

City Council Members

August 17, 2020

Regarding: Anti-Displacement Strategy

I suspect you have seen some of my letters opposing elements in the expansion of the ARO. This letter is a bit different, because I fear that you will pass this most recent proposal. I would appreciate your listening to my observations.

I believe it was in 2015 at the Roosevelt Center, where the initial Commission was hearing public views on Rent Control. The hall was packed. I was surprised at the large number of Vietnamese. I listened with great interest to their statements and disbelief in the ARO proposals. These people were owners of small rental units. Many of them were immigrants, whose entire family worked to earn enough to purchase a small rental. To see the looks of disillusion and disbelief in what they were hearing was very moving to me. It was the American Dream gone awry.

I assumed they bought property in the area, where they lived, old properties requiring much upkeep. These citizens made good landlords, willing to help their tenants, who were low wage themselves and susceptible to economic turbulence. Owners, who did their own repairs, and relied heavily on rent to meet the monthly mortgage, utilities, taxes and negative cash flow.

When the Anti-Displacement goes into effect, they will be hit the hardest, because their tenants are the first to be laid off. Some of them are scrambling to pay the mortgage with one, two or all residents unable to pay. If they lost rents in April, and the Covid eviction moratorium promises to go through to year's end, plus 90 days, we are looking at a year or more without rents. Most alarming is that the City doesn't consider them at all. Simply saying a resident owes you rent falls short of helpful. It is unbelievable to think how little consideration of their dilemma, and you are willing to see them economically destroyed. There in no effort on the part of the City to find out how bad these owners' circumstances are. I shudder to think about these and other owners, being sacrificed for the common good. Forced to sell and then forced again to give tenants First Refusal Right. Tenants don't have money so a non-profit or community trust can buy the property with private and City grants at a discount.

I sincerely hope you give this some thought before voting in the Anti-Displacement Strategy.

Thank you for your consideration

David Eisbach, owner, broker, manager

Members of the City Council

August 13, 2020

I believe it is time to look at the way the Housing Department conducts its business. I attended an outreach presentation of the Anti-Displacement program. I even wrote a paper on it. I can say that the rental providers were certainly against the following:

1. Right to legal counsel for residents under eviction. Just Cause has whittled down reasons for eviction to non-payment of rents. Indeed, even before the pandemic these actions were in the ninetieth percentile.
2. Neighborhood-based tenant preference is opposed on the basis that it takes from the right to select residents from owners.
3. Preservation strategy to monitor and prevent net loss of restricted affordable housing; these force owners to stay with a sinking ship.
4. Preservation Ordinance-giving tenants the right of first offer to purchase before going on the open market; now you want to tell an owner to whom they should sell.

These recommendations have not changed. Neither do they show any influence of owner concerns.

I look at the local Network participants with wonder, where is there anyone representing the viewpoint of the lowly owner?

1. Council Member Magdalena Carrasco, who has been an unquestioning supporter of rent control
2. Two members of planning, Shiloh Ballard and Rosalynn Hughey, I have no thoughts on this.
3. Working Partnerships, Derecka Mehrens. This is an arm of the South Bay Labor Council and an unabashed supporter of rent control.
4. Jacky Morales-Ferrand, Housing Director. I need not comment.
5. Law Foundation of Silicon Valley, Nadia Aziz. Its purpose is total support of tenants and it works constantly against owners.

This set up certainly gives the appearance of Conflict of Interest. I do not know if Working Partnerships is a grant recipient of the City of San Jose, but undoubtedly the Law Foundation is. The question might be, Do we, through grants and favor, support the lobbying efforts of these organization?

If you look at the requirements for the members of the HCDC, Housing and Community Development Commission, you will find that only one member represents owners of a rental unit, and one the interests of manufactured home park, the remaining eleven must represent low income, renters, or their interests. It is usually an automatic finding for the programs of the Housing Department.

David Eisbach

San Jose, The state of things-July 2020

I don't think it's healthy for a state to be ruled by a single party! Wisconsin and California come to mind. One doesn't need to be a senior to recognize that things have changed.

Eminent Domain, through the years, has meant the government can condemn a property as long as it is needed for the common good, and the owner is fairly compensated. The common good is for a school, hospital, road, public buildings or a rail system. However, it now covers a casino/hotel complex because it pays more taxes than your neighborhood; the XL Pipeline from Alberta, Canada's tar-sand oil runs through states down to the Gulf of Mexico to be shipped overseas. America's becoming the world's largest producer of oil must be for the common good, maybe at the pump?

Compensation for the forced loss of a property is the second part. Usually, the process calls for appraisals and negotiations on a fair price. The City of San Jose, acting on a housing crisis, which it partially generated itself, has broadened its rent control ordinance to the point of eliminating some private property rights, like capping rents, raising occupancy numbers, freeing residents from any utility costs, and stopping non-payment evictions during the pandemic; the state Judicial Council bolstered that move by closing all eviction courts for the duration and possibly beyond. This stops all evictions! If a tenant couldn't pay in April, they will be protected through August (That's five months at \$2,000)! San Jose toys with the plan of recognizing that the tenant owes back rents and expects they will pay half of the owed rents by year's end and the rest in a year, but eying the pandemic second wave, that's doubtful; the state talks of tax credits and suggests an owner sells them at a discount to raise money. It's a problem because tax, water, maintenance and mortgage go on, under the close eye of City Housing which makes sure tenants are decently housed. The end result is that the cost is extracted from income property owners, sacrificing those smaller marginal owners. Here we have the taking of private property without compensation by means of legislation.

Certain Non-profits like Sacred Heart and The Law Foundation of Silicon Valley add another level. San Jose receives and distributes federal Housing and Urban Development money to non-profits concerned with housing. One can argue that

HUD's grant to non-profit's can be used for political lobbying, but they are also recipients of San Jose's grant program. Sacred Heart and the Law Foundation are in the forefront of every council meeting effectively lobbying for residents, not owners. The urban development part in San Jose is lodged within bottom-line problems of builders, the NYMBY forces and the uncertainty of City Council actions via rent control.

I have seen the housing department led council make decisions over five years to tighten the tether on income property owners. The Covid 19 disruption has and is ruining many businesses but the city's housing action has systematically worked toward this end all along and is poised to continue. It doesn't show yet, but the more strict the controls are, there will be less interest in buying or building housing.

David Eisbach

Anti-Displacement 8/13/20

I fear we have come to a point, in the question of property rights, that leads to disaster with the implementation of the Anti-Displacement strategy. Imagine, if you can, that you own an income property. One, of three tenants, hasn't paid rent of \$1,500 since April. (\$7,500). Eviction is not possible until the pandemic is over. Note, you have a \$1,000 a month tax bill plus maintenance. You have a rent cap of 5% no matter what the CPI is. Finally, you file for Eviction.

1. The City gives the tenant legal counsel. You pay \$1,500 to your attorney. Tenant counsel, insists on a jury trial, even with non-payment of rent. You face months of court and attorney fees. You give the tenant \$10,000 to leave.
2. You remodel the apartment and are about to advertise, when the City sends you a local tenant under the neighborhood-based tenant preference strategy.
3. You consider creating a condominium and sell the apartments to separate buyers, or possibly divide the property in two with a zero-lot line. The City stops you because you are not allowed to reduce the affordable housing stock.
4. You decide to sell, but the City encourages the tenants to buy the property before you are allowed to place it before the general public.

If the City funds attorneys in eviction actions, selects a new tenant, stops you from taking your property off the market and forces you to deal with tenant buyers before entering the market, what's happened to the property rights? Would you buy this property? Would you build in San Jose?

David Eisbach