if the Landlord and tenant had agreed to a written lease or rental agreement. In the absence of a written lease, not only is there the potential for misunderstandings regarding the terms of the oral agreement, but the lack of a lease agreement could create significant instability for a tenant. Aside from the value that comes from knowing that housing is secured for a full year, offering a 12-month lease aligns with the current and future administration of the ARO. The ARO requires that rent increases are only allowed to occur once in a 12-month period. The registration process created under the ARO will also capture tenant information once every 12-months.

Regardless of the stability and efficiencies created by offering a 12-month written lease, there will inevitably be tenants who prefer not to enter into a written lease, or would elect for a different term of the lease. The proposed requirement is only that the offer of a 12-month written lease be made in writing. Should the tenant not find either or both of those terms acceptable, the tenant could reject the offer in writing and settle on new terms with the property owner.

Remove Exemption for Apartments with Rental Subsidies

Under the current ARO, apartments with rental subsidies are exempt from the ARO requirements. This includes provisions that prohibit re-setting the rents if the prior tenant was evicted for no-cause. As a result, a property owner could serve no-cause notices to current tenants and re-rent the apartment to a tenant with a rental subsidy at a higher rent that exceeds the 5% annual rent increase limit of the ARO. Staff recommends making an amendment to the Interim Apartment Ordinance to remove the exemption for apartments with rental subsidies. This proposed change will require that all property owners who serve no-cause notices to tenants in ARO apartments must re-rent to new tenants at the prior rent rate. If approved, this language will also be included in the full-modified ARO that will be brought to City Council.

Research Relocation Benefits

The City's existing policies provide relocation benefits to tenants when the City deems that the building is no longer habitable. Tenants are also entitled to relocation benefits when a rental property is being converted to condominiums. With the adoption of the Ellis Act Ordinance, the City will create a third set of relocation benefits. Staff is seeking direction to develop a report with recommendations that will determine if it is feasible to unify these policies and provide clarity for implementation and enforcement of these policies.

Limitations of the Proposed Tenant Protection Ordinance

It should be noted that while the proposed Ordinance provides greater protections for tenants, it does not address all situations in which a tenant could be displaced.

- **Limited Enrollees** – The Tenant Protection Ordinance provides protections to enrolled tenants. There may be tenants who may not enroll in the program. These tenants will not receive protections if they are not enrolled. Some tenants may not be interested in reporting repairs to the City, resulting in no local protections for those tenants.
- **Substantial Rehabilitation** – Property owners may serve no-cause notices to vacate on tenants in order to perform the construction work associated with major building renovations. Under the Proposed Ordinance, enrolled tenants would have some protections. However, unenrolled tenants cannot receive benefits. In order to ensure tenants are not displaced by rehabilitation activity, Just Cause protections would need to be universal to all tenants via a Just Cause Protection Ordinance.
- **No-cause Evictions to Avoid Relocation Benefits** – As property owners contemplate removing their apartments from the rental market under the Ellis Act Ordinance, there is a risk that no-cause notices to vacate may be served on tenants in order to avoid payment of relocation benefits required by the Ellis Act Ordinance. Thus, tenants are enrolled during the 12-month period prior to the filing of a notice of intent to withdraw under the proposed Ellis Act Ordinance. This reinforces the protections that have been added to discourage such evictions. However, in order to ensure tenants are not displaced without receiving the relocation assistance benefits provided in the Ellis Act Ordinance, Just Cause protections would need to be provided for all apartment tenants.

Public Outreach

During the development of the draft Tenant Protection Ordinance, staff met with a wide range of stakeholders. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with property owners of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. For the first round of outreach, the Department hosted three public meetings on the Proposed Ordinance. Staff was invited to attend four additional meetings hosted by stakeholders. For the second round of outreach, the Department hosted four public meetings on the draft Tenant Protection Ordinance.

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A list of all the public meetings is provided below.

DATE	LOCATION
First Round of Public Meetings	
November 7, 2016	Cypress Community Center
November 14, 2016	San José City Hall
November 16, 2016	Bascom Community Center
December 5, 2016	Housing & Community Development Commission
First Round of Stakeholder Meetings	
November 30, 2016	Santee Tenants
December 4, 2016	Small Property Owners
December 13, 2016	Sacred Heart Community Service
December 19, 2016	Reserve Apartment Tenants
Second Round of Public Meetings	
February 8, 2017	San José City Hall
February 15, 2017	Bascom Community Center
February 17, 2017	San José City Hall
February 27, 2017	Cypress Community Center

The prior version of the Proposed Ordinance was released on January 18, 2017 and was available for a 45-day public comment period. The Housing Department utilized an electronic emailing system to notify developers and property owners impacted by the proposed ordinance in addition to those covered by the ARO.

Written comments were due to City staff by March 3, 2017. The public comment file can be found at: <http://www.sanjoseca.gov/DocumentCenter/View/66104>.

The public comment file is **Attachment D**.

EVALUATION AND FOLLOW-UP

The Housing Department will provide quarterly reports to the Housing and Community Development Commission regarding the numbers of tenants that utilize the program and obtain tenant protections. The number and result of appeals will also be reported. In addition, the Housing Department will provide a report to the City Council in 18 months determining the effectiveness of the Tenant Protection Ordinance.

POLICY ALTERNATIVES

Alternative #1: Do not implement an Ordinance that Adds Limited Tenant Protections

Pros: No additional fees would be assessed to owners for the staff required to implement this Ordinance.

Cons: Tenants will not be afforded any additional protections from retaliation.

Reason for not recommending: Implementing this Ordinance is consistent with previous City Council direction. Since the time of that direction, the Housing Department staff has experienced instances in which stronger tenant protections would have avoided the housing displacement of several vulnerable households.

Alternative #2: Implement an Ordinance with Just Cause Eviction Requirements with automatic enrollment for all tenants or automatic enrollment after a specified period of tenancy.

Pros: An ordinance with stronger tenant protections will eliminate the voids in tenant protections against unwarranted evictions that will exist even if the TPO is passed. In addition, an ordinance without an enrollment process will also be less expensive to administer as the protections are automatically applied to all tenants.

Cons: Having an ordinance that only allows evictions for cause is viewed by apartment owners as extremely burdensome. It arguably makes it difficult to evict "problem" tenants to the detriment of other residents.

Reason for not recommending: The Tenant Protection Ordinance as proposed is consistent with previous City Council direction.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office and the City's Planning, Building, and Code Enforcement (PBCE) Department.

COST SUMMARY/IMPLICATIONS

To implement the Tenant Protection Ordinance, the Administration plans to bring forward position additions as part of the 2017-2018 Proposed Budget. It is currently anticipated that the TPO will require the addition of three full-time positions to the Housing Department, one position to the Planning, Building, and Code Enforcement Department, and one position to the City Attorney's Office. The Senior Analyst in the Housing Department will be funded through a current position. These positions will be fully dedicated to the TPO Program. A table listing these positions is provided below.

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Tenant Protection Ordinance Implementation

Position	Department	Description
Senior Analyst	Housing Department	The Senior Analyst will serve as the Enrollment Team supervisor and will oversee the implementation of the Tenant Protection Ordinance. This position will be funded through an action to delete a current position and add as a new position.
Enrollment Analyst	Housing Department	The Analyst will work with tenants and landlords to ensure tracking of enrollment is accurate and communicated effectively.
Code Enforcement Inspector	Planning, Building and Code Enforcement	This position will respond to complaints made by tenants and will coordinate with Housing to track enrollment.

In addition to these positions, two additional positions are recommended support both the TPO and the ARO Programs. These positions are listed below.

Apartment Rent Ordinance Implementation Support

Senior Deputy Attorney	City Attorney's Office	This position will develop the legal documents and forms necessary to implement the ordinance and provide ongoing support to the overall ARO program.
Information System Analyst	Housing Department	This position will develop and support the system necessary to track the enrollment process and will support the ARO databases ongoing.

A significant portion of these position costs will be associated with the Tenant Protection Ordinance implementation. The positions, which are currently under review, and the associated impact on the fees will be brought forward to the Housing and Community Development Commission and the City Council prior to the FY 2017-2018 Budget. The increased costs address the TPO implementation only and do not address the additional staffing and resources that are expected to be necessary to implement the fully modified ARO that is expected to be brought forward in August 2017.

/s/

JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8310.

Attachments:

- A: Research of Eight Other Cities in California with Just Cause Protections
- B: Tenant Protection Ordinance Fact Sheet
- C: Material Code Violation & Necessary Repair and Replacement List
- D: Tenant Protection Ordinance Public Comments