Draft Tenant Protection Ordinance
City of San José – Department of Housing

Public Comments Received as of March 3, 2017
My friend experienced unlivable conditions, including the owner breaking through a wall to make a passageway from their residence into her living space. This destruction encroaching her living space resulted in her having no privacy.

The owner's action was performed in anticipation of the owner placing their property for sale on the market.

The owner did provide her with notice to vacate the premises. However, this tenant was unable to find comparable accommodations within her ability to pay the high rental rates in this area. She is established in this area and chooses to not leave the area.

She has been forced to live in a much less desirable space that is not by any means comparable to her former accommodations.

Will this new ordinance provide her with any protection in acquiring a comparable residence?

Please let me know if this ordinance will be of any assistance to her, and if so, of any further information we are to provide.

Thank you for your consideration.

Ruth Kelso

"The price of apathy toward public affairs is to be ruled by evil men."  -- Plato

“The important thing is to never stop questioning.”  -- Albert Einstein

Power concedes nothing without demand.

"A veteran - whether active duty, retired, national guard, or reserve - is someone who, at one point in his or her life, wrote a check made payable to The 'United States of America', for an amount of 'up to and including his or her life.'" (Author unknown)

Every time a lesbian comes out, an angel gets her wings.
Share Your Comments
Comparta sus comentarios
Xin Đóng-Gộp Ý Kiến

We need statistics that show data about what is happening to tenants as well as just close.

(continued)

OR send your comments to: o envíe sus comentarios: hoặc gửi ý kiến của bạn qua điện thư tại:
tpo@sanjoseca.gov & ellisact@sanjoseca.gov

About You  Acerca de usted  Thông Tin Về Bạn

PRINT CLEARLY  IMPRIMIR CLARAMENTE  XIN VIỆT RO RÃNG

Name Nombre Tên: Diana Alvarez

Email Email Điện-Thông: [redacted]

check all that apply: marque todo lo que corresponda: xin chọn những điều ứng với bạn

☐ I live at an Apartment Rent Ordinance (ARO) apartment
   Vivo en un apartamento alquiler ordenanza.
   Tôi đang sống tại một căn hộ tuân theo Luật Thuê Chung Cu.

☐ I own or operate an (ARO) apartment
   Soy dueño o opero un apartamento alquiler ordenanza.
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☐ I am a member of the public.
   Soy un miembro del público.
   Tôi là một thành viên trong cộng đồng.
Share Your Comments  
Comparta sus comentarios  
Xin Đồng-Gổ Ý Kiến

The proposed to include the apartment built after September 1979, will likely go unnoticed by those owners unless the city defects this part of the proposal (past the council meeting in April) and outreaches to the owners if gives them a chance to respond.

OR send your comments to o envie sus comentarios o hàc gói ý kiến của bạn qua điện thư tai tpo@sanjoseca.gov & ellisact@sanjoseca.gov

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Why not create the logism 1st & find out the dimensions of the alleged abuse by owner before enacting these ordinances that limit some owner protections for abuses by unrelated tenants.

over continuado lìt qua

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Name Nombre Tên: __________________________

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Xin Đóng-Gốp Ý Kiến

I was very impressed with the proposed Ellis Act Ordinance and also the Tenant Protection Ordinance. I feel that they are needed in this day and age.

The speaker Rachel was very patient, helpful and friendly and the staff ever continued to help me.

OR send your comments to tpo@sanjoseca.gov & ellisact@sanjoseca.gov

About You
Acerca de usted
Thông Tin Về Bạn

Name: [Redacted]
Email: [Redacted]

check all that apply

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Xin Đăng-Góp Ý Kiến

The Ellis Act & Tenant-Protection Community meeting tonight was very educational and informative. I strongly agree that this ordinance should be enforced in all communities, and I have a better understanding of being a tenant & a landlord/owner.

OR send your comments to thaoellis@sanjoseca.gov & ellisact@sanjoseca.gov

About You

Name: [Redacted]
Email: [Redacted]

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Soy un miembro del público.
Tôi là một thành viên trong cộng đồng.
The speaker, Rachel, was very informative, friendly, and patient with all questions from the community.

I am well informed. The staff (with help, Lorena) were very helpful and informative with everything.

Thank you.
Share Your Comments
Comparta sus comentarios
Xin Đồng-Góp Ý Kiến

San José Ellis Act.
- Re-control will prevent new development on the old buildings.

SJ TPO
- Older buildings have older electrical systems which should not be considered as material code violation.

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tpo@sanjoseca.gov & ellisact@sanjoseca.gov

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☐ I am a member of the public.
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Xin Đồng-Góp Ý Kiến

Piénsenos que nuestra comunidad de bajos ingresos necesita una protección como éste, pues está siendo desenfocada indiscriminadamente de San José, uniendo dos cosas: pagar renta y terminar siendo sacados porque al propietario quieren momentos de la renta. Los tratamientos injustos son realizados a

OR send your comments to o envíe sus comentarios hoac giợ ý kiến cai ban qua dien thu tai
tpo@sanjoseca.gov & ellisact@sanjoseca.gov

About You Acerca de usted Thống Tin Về Bạn

PRINT CLEARLY IMPRIMIR CLARAMENTE XIN VIỆT RỘ Ränge

Name Tên: Nanna [hidden]

Email Email Điện-Thư: [hidden]

check all that apply marque todo lo que corresponda xin chọn những điều thích ứng với bạn

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Tôi là một thành viên trong cộng đồng.

Thank you  gracias  xin cám on
# Share Your Comments

**Comparta sus comentarios**  
**Xin Đóng-Góp Ý Kiện**

1. The Ellis Act Ordinance may give too much benefit to current tenants. How about the new tenants who will pay much higher rents (market)?
2. What percentage of current rental is in the future?

**Eviction?** Now the complaint about "no cause eviction" are less at average 30 complaint per year out of 4,000 ARO units < 0.1%. There is no need "just cause eviction" of San Jose.

OR send your comments to o envoie sus comentarios hoặc góp ý kiến cun bạn qua điện thoại:

**tpo@sanjoseca.gov & ellisact@sanjoseca.gov**

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## About You

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- [ ] I live at an Apartment Rent Ordinance (ARO) apartment
- [ ] I own or operate an ARO apartment
- [ ] I am a member of the public
Public Discussion:

Draft Ellis Act and Tenant Protection Ordinances

Share Your Comments
Comparta sus comentarios
Xin Đồng-Góp Ý Kiến

I put the ARO on the new building. It will discourage the development for the new building soon and later. There will be a lot of old ARO building less new building.

2) Notice the property owner by mail
the change for the Ellis Act, not only

3) ARO Units also other property too

4) Does this extent the ARO to the new building against the law?

OR send your comments to

tpo@sanjoseca.gov & ellisact@sanjoseca.gov

About You

Cerca de Usted

Thông Tin Về Bạn

name:

Email:

check all that apply

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Ellis Act will make San Jose a
run-down city. It will largely
discourage rebuilding so San Jose
will stuck with 100+ year old building.

OR send your comments to o envie sus comentarios holc guй y kiёn cнn ban qua диen thu tai
tpo@sanjoseca.gov & ellisact@sanjoseca.gov

About You   Acerca de usted   Thông Tin Về Bạn

Name: [Sey] [filled in]
Email: [email] [covered]

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Both Bills Act and TPO are one sided policy that only benefit the tenants.

If TPO covers more than just ARO units, the city must do outreach to all the owners who are going to be impacted. This is a very important law to all the property owners financially.

thank you  gracias  xin cám ơn
Dear Department of Housing,

I am writing to you as a rental housing provider in the City of San Jose. We are concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As property owners, we have a limited awareness of the conditions inside our units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the just cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant is commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely,

Property Owner
Chad
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Sincerely,

David

Property Owner

Selling homes since 1986

**I have not verified any of the information contained in those documents that were prepared by other people**
electronic mail message by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it is prohibited and may be unlawful.

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Nothing in this email shall be deemed to create a binding contract to purchase/sell real estate. The sender of this email does not have the authority to bind a buyer or seller to a contract via written or verbal communications including, but not limited to, email communications.
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Sincerely, Susie

Property Owner
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Sincerely,

Heather

Heather Property Manager
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Sincerely,

Property Owner
Paulo
Mobile:
Email:
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Sincerely,

Mary Anne [Redacted]
Property Owner
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Very truly yours, Angela M. Nolan, Benjamin Carpenter and Matthew Carpenter, rental property owners

Angela M. Nolan

Attorney at Law

California Real Estate Broker
"The ultimate test of a moral society is the kind of world that it leaves to its children.” Dietrich Bonhoeffer
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Gary Collins
Rental Property Owner
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Lucille M. Tersigni
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Janet Wright, Property Owner
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Property Owner
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Sincerely,

Sue Anderson

Property Owner
Nguyen, Viviane

From: Northlake Ambassador < >
Sent: Wednesday, March 01, 2017 10:30 AM
To: TPO
Subject: Response to the TPO

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Property Manager

Sharon LaBelle
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James A. Campagna

Rachel Campagna

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communication in error, please notify the sender immediately by reply e-mail, or by calling (408) 978-0400. Delete this communication and destroy all copies.

Please consider the environment before printing this email.
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Sincerely,

Paul Fogarty

I have been a landlord for many years and I have encountered many tenants. We try our best to screen for good people but we never know until the person moves in what we will encounter. There are certainly those who try to take advantage of the system, create problems, or create an uncomfortable environment for other tenants...or those who simply don't want to pay rent. We need swift legal protections in these cases. I am concerned that offering extra protections to tenants who violate their leases (or the law) could have severe unintended consequences, not to mention additional time, money and stress for the landlord. Not all of us landlords are wealthy and greedy. I am landlord who simply wants to help build a retirement plan and my rentals barely produce enough for me to live on. Added legal expense or frivolous code repairs could offset virtually all income for a landlord like...
me. Remember, people like me are "small business owners" who provide an important service to the community and need just as much protection as the tenants who reside in our properties.

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Kimberly M. Mattos, J.D., Broker
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Sincerely,

Regina Rogy

Property Owner
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Property Owner

Eric
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I think there will be a legal issue about this new draft of Ellis Act. It is against the Costa-Hawkins Act.

Sincerely,

Dong
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Maxine Lubow
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Sincerely,

Yitong Chu

Sent from my iPhone
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Sincerely,

Property Owner

Abele Zhang
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Sincerely,

current Section 8 Property Owner

Cynthia Lai
To God be the glory for all the things He has done.
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Property Owner
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Property Owner
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Property Owner
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<table>
<thead>
<tr>
<th>From:</th>
<th>Ivan Soon [redacted]</th>
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</thead>
<tbody>
<tr>
<td>Sent:</td>
<td>Thursday, March 02, 2017 8:37 AM</td>
</tr>
<tr>
<td>To:</td>
<td>TPO</td>
</tr>
<tr>
<td>Subject:</td>
<td>Tenant Protection Ordinance</td>
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</tbody>
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—Lisa Goodman
—Owner, Realtor®, Property Manager - Buy, Sell, Rent!
—Certified in Property Management from CAR (California Association of Realtors®)
—Past President of Santa Clara County Chapter of NARPM® (National Association of Residential Property Managers)
Hours of Operation: Monday-Friday from 9am-6pm; Weekends for emergency calls or by appointment
Dear Housing officials,

A healthy housing market must protect owners’ rights and promote flexibility of problem solving. Housing providers often risk their entire life savings, physical and emotional security to open up their house to strangers; San Jose must protect their rights in order to promote a healthy housing supply.

In general, the market is the best regulator of the rental business. TPO and relocation fees create artificial conditions for unscrupulous renters to scam property owners; the TPO as is now will devastate the housing supply as already done in other cities. San Jose should show greater wisdom to resist those pitfalls. Below are only a small peak into the problems to come.

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Yours truly,
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Hi,

Quick note to say that I’m in favor of the Ellis Act – make it as high as possible, say $1M or $2M. Units are usually removed from the market to be developed into more units, so if supply can’t be increased due to the Ellis Act, rents will keep increasing, which is exactly what I want. Thanks for making the punishment as high as possible.

Our units are updated and code compliant when rented. If it wasn’t for the tenants, they’d always be code compliant, so if you can ask the tenants to treat the units reasonably and stop doing stupid crap to create code violations, I’d appreciate it. And the TPO should have a provision in there for tenant created code violations, like pulling down smoke detectors, which is huge problem and happens frequently.

Jeff
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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Top Producer
Paul Dhaliwal, Realtor
Intero Real Estate Service
A Berkshire Hathaway Affiliate
10275 N De Anza Blvd,Cupertino,CA,95014
Looking to sell or buy? Call me for free Consultation!
I'm never too busy for your referrals
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Rick Smith
Multi Unit Property owner in San Jose
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Sincerely,

Mary Alvarez, Broker Associate
Windermere Real Estate/Valley Properties
1295 E. Dunne Ave, #220, Morgan Hill
521 Charcot Ave, #111-E, San Jose
1191-A N Main St, Salinas

www.mary.withwre.com
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Joe Brown | Regional Vice President & Managing Officer
Intero Real Estate Services, a Berkshire Hathaway affiliate

Ready for the next level in your career? See how I can help!
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**Be aware! Online banking fraud is on the rise. If you receive an email containing WIRE TRANSFER INSTRUCTIONS call your escrow officer immediately to verify the information prior to sending funds.**
NOTICE: The information contained in this message is proprietary and/or confidential and may be privileged. If you are not the intended recipient of this communication, you are hereby notified to: (i) delete the message and all copies; (ii) do not disclose, distribute or use the message in any manner; and (iii) notify the sender immediately.
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Sincerely,

SUIDHANSHU JAIN
118 SMITH CREEK DRIVE
LOS GATOS CA 95030

RENTAL PROPERTY AT: 4610 FALLSTONE CT, SAN JOSE, CA 95124.
At Bank of America, we want you to be delighted with the service you receive. If at any time you are not satisfied with the level of service you receive, please let me know. If I am not meeting your expectations, feel free to contact my manager. Once your transaction is complete, you may receive an invitation to complete a survey rating your satisfaction with this experience. Your feedback is extremely important to us and provides valuable insight into how we can better serve our customers.

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Sincerely,

Mike Bui

Sent from my iPhone
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KW Cupertino
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Misspellings are my iPhone's fault
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Sincerely,
Lee Smith

Misspellings are my iPhone's fault
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Gloria Radam
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Fernando

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Sincerely,

Dung Truong
Nguyen, Viviane

From: Jacqueline Nguyen
Sent: Thursday, March 02, 2017 4:23 PM
To: TPO
Subject: RE: Proposed TPO and Ellis Act Ordinances

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Sincerely,

Jacqueline Nguyen

Sent from my iPhone
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Steve Hanleigh
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Diana Strannigan
Alain Pinel Realtors
Pura Vida
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Bobbasso reator

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Sincerely,

Michael Ryan, Mortgage Broker
Mortgage Broker.. for YOUR Life

p.s. In reading this, who comes to mind in need of trusted, valid information about money and finance? Help us, help them. They will be glad you did and thank you.

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Lisa Dewey
Realtor®
Keller Williams Silicon City
2520 Mission College Blvd. Suite 102
Santa Clara, CA 95054

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Sent from my BlackBerry Z30 smartphone!

Greg Haas, Broker/Owner
Real Estate Investment Counsel
"Professional Service with Personal Care!"

CA BRE Lic. # 00700933
Green statement: No trees were harmed in the sending of this email, but billions of electrons were really agitated.
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Broker Associate / Realtor
Realty World Milestone Los Gatos

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David Mella
Realtor

www.Facebook/southsanjoserealestate.com
Intero Real Estate Services
A Berkshire Hathaway Affiliate
518 N. Santa Cruz Avenue
Los Gatos CA, 95030
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Henry Ngo
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Michael Temperino
Access Properties
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I bid you Peace, Prosperity, Happiness and Good Health in all that you do!!

Sincerely,
Lionel Madamba
Equity One Real Estate
Associate Broker/ Realtor

"Confidence thrives only on honor, on honesty, on the sacredness of obligations, on faithful protection and unselfish performance. "- Franklin D. Roosevelt, 32nd US President.

Sent from my iPhone
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Overly restrictive, over regulated, too complicated, unmanageable and will create more division in our city...TPO is getting out of control.

Sincerely,

*John Espinosa*
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It's a good life,
Grace Vaccaro

Visit my Website

Oh By The Way...if you know someone who would appreciate my services, please call me with their name and number and I will be happy to help them.
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Nicolette Virgilio

Old Republic Title

Sent from my iPhone
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Carla Griffin
Broker/CRS/SRES
B & A Realtors
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Dave Campagna
Loan Officer

PREMIER LENDING INC. | 1199 HOWARD AVE., SUITE 200 | BURLINGAME, CA 94010 | NMLS #238143
SATELLITE OFFICE: 51 E. CAMPBELL AVE., SUITE 107-B | CAMPBELL, CA 95008
WEBSITE: WWW.PREMIERLENDINGINC.COM

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james

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REALTOR®/Broker/Veteran
Coldwell Banker - Morgan Hill
President, 2010
South County REALTORS® Alliance
Director, 2009 - 2012
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California Association of REALTORS®
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I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Gary C. Rost  
Vice President - Sales  
COLDWELL BANKER - The Real Estate People  
2698 Berryessa Road  
San Jose, CA 95132
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Sincerely,

Kristina Rodgers
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Sincerely,

John Wunderlich  
Broker / REALTOR(R)  
Wunderlich Realty  
[redacted]  
CalBRE #01739226  
2013 President - South County Realtors Alliance
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Sincerely,

Sent from my iPhone

Regards,

Hong Le
California Investments
1370 E. Santa Clara St., Suite A
San Jose, CA 95116
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Sincerely,

Cristina C. Gonzalez
Alain Pinel Realtors, CNE

http://www.crisgonzalez.com/

See what my clients are saying on YELP
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Sincerely,

Jamie Sweeney
Contact number:
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Thank you,

Jeanette Hada, Broker
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Sincerely,
Dear San Jose Housing Department,

I am Property, Manager, and Landlord in San Jose. The new TPO is extremely overly complicated and a huge burden on property owners. I would like the Housing department and Council to rethink this action. You are about to create a tremendous burden on property owners and small businesses that is unfair and not necessary. We do not mistreat any of our tenants and in fact we are currently renting many of our units below the market rate. If the city persists in moving in this direction we will sell off our assets in this city and go somewhere else. Maybe you get a landlord like us or maybe you get another slumlord that will only hurt our city.

If your goal is to create substandard rentals in our city this is a great way to accomplish that. I would hope that all of you would like to see and maintain good quality housing for all those who choose to rent in our city.

Please reconsider this line of action and let’s bring tenants and landlords together rather than tearing them apart. I have seen similar actions like this backfire on a community and I would hate to see that happen here. Just look at the rental housing markets in east and west Oakland, Berkley, and San Francisco. Taking away all incentives for property owners who take a risk with their hard earned money to invest in our community is a recipe for disaster.

Respectfully,

Myron Von Raesfeld.
Dear San Jose Housing Department,

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Sincerely,

Cindy L. Simon

Sent from my iPad
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Sincerely,

Joanne McPhee
Nothing in this email shall be deemed to create a binding contract to purchase/sell real estate. The sender of this email does not have the authority to bind a buyer or seller to a contract via written or verbal communications including, but not limited to, email communications.
Dear Department of Housing Staff,

I own a rental property in San Jose. As the TPO is written is very confusing and complicated. Please adopt changes to the TPO that will simplify it not complicate it. As a property owner I may not know of conditions inside unless the tenant tells me, I inspect or the tenant reports a code violation. I think one instance of a 6 month cause protection per lease term would be reasonable.

TPO indicates that owners must show that code violations have been corrected before eviction for just cause. This may make the property owner powerless to prevent further criminal activity until the code violation is corrected. As a concerned owner, I ask that illegal activity be exempt from TPO.

I also ask that you to remove the requirement that good cause protection be provided to tenants for one year prior to a notice of intent to withdraw the property.

Thank you,

John M. Simmons
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Toni Pineda
Dowling Builders Inc
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Sincerely,

--

Richard Gray, CMI, CMR, CRIE, CIAQM

www.certified-environmental.com
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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner

Sent from my iPhone
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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner

Sent from my iPhone
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Tuan Huynh
Dear San Jose Housing Department,

I have attached my letter above. I am a current and future owner of property in San Jose. I am a local licensed Realtor and Certified Residential Appraiser in the State of California. Thanks for your consideration in this matter.

Sincerely,

David D. Dietrich
3/2/2017

Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Sent from my iPhone

Respectfully,

Tung Nguyen | [REDACTED]  
MBA | GRI | REALTOR® | Broker/Owner | [REDACTED]

Realty World - Six Sigma | www.rwsixsigma.com  
1879 Lundy Ave, Suite 122 - San Jose, CA 95131
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Sincerely,

Fred & Shirley Poole
Sent from my iPad
Dear San Jose Housing Department,

Your proposed policies and rent control regulations are costing San Jose active rental units in 2 ways. First, Investors are selling off single family homes that are currently housing Tenants. Second, and more impactful, Investors of mine have crossed San Jose off of their cities where they will purchase rental units.

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Joseph Weinstein

Owner/Investor/Broker
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Sincerely,

Thanks,

Thuan Nguyen
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Sincerely,

Kim Ngo/Broker Owner
Ezymax Realty Inc.

16686 San Benito Drive
Morgan Hill, CA 95037

www.EzymaxRealty.com
"Check us out on Yelp!"
http://www.yelp.com/biz/ezymax-realty-inc-morgan-hill

Referral is greatly appreciated!
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As a property manager, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

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Sincerely,

Malin Shah
Property Manager

If you see someone without a smile give him one of yours.
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Warmly,

#ALOHAAGENT | EQ1RE.com
"LIVE WITH ALOHA"
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Sincerely,

Aldo Gonzalez

Realtor

Interio Real Estate Services

http://www.realtoraldogonzalez.com/
http://www.zillow.com/profile/Aldo-Gonzalez/

“Reminder: email is not secure or confidential. Intero Real Estate Services will never request that you send funds or nonpublic personal information, such as credit card or debit card numbers or bank account and/or
routing numbers, by email. If you receive an email message concerning any transaction involving Intero Real Estate Services and the email requests that you send funds or provide nonpublic personal information, do not respond to the email and immediately contact Intero Real Estate Services To notify Intero Real Estate Services of suspected email fraud, contact: [Contact Information Redacted]
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Rolando R. Membrere
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Rondo R. Membrere | 5 EQ1 Real Estate 1762 Technology Drive #106 San Jose, CA 95110 Web | RondoMembrere.com Web | EQ1RealEstate.com
> Dear Department of Housing.
>
> > Under the proposal of enacting Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires me to know a full year in advance of our intent to utilize the Ellis Act. This is really an unreasonable expectation. This ordinance would also hurt the resale ability of my property as this one year requirement would impact the subsequent owner too...I urge you to strike down the requirement that "good cause protection" be provided to tenants for one year prior a notice to intent to withdraw the property is served.
>
> > In April, 2016, with over a dozen community meetings, numerous community input and all parties’ compromise, the council finally reached a consensus decision for all the key factors of the new Rent Control Ordinance. I don't understand why this is brought up again? What is the reason that city council’s decision is not respected by your department at all?
>
> > Relocation Assistance Ordinance was part of the council’s decision too, which is now being drafted as Ellis Act.
>
> > The San Jose Housing Department’s draft proposal missed a key component --- Means Tested, which is what an owner should have after subsidy the society by keeping the rents below the market years after years. The city should treat hundreds and thousands of mom and pop owners fairly.
>
> > As for “Re-Control” & “Return to the Market”, these two items have never been mentioned nor voted by the council, thus they shall be eliminated. Adding these into the ordinance will largely discourage or kill the redevelopment in the city, and make San Jose a rundown city in a long run. Property owners are not prisoners!
>
> > A good law is to protect all people and to treat all people equally. A bad law makes no one want to stay as a property owner. Who wants to be a prisoner? Do you?
>
> > Sincerely,
> > Property owner
> > Shufang Tian
> > 3663 Lago de Bracciano st, San Jose 95148
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who advised on and help investors, small and large to own rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As a Realtor, I know my clients have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead, we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Sincerely,

W. Gene Hunt
Realtor
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Xiaoqing Wang
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Sincerely,
Thelma Fedrick

Sent from my iPad
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Lucille B Chacón
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Jim & Linda Eastman
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Lourdes Sandoval
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Josephine Schooler
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Lih Galleguillos

Green Valley Realty
19676 Stevens Creek Blvd. #280
Cupertino, CA 95014
BRE# 01044010
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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner
Susan yang

Sent from my iPhone
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Richard Chou
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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner
Sent from my iPhone
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Sincerely,
Dana Do, Broker

Sent from my iPhone
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Sincerely,

Andrew Shu
2017, March 2.
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Jianmin Li
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Property Owner & current Section 8 landlord
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Sincerely,

Jennifer
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Eric
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Sincerely,

Duli Mao
Nguyen, Viviane

From: Kenneth Wong <>
Sent: Thursday, March 02, 2017 10:40 PM
To: TPO
Subject: RE: Proposed TPO and Ellis Act Ordinances

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Abida Syed

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Sent via the Samsung GALAXY S® 5, an AT&T 4G LTE smartphone
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Property Owner Anna Ling
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Sincerely,

--
Mike Bui

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Dennis F DeIsle Jr
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Sincerely,

Jason Zhou
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David A. Giarritta
Broker Associate
Fireside Realty
2111 Lincoln Ave
San Jose, CA. 95125
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Vince Trac
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Darcus D Simmons

[Brokerage Information]
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Property Owner, Frank
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Clearly, there is no right to housing. Here is no right to living in rental housing while, disturbing those around you without consequence. These protections will denigrate San Jose. Nothing is guaranteed and this “protection” is a carte blanche “for bad tenants and for failing rental business in San Jose. These laws lower our property values. I will never buy another rental property in San Jose under these laws. I will take my money elsewhere.

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Kim Mattos
Apartment Owner
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Thank you.

Connie
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Sincerely,

Joe Rich Ramirez I Intero Real estate

Owner
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Rosie Abano Realtor
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Be Well!
Jewel L. Leake, Realtor
"Curb Appeal Specialist"
Helping Seniors Transition
www.Mrs-Sold.com
www.BayAreaAndLocal.com
Mainstream Real Estate Group
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Sincerely,
Matthew Crawford
San Jose Condos Owner

Matthew Crawford
Intero Real Estate Services
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I am writing to you as a concerned citizen in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity.

Sincerely,

Paul J Nogosek
Dear Department of Housing,

I am writing to you as a rental housing provider in the City of San Jose. We are concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As property owners, we have a limited awareness of the conditions inside our units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the just cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant is commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner
Dear San Jose Housing Department,

I am writing to you as an interested party in having rental properties in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As a property owner, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

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Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, which is an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely,
Mikaela Rojas
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences. As a property owner, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term. Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead, we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that. Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, which is an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely,

--

Anne Hansen
Realty ONE Group
Dear San Jose Housing Department,

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Respectfully,

Dennis Steinbach
Dear San Jose Housing Department,

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Sincerely,
Larry Hernandez
Dear San Jose Housing Department,

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Sincerely,

Gabriel Ramirez
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Sincerely, Jacklyn V. Caulfield
Dear San Jose Housing Department,

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Sincerely,

Cindy
Dear Department of Housing,

I am writing to you as a rental housing provider in the City of San Jose. We are concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Sijia Wu

Sent from my iPhone
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Sincerely,
Dennis G. Lee
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Sincerely,

Irene Huang
Dear Department of Housing,

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Sincerely,

Property Owner
Just leave the just cause alone

Tenants know how to use you to get free rent.

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Sincerely,

Marianne Taylor
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Ning Yu
Cell: [Redacted]
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Sincerely,

Sent from my iPad
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Sincerely,

Karl Andrews
Xxxx xxxxxxxx

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-Nan Tingley
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Sincerely,

Diane LoVerde
Real Estate Broker and Property owner
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As a property owner, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead, we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, which is an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely,

Shannon Thwaite
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Andrew Pak
Dear San Jose Housing Department,

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Sincerely,

Sent from my iPhone
Dear Department of Housing,

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Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner
Jane Zhang
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns and manages rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Alec Cruz
Property Manager

Cal-Western Property Management
1270 S. Winchester Blvd. | San Jose, CA
calwestern.com
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Sincerely,

*CRS – Certified Residential Specialist, ABR® – Accredited Buyer’s Representative, SFR – Short Sale and Foreclosure Resource Certified*
Comments to the Tenant Protection Ordinance (TPO) Revisions

The Tenant Protection Ordinance (TPO) revision should strongly support the Good Cause provisions of the ordinance (Draft TPO, §17.23.1030), which thoroughly amend Staff for the protection of tenants who make complaints. Yields may evict a Staff and City Council to address the problem of retaliatory evictions cited is an incomplete solution.

The Silicon Valley Renters Coalition and San Jose once again consider a just cause ordinance to prevent retaliatory evictions of low-income tenants. Short of extending the good cause protections of the Tenant Protection Ordinance (§17.23.1030) at the end of a tenancy.

Given the economic insecurity of low-income renters, many live in fear of the eviction threat that leads to much-needed stability. The rights of tenants to be in stable housing, lords, and ladies below, we strongly believe that providing such protections apply to all Tenants and Not be Limited to Tenants with TPO protections apply that is not time limited will lead to the protection of immigrants, disabilities, and low-income families strongly advocate that:

1. TPO apply to all Tenants and Not be Limited to Tenants who Make a Complaint.
2. TPO Protections are Limited to Two Years.
3. Tenants Must be Able to Get Required and Admissible Evidence from the City to gainst Evictions in Court.
1. **TPO Should Apply to All Tenants, Not Just Those Tenants Who Make Complaints.**

   The TPO has a strong good cause provision that articulates and explains the reasons by which a landlord can evict a tenant, and allows for both fault and no fault evictions but allows for eviction without good cause after a time period of no more than two years. (TPO, §17.23.1030). We additionally commend Staff’s inclusion of protections against evictions for adding family members to a tenancy so long as it does not violate the building code. (TPO, §17.23.1030 B. 2 B. ii). So many families have been forced to share housing because of the high cost of housing, and many live in fear of making complaints for fear of evictions for over-occupancy. We also commend the limitation on a landlord’s ability to evict for substantial rehabilitation to actual health and safety, and requiring relocation benefits for those tenants, to ensure that unscrupulous landlords do not use the cover of making repairs to circumvent rent control protections. (TPO, §17.23.1030 B. 8).

   While these protections will help keep families in stable housing, only tenants who make a complaint are afforded these important protections. (TPO, §17.23.120.) TPO protections should apply to all tenants, and not just those who make complaints.

   We acknowledge that the TPO was extended from prior drafts to include protections for tenants who make complaints related to code enforcement, fair housing, or violations of the Apartment Rent Ordinance. However, this does not encompass all instances where a landlord may take retaliatory actions against tenants including evictions after tenant organizing and political activism, victims of landlord harassment, complaints for reduction in services for non-ARO units, and complaints related to immigration status. In order to fully protect tenants from retaliatory acts, TPO should apply to all tenants.

   Moreover, given the political climate, many immigrants and people of color fear making complaints for fear of losing their housing, or even worse, that a landlord may retaliate by calling immigration enforcement. TPO will not be effective if tenants fear making complaints, as those protections only apply to tenants who make complaints. Extending TPO to all tenants will provide tenants with stability in their housing, as a landlord would need a reason to evict a tenant, and thus good tenants will become long-term tenants. Stable housing leads to stable communities.

   Lastly, requiring landlords to provide a reason to evict a tenant does not punish landlords. Rather, it provides both landlords and tenants with stability, and it provides clarity as to when evictions can occur. Extending TPO to all tenants will not limit a landlord’s power to evict a tenant. A landlord is still empowered to evict tenants who break the lease or who cause a nuisance. (TPO §17.23.1030).
2. **TPO Protections Should Last the Entire Tenancy, and Not Be Limited to Six Months or Two Years.**

As currently proposed the maximum a tenant can receive TPO protection is for two years. We strongly advocate that the TPO protection last for the duration of the tenancy. A tenant is not adequately protected against retaliation if an unscrupulous landlord may simply evict tenants after a two year TPO period is up. We have seen tenants who have lived in a property in fear of retaliatory eviction for nearly a decade. Moreover, as proposed, the time frame from which the two-year clock begins varies based on the situation. This may lead to confusion as a tenant and landlord may not know when the TPO protections are over, and a tenant could be evicted without cause. Additionally, City staff could face hurdles administering who has TPO protections and for how long. A landlord may attempt to evict a tenant for no cause when a tenant still may have time remaining for a TPO protection.

No other city limits eviction for good cause to two years only. Over twenty cities have good cause protections for all tenants for the duration of their tenancy. A notable exception is San Diego, where a good cause protection starts two years into a tenant’s tenancy. Even so, there when the two-year period is over and a tenant has shown that they can be a good tenant, a landlord may only evict by giving a reason to the tenant for the duration of the tenancy.

3. **TPO Should Ensure That Tenants Will Be Able to Defend Against Evictions**

TPO must have mechanisms in place to ensure that tenants will be able to defend against evictions. Just because tenants receive TPO protections does not mean that unscrupulous landlords will not try to evict tenants without cause. Tenants need a simple way to know that they have TPO protections, and when they expire. Tenants will also need a means to prove in Court that they do in fact have TPO protection.

If TPO applied to all tenants, a tenant could simply point to the law to support their claim. However, since not all tenants will have TPO protections, the City must be able to have a means to produce a witness who can testify that the tenant does in fact have TPO protections and whether these protections have or will expire. A document that the tenant receives or can access would likely not be admissible in Court, as the document would be considered hearsay, or an out-of-court statement. Therefore, in order for TPO to help tenants successfully fight retaliatory evictions, and given the short timeliness in eviction cases, the City must ensure a process to respond to subpoenas and tenant requests in a timely manner, and find City staff available to testify in Court to the TPO protection.
4. **Conclusion**

We strongly believe the best way to protect tenants against retaliatory evictions, and to prevent displacement is a robust just cause eviction ordinance. Just cause eviction protections prevent landlords from giving tenants who complain a no-cause eviction notice. Just cause eviction protections lead to a safer, more sustainable housing stock and a more stable housing environment for all tenants.

While falling short of the full protections afforded by just cause, we recognize that with these improvements, the TPO can be an effective tool to prevent retaliatory evictions. However, in order to meet its purpose of protecting tenants, the TPO would need to have the robust additional protections we have suggested here, as well as continuous monitoring by City staff.
Comments to the Ellis Act Ordinance

The Tenants’ Rights Coalition strongly supports the Ellis Act Ordinance. The Coalition endorses the following goals: a) that the Ordinance should apply to any ARO property is sold; b) that prevent the displacement of low-income tenants and keep rent-ignorable units affordable to current residents; c) that low-income tenants have a right to refuse displacement as an option for landlords; and d) that the Ordinance should be amended in the following ways:

1. The Ordinance Should Apply to any ARO or Demolished.
2. The Relocation Benefits and Services Provided to Tenants Must be Specified in the Ellis Act Ordinance, and Must be Significant to Low-Income Families.
3. Non-Profit Developers and Tenants Must Have a First Right of Refusal Before an ARO property is Sold.
4. The Ellis Act Ordinance Must be Non-Compliance.

We support the staff recommendations enumerated below.

1. The Ordinance Should Apply to any ARO of Properties Demolished or Demolished.

Of the vast majority of tenants, the Ellis Act Ordinance provisions should cover any unit that will undergo demolition or renovation in situations where an entire property and all its complexes are multi-building complexes where just one
building in a multi-building apartment complex are renovated. Tenants living in those buildings should also get the protections of the Ellis Act Ordinance include limiting evictions to good cause and relocation payments.

2. **The Relocation Benefits and services provided to tenants must be specified in the ordinance, and must be sufficient enough to keep low-income families in San Jose.**

As currently drafted, the Ellis Act Ordinance could give the City Council discretion to determine on a case by case basis the formula for relocation benefits that displaced residents receive. We strongly believe that the Ellis Act Ordinance specify exactly what type of benefits displaced families received so all displaced families are treated equally. Additionally, it will ensure that displaced families receive the maximum relocation assistance possible.

Second, displaced families who qualify for “qualified assistance” should receive multiple benefit allotments if they meet multiple categories. The Ellis Act Ordinance provides a “qualified assistance” for certain families; specifically if anyone in the household is disabled or has a catastrophic illness, low-income, elderly, or has school-age children. Displaced families with multiple qualifying conditions, for example a family that includes school-age children and a person with a disability should get multiple qualified assistance benefits.

Third, the Ellis Act Ordinance must provide enough relocation benefits to keep low-income residents in their communities. As drafted, the Ellis Act Ordinance does not provide for a rent differential for those tenants who qualify under “Qualified Assistance.” We strongly encourage the City to include a rent differential, whereby landlords would be required to pay the difference in rent between market rate and what the tenant was paying for a tenant for as long as necessary to keep a displaced tenant’s new rent affordable but subject to the allowable per annum increases for ARO properties. Many low-income tenants who will be displaced will have nowhere to go as the number of rent-controlled units in San Jose diminish. We are especially concerned with the current crisis of the flooding and the fate of those families who were evacuated from rent control buildings that suffered much damage. The comparison of the proposed relocation benefits in San Jose to other cities shows that San Jose has a much lower relocation benefit than other cities, although it is one of the most expensive cities in California. Having a rent differential will allow tenants a longer period of time to find an affordable unit to rent and will ease the financial burden on low-income tenants. Additionally, the benefit for a security deposit must be the actual amount a resident pays for a security deposit. The suggest security deposit allowance in the matrix of $500-700 is much lower than most tenants pay.
Lastly, the responsibilities of the relocation specialist must be specified in the ordinance. The Ellis Act Ordinance must describe what type of services the relocation specialist must provide, how tenants can access such assistance, and consequences and penalties for failing to provide adequate services.

3. **Non-Profit Developers and Tenant Groups Must be Given a First Right of Refusal if the Property is To be Sold.**

We strongly encourage the City to adopt a policy that will give a first right of refusal when an ARO property is being sold to a non-profit developer and/or tenant organizations who will keep the property affordable. In the mobile home park context, the City has a mandated period of good faith negotiations for resident organizations who wish to purchase a mobile home park before it is converted to another use. Similarly, the City should encourage the preservation of ARO units by giving non-profit developers and tenant organizations the first right to purchase the property and a mandated negotiation period.

4. **The Ellis Act Ordinance Must Include Stronger Penalties for Non-Compliance.**

We encourage the City to strengthen the civil and criminal penalties for non-compliance to encourage compliance with the Ellis Act Ordinance. As currently drafted, criminal penalties are limited to $500.00 for the first offense, and a $1000.00 fine for any subsequent offense. There are no specific civil penalties. We strongly encourage the City to increase these penalties for non-compliance, and to attach a penalty for each violation of the Ordinance, including assessing a penalty for each unit where an owner fails to comply with the Ellis Act Ordinance.

5. **Conclusion**

We support the staff recommendations to the Ellis Act Ordinance. Given the age of ARO properties in San Jose, the Ellis Act Ordinance is important to keep units affordable and prevent the displacement of low-income residents. We believe that San Jose will benefit from a strong Ellis Act Ordinance that includes the Coalition’s suggest changes. We also strongly believe that an Ellis Act Ordinance would function most effectively with a just cause eviction ordinance, as both ordinances are necessary to prevent the displacement of low-income families from San Jose.
Comments to the Act Ordinance

The Tenants’ Rights Coalition strongly support the adoption of the Ellis Act Ordinance. The Coalition believes that the following goals: a) keep its affordable to current residents; b) prevent displacement of low-income tenants; c) provide an option for landlords; and d) promote to displacement.

In view of these goals, we propose the Ellis Act Ordinance stronger and to fully prevent the displacement of low-income tenants and keep rent-ignorable. We strongly believe that the Ordinance should be amended in the following ways:

1. The Ordinance Should Apply to any ARO of the Renovated or Demolished.
2. The Relocation Benefits and Services Provided to Tenants Must be Specified in the Ellis Act Ordinance, and Must be Specified in the Low-Income
   Fund.
3. The Relocation Benefits and Services must be Specified in the Ellis Act Ordinance, and Must be Specified in the Low-Income Fund.
4. The Ellis Act Ordinance should be rent-ignorable.

We support the staff recommendation of the Ellis Act Ordinance, but recommend the following enumerated below.

1. The Ordinance should cover any unit that will undergo renovation or demolition. A vast majority of tenants, the Ellis Act Ordinance provisions should cover any unit that will undergo renovation or demolition. In situations where an entire property that comprises a complex or a building in San Jose are multi-building complexes that are under just one
building in a multi-building apartment complex are renovated. Tenants living in those buildings should also get the protections of the Ellis Act Ordinance include limiting evictions to good cause and relocation payments.

2. **The Relocation Benefits and services provided to tenants must be specified in the ordinance, and must be sufficient enough to keep low-income families in San Jose.**

As currently drafted, the Ellis Act Ordinance could give the City Council discretion to determine on a case by case basis the formula for relocation benefits that displaced residents receive. We strongly believe that the Ellis Act Ordinance specify exactly what type of benefits displaced families received so all displaced families are treated equally. Additionally, it will ensure that displaced families receive the maximum relocation assistance possible.

Second, displaced families who qualify for “qualified assistance” should receive multiple benefit allotments if they meet multiple categories. The Ellis Act Ordinance provides a “qualified assistance” for certain families; specifically if anyone in the household is disabled or has a catastrophic illness, low-income, elderly, or has school-age children. Displaced families with multiple qualifying conditions, for example a family that includes school-age children and a person with a disability should get multiple qualified assistance benefits.

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We encourage the City to strengthen the civil and criminal penalties for non-compliance to encourage compliance with the Ellis Act Ordinance. As currently drafted, criminal penalties are limited to $500.00 for the first offense, and a $1000.00 fine for any subsequent offense. There are no specific civil penalties. We strongly encourage the City to increase these penalties for non-compliance, and to attach a penalty for each violation of the Ordinance, including assessing a penalty for each unit where an owner fails to comply with the Ellis Act Ordinance.

5. Conclusion

We support the staff recommendations to the Ellis Act Ordinance. Given the age of ARO properties in San Jose, the Ellis Act Ordinance is important to keep units affordable and prevent the displacement of low-income residents. We believe that San Jose will benefit from a strong Ellis Act Ordinance that includes the Coalition’s suggest changes. We also strongly believe that an Ellis Act Ordinance would function most effectively with a just cause eviction ordinance, as both ordinances are necessary to prevent the displacement of low-income families from San Jose.
Dear Mayor, City Council, and Staff:

Please see the attachments about the Tenant Protection Ordinance from the SV Renter's Rights Coalition. We look forward to discussing the comments further with you all.

Sincerely,

Nadia Aziz
Senior Attorney
Law Foundation of Silicon Valley
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

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Sincerely,

Eugene Fiance

Managing Partner

Fiance Properties
City of San Jose Traffic Solution, (This piece is related to the ARO)*

We have a transportation problem if not a dilemma in Santa Clara County, which includes the City of San Jose. How does this sound for a solution:

1. Everyone in San Jose, who owns a car that is five years old shall personally place his/her vehicle at San Jose's disposal for two hours daily during the work week and one hour on Saturday and Sunday. If owner cannot drive during the work day, they must drive during the evening, or achieve the balance on the weekend. If the owner pays someone else to do the driving, the hours required will be doubled. Cars not yet five years old are exempt.

2. They are required to visit three assigned pick up areas to carry passengers wherever they wish to go within the City Limits. Some the routes mirror the former bus line routes and others will require going into neighborhoods to pick up fares.

3. They are required to have special insurance to cover the their passengers.

4. They are allowed to charge $.25 per mile, with a maximum of $5.00, no matter where the passenger wishes to go. Special discount fares of 20% must be given to those holding low-income cards. and each driver should donate two free rides per week to a disabled or protected category rider.

5. The auto will have to have a safety inspection every quarter and the cost of any deficiency must be borne by the owner.

6. The vehicle will be clean and polished, with working seatbelts, working windows, child locks, and approved child seats, heat, air conditioning and fragrance control.

7. The driver will have to get a special license, at the end of a three weekend course at his own expense.

8. The City will hire full-time employees to maintain a protective program for passengers, to make sure they are not over charged, or mistreated. There will be a special committee to hear passenger complaints. If a passenger causes damage to the vehicle, the owner will present proof to the Travel Committee in the presence of the passenger. . If the passenger is not present, the case cannot proceed.

9. The owner/driver must maintain a log of pickups and drop off points, report monthly problems with the vehicle. Any repairs will have to be done, within one week. With proof, the Travel Committee may reduce the makeup hours by 25%.

10. If there is a major problem with the automobile and the owner has to spend over $3,000 in repairs, he may petition the Traffic Committee at City Hall and it may decide in fairness to take $400 of that and adjust the mileage figure from $.25 per mile to $.27 and adjust the cap from $5.00 to $5.25 over a period of 8 years, during which time no new claim may be made.

11. If the owner decides to leave the City transportation program, he must sell the auto and pay the higher of 50 % of the sales price or $1,500 to the City. It is assumed that the owner is acting in bad faith, so he must sign a ten years agreement beginning with the purchase of a new vehicle and re-entering transportation program after five years for an additional term of five years. The Committee may at its discretion adjust hours required and charges.

12. An annual tax of 4% of total income from fares will be charged, along with the City Business Tax.

I believe this plan would solve citizen transportation needs in San Jose. What do you think?

*Please read the letter first and then replace all mention of auto, vehicle, or transportation with ARO properties.

David Eisbach
Members of the Council:

I write to you as a concerned citizen of San Jose and I plead for your indulgence and attention to some of the things I say. Admittedly, I am an income property owner and a part of my business is the management of residential properties in the City of San Jose. I have four grave reservations because of the progress made during the revision of the ARO.

1. I do not think that the number of "Bad Actor" incidents as brought forward by the Housing Department is statistically viable enough to warrant the severe resident protection programs being developed. By their own admission claiming that 1.5 full time positions are insufficient to really manage the original ARO, they do not know the rents or conditions of the ARO housing stock.

2. The methodology (the study) used to form the basis was faulty in that the data was gleaned in studies of 50 and above units while the 50 and above units under the ARO make up only 9 percent of the ARO rental stock.

3. The so-called Advisory Committee was maneuvered so as to free Housing to interpret the results as they chose. While the make up of the Committee was split equally between tenant advocates and owner advocates, it guarantied that there could be no vote aside from a tie. Housing did not select any other citizen neither a tenant nor owner of an income property to act as a mediating influence and to actually decide something. Housing chose instead the Red, Amber, Green color code to signify "Stop, Undecided, Go!" This left them free rein. The Community Outreach efforts were the same, only this time passing out stickers to put on a board and putting limits at that.

4. The atmosphere of these revisions exudes a great mistrust of owners, assuming the worst intentions and prepares the most onerous propositions and punitive programs burdening owners. It is mystifying and disheartening.

I am enclosing three Observations:
1. Blue copy of the Ellis Act 2.16.17
2. ARO Tenant Protection Ordinance 1.18.17
3. ARO: Time to Pause and Reflect 2.26.17
In the midst of an expansion of rents in the Bay Area, the Housing Department of San Jose began devising a program to reform the City’s Apartment Rental Ordinance (ARO). Owners accepted the existing ARO as adequate with an 8% annual increase, pass-through provisions for extraordinary expenses of mortgage debt and unit repair. Notice period for ending tenure was 60 days if a tenant was in more than one year, this was subject to negotiation, but if the notice was 90 days the tenant had to vacate the property. If the vacancy factor was under three percent, there had to be a 120 day notice. The ARO agreed with California State Code that there need not have a specific reason to ask for the unit back.

Although numbers seem to be in flux, the City Auditor’s report of Nov. 30, 2016 places the units under ARO control at 45,820 about one third of the City’s 140,000 rental apartments. Single family units and duplexes are exempt. Those ARO units were all built before September 7, 1979.

Owners have argued that the survey ordered by the Housing department was skewed in favor of tenants. It is clear that Housing’s one and one-half full time positions were not able to keep up with the demands of the ARO. The statistics presented were so scant in numbers as to be inconsequential. The basis for comparison between older pre-Sept 1979 housing and those built afterwards were entirely taken from data on 50 units or more. Only 9% of ARO properties are 50 units or more. The survey asserted that there is no difference in maintenance costs of a 40 year and a 20 year old property. No notice that asbestos and lead paint are only found in ARO units. No effort was made to compare rents of a two bedroom in an older six unit with a laundry room and a 50 unit with club house, pool, air conditioning, and laundry. Using data from Census and governmental sources of the Bay Area, the results painted owners as deserving of more stringent control.

The outcome of Housing’ crusade led the City Council to approve setting a 5% annual increase, with a banking provision, dropping the debt pass through and creating a capital improvement element pass-through designed only for tenant safety. Tenants were to share 50% of the cost of new City employees for ARO activities. Duplexes remained exempt, and “Just Cause” did not pass.

The Council ordered the issue of rent registry and the number of full-time-positions in Housing researched, along with tenant protection, and the Ellis Act.

The City Auditor’s Report of Nov. 30, 2016 favored a unit registry, which was rejected by Council in favor of a full registry. They also dropped the banking provision of the rent raise change, and somewhere before this meeting, it was agreed, presumably by Council, that the owners would be responsible for supporting the unknown number of FTP added to the Housing Department. The Ordinance states that the ARO program will be self-supporting. This eliminates any concern tenants might have over an explosion of Housing employees.
A series of poorly attended and confusing formats at community meetings explaining the Tenant Protection Ordinance and the Ellis Act are just now playing out. What has become apparent is that it downplays the tenant’s responsibility of notifying an owner that there is a problem with the rental unit, instead, the tenant contacts the owner and the City or simply the City, which in turn orders an inspection and repairs to be performed within thirty days, and the resident is automatically protected for six months, regardless of any misgivings or even if there is no problem. If longer than 30 days then the tenant gets 2 years of protection. In both cases any action of eviction has to be with “Just Cause.” Housing wants to extend this program to all rentals, even those outside the ARO. The retaliatory eviction protection, where the owner wants to evict a tenant, presumably to increase his rent, which is already forbidden under the ARO is stopped by the City. In this case the cause must be just and the protection period is two years.

Emboldened by victories, Housing has devised an Ellis plan of such punitive and outrageous extravagances, it cries out as the taking of private property against the U.S. Constitution.

I beg the Council Members of the City of San Jose to slow down and be a little more cautious. I offer these suggestions as to a course of action that would be reasonable and fair:

1. Conduct an audit of the Housing Department’s full-time-employees, supported by time studies in preparation for additional FTEs. The full ARO cost will fall on the shoulders of owners, whose burden is already considerable.
2. Be wary of the new positions asked for. Pay close attention to procedures, forms and responsibilities of both owner and tenant.
3. Withhold your acceptance of the survey and the figures of Housing until there are actual ARO rent figures and activities of both tenants and owners through the Council authorized rent registry.
4. Because of the changing makeup of the Council, a review may be called for with the introduction of real data.
5. Direct Housing to notify all owners and tenants by mail about the ARO, its changes and upcoming meetings.
6. Please, allow each speaker two minutes to express their point. If a person doesn’t speak English, have their spokesman read the English translation. Halt the public input at three hours.
7. Allow questions to be asked of the Council Members and Housing staff, either by card or directed.

Respectfully submitted,

David Eisbach
1125 Andrea Dr.
San Jose, Ca. 95117
The Housing Department has stated under “Background”, ”The City Does not currently restrict no-cause terminations of tenancy other than to require certain noticing under the Apartment Rent Ordinance (ARO)…” Then Housing goes on to say.

“This ordinance was proposed because Staff received multiple statements from tenants who asserted they were afraid to complain about issues impacting their housing because they feared receiving a no-cause eviction. Issues that tenants have stated they were afraid to pursue included of housing, building, or fire code violations, harassment, intimidation, unfair and excessive rent or service charges, discrimination, participation in City public meetings, and threats pertaining to immigration status.

What’s lacking here are facts, which has become a trademark of Housing. It appears to me that the first quotation is an undesirable fact, which is attacked in the second quote in order to promote Just Cause:

1. What is meant by multiple? 1,000? 5,000? 10,000?
2. Who are these people? What are their names and have they signed a complaint?
3. What did Housing do for these people? Mediation? Consolation? Education?
4. Did Housing explain that State Law CC 1942.2 would protect them in all these circumstances. Did Housing explain that discrimination is covered under Federal Law and that they could go to Sentinel (tenants rights organization) for protection.
5. Did Housing explain that they must write a letter outlining the problems and allow the owner time to fix things, and then if he refuses and starts an unlawful detainer action, you are protected by State Law. Did Housing refer the complaint to San Jose City Code Enforcement, the bulldogs of the City?
6. What did Housing do? I think we have a right to ask.
7. Who proposed this change? Housing?
8. It would be good to hear about the community meetings opinion gathering procedure because there is nothing here resembling commentary by owners.

“The City Council directed staff to develop an ordinance that created protections for tenants… Tenants facing these circumstances would be enrolled and receive just/good cause protections for up to two years from resolution of the complaint…”

Again, who is asking questions? I think the following are germane:

1. State Law does not require just/good cause for evictions and in the case of retaliation, the tenant is protected for six months from rent rise, eviction if retaliatory and the repairs are ordered.
2. If the problem is resolved, what is the purpose of the two years? What is the status of the owner? Can the owner raise rents 5% under ARO rules?
3. If the tenant came to Housing because they were afraid of the landlord, wouldn’t the owner then learn of the problem?
4. How is the owner to be informed of the problem? If the State requires notice from the tenant, why does Housing think it should not also be in writing before they get involved?
5. What we have here is something like a speed trap. The owner is not notified of a problem, the tenant goes to Housing, Housing does its duty and the tenant is awarded an extended two year lease.

6. Why does Housing think that their role is the best use of City employees?

7. If no other city has a tenant enrollment requirement. Why does Housing believe it necessary?

“Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.

1. If the tenant has signed a rental agreement forbidding any subletting and they have moved someone in unknown to the owner, what does sufferance mean?

The City Council proposed, the TPO will be a complaint-based program that provides protections only to tenants experiencing one of the conditions outlined in the ordinance. Effective implementation of the TPO will require use of the rent registry to ensure that tenants receive the proper term of good cause and that clear communication is occurring with the property owner.”

1. The term “complaint based” seems to be what Housing has now. Sitting around waiting for a complaint and sighing because there are only 1.5 City employees plus a new supervisor to handle it.

2. The introduction of the registry, recently passed by the Council, has nothing to do with the TPO as described. If you have a bad actor owner, who’s hands are slapped for mistreating a tenant, does it require a full-time City employee to watch him for two years?

3. Is this registry worth $89 per unit to perform this kind of business?

4. The City has asked Housing for the number of new employees that would be required to conduct business. There was none given. I guess the City will trust Housing on that score.

“If no Material Code Violation or Necessary Repair or Replacement is identified following an inspection of the Rental Unit or structure containing a Rental Unit, Good Cause Protections shall continue for two (2) years after the City is allowed access to the structure for such inspection.”

1. Why? Whom does Housing think they are dealing with? Here a tenant makes a spurious claim to cause the owner problems and he is rewarded with a two year extended lease. Does this sound a little one-sided?

“For purposes of this subsection (3) of Section 17.23.1020(C), inspections shall include but are not limited to fire and life safety inspections, and Code Enforcement inspections.”

1. So a simple complaint by a tenant can bring a Code inspector out and he will look everywhere for something. It keeps getting better and better for the owner.

Respectfully submitted by David Eisbach, Broker, Owner, Manager deisbach@sbcglobal.net
Here are some entries for the TPO comments.

Thank you

David Eisbach
RE: Draft Recommendations for the City of San Jose Tenant Protection Ordinance and San Jose Ellis Act Ordinance

Dear San Jose Housing Department,

I am writing on behalf of the Santa Clara County Association of REALTORS®, representing over 6,000 members in the real estate business. We all agree that action is needed to solve the affordable housing shortage, but we do not believe that you can regulate your way to more housing for those that need it most. We have deep concerns that landlords are being asked to comply with regulations in the proposed Tenant Protection Ordinance (TPO) and Ellis Act that are onerous and will not achieve the stated goal of making San Jose a more affordable place to live.

The Draft TPO says that the housing department received “multiple complaints” from tenants that had issues with their landlords, which is the rational for the proposed ordinance. This is not a statistical justification of why an ordinance is needed, but a rhetorical one. In fact, the San Jose City Auditor’s own data shows that less than one percent of tenants in ARO units register a complaint on an annual basis. Below are the specific concerns we have with the TPO and Ellis Act proposals.

17.23.1015 Scope; Regulations.

We believe that by regulating small landlords as mentioned in item 3 and 4 would unnecessarily onerous for individuals that do not consider themselves professional property managers or landlords. The initial intent of the TPO was to protect tenants in ARO rental properties that are already heavily regulated. Items 2 and 3 would impact single family homeowners and present a unique challenge in both implementation by the City and be extremely burdensome for homeowners. In that vein, we ask that you consider not regulating market rate properties with less than sixteen units, which is the number of units required by state law for onsite property management. This will strike a fair balance between small property owners and the interests of the city.

17.23.1020 Qualification for Enrollment.

This section is overly broad and that landlord is assumed guilty before he or she can even resolve an issue or material code violation with the tenant. We believe that the Just Cause protections
described as “Good Cause” in the draft ordinance should not apply on a complaint basis, but in a way that more objective and fair to the landlord. As it stands, this provision may be legally difficult to enforce and may infringe on landlord’s right to due process.

Additionally, the scope includes unpermitted units stating that a tenant is entitled to good cause protections, “until two years after the unit has been permitted.” In many parts of the city this would require complete tear downs and rebuilding of converted garages and other structures and would in reality displace more people than it would help. San Jose has not passed an ordinance for homeowners to legalize certain types of Accessory Dwelling Units and this ordinance may have the impact of displacing many people in this form of naturally affordable housing.

17.23.1030 Good Cause Protections.

The standard for imposing good cause protections on landlords is very low and standards for evicting a bad tenant are very high creating an imbalance in the landlord tenant relationship. This makes assumptions that the landlord only has a responsibility to one tenant, when they have an obligation to providing safe quality housing to all their tenants. Therefore, we believe that the city should not consider the proposed list an exhaustive one of reasons that a tenant can be evicted. A clause that allows for circumstances to be considered like the tenant committing a crime should be included.

17.23.960 Effective Date of Withdrawal; Extension of Tenancy.

The Draft Ellis Act Ordinance requires a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This is an unreasonable expectation that will lower land values for owners and lower tax revenues to government by hurting the resale ability of rental buildings. We ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is serve.

17.23.950 Relocation Assistance.

The city should means test the Ellis Act relocation assistance provision. By applying all assistance equally the city will allow for payments very high earners such as doctors and lawyers while raising the cost of development, which will be directly borne by first time and new homebuyers of the redeveloped property. The goal should be to make housing more affordable, not less.

17.23.930 General.

The Fee structure proposed in the Ellis Act draft is also flawed. Asking for property owns to pay both tenants and the city upfront putting their project at risk of making a return. We believe that
any payments structure should be further analyzed in consistency with other fees the city imposes on new development.

We stand ready to work with you on real solutions that will stabilize prices and communities such creating more housing and helping people find paths to homeownership. Thank you for your consideration of our comments.

Sincerely,

Vincent Rocha
Director of Government Affairs
Santa Clara County Association of REALTORS®
Hello,

Please see the attached letter for SCCAOR's Comments on the draft Ellis Act and Tenant Protection Ordinances.

Regards,

Vincent Rocha | Director of Government Affairs
Santa Clara County Association of REALTORS®
1651 N. First St., San Jose, CA 95112
Imagine you just moved your family into your new home. You are looking forward to your children walking to school and riding bikes to the park with them. But you can’t because a neighbor is involved in illegal activities and you don’t feel safe. This is what will happen to those who live in parts of San Jose if the Tenant Protection Ordinance (TPO) passes as proposed.

I agree that we need to protect the vulnerable Tenants from the bad Owners. An assumption is being made that the TPO will do this without consequence to their safety. Here is another perspective, with facts and examples, that challenge this assumption.

**8 OF THE 9 MOST DANGEROUS BAY AREA cities have a “CAUSE” EVICTION ORDINANCE**

The problem is a Cause Ordinance doesn’t only protect good Tenants from bad Owners. It also gives a safe haven for dangerous Tenants that threaten the neighborhood. Here’s why:

1. It is all but impossible to get written evidence from a Tenant for a Cause eviction for fear of retaliation. Tenants in low income ARO neighborhoods are especially vulnerable and tend to exist in a “no tell” culture. Many Tenants will not do what's needed for a court eviction because they live in fear of the dangerous Tenants. They know snitches get stitches or worse. Today, Tenants tell their Owner when there’s a problem. The responsible Owner verifies the situation and gives a No Cause eviction to the problem Tenant. For example:
   - I had a drug dealing Tenant. I had witnesses and was going to go for a Cause Eviction. The police would not show up when called. The witnesses would not come forward when asked even after they complained about it. The only way I could evict the Tenant to make it safe for the other Tenants was with a no Cause Eviction.
   - Michael Fitzgerald, with San Jose’s Housing Commission, had a drug dealing Tenant. He said, “Even my Police Officer Tenant wouldn’t report the drug dealer to the SJPD for fear of retaliation. Since he was not arrested for dealing at that address, my legal representation couldn’t use this for a Cause eviction. The legal system bought them an extra 5 months. The other Tenants were terrorized the entire time.”

2. Problem Tenants know how to game the system. The TPO would give a safe haven for much longer than the State law provides. For example:
   - A Owner told a Tenant that was harboring a gang member involved in the killing of a local high school student that the Tenant needed to kick him out. The Tenant trashed their unit and called Code Enforcement. The Tenant was then protected under California’s current state anti retaliation provision.
   - A Code Enforcement officer told me that a Tenant had stopped up his toilet, complained to code, and got to live rent free as a result. This happened with the same Tenant in 2 separate houses. The Tenant was a plumber.
SAN JOSE HAS BEEN SAFER THAN EVERY LARGE CALIFORNIA CITY THAT HAS A CAUSE ORDINANCE

San Jose has been #6 on Forbes’ list of safest cities. Cities with a Cause Ordinance have significantly more crime than San Jose. Source: USA.com With the proposed Tenant Protection “Cause” Ordinance, how long will this good standing last? These Problem Tenants, left unchecked, dominate the neighborhood. Tenants are either forced to live in fear or move out of their affordable unit and into a more expensive market rent unit.

ARO UNITS MOSTLY OWNED BY MINORITIES & SMALL MOM AND POPS WHO RECEIVE FEW COMPLAINTS

The information used by the Housing Department and the decisions being made are based on buildings with 50 or more units. This represents less than 1% of the total ARO Units. These buildings are owned by bigger companies, with employees who speak English as their first language, and are better able to handle the complexities of the proposed TPO.

Most ARO units are owned by Minorities, Immigrants, and Small Mom and Pops who own less than 9 units and work(ed) a full time job to own their small building. The Owners and Tenants are two sides of the same coin and interdependent on each other. Regulation is hard on small businesses because it’s expensive and complicated to deal with the administrative bureaucracy. Many Owners speak English as their second language which compounds the problem.

FY 2010 to 2015 Eviction complaints averaged 28 per year. Even after widespread media attention about Rent Control, inquiries were only 1.5% of ARO units. The TPO creates a lot of regulation burden given these numbers. Note: ARO rents were on average less than 50% of market rents. (Sources: Housing Department & City Auditor’s Data)

UNINTENDED CONSEQUENCES: JUST CAUSE = INCREASED CRIME

There is a direct correlation between a city being more dangerous because of having a Cause Eviction ordinance. The Tenant Protection Ordinance creates a Cause ordinance. This will make it so the Owner is powerless to prevent further criminal activity until the code violation is corrected and the 2 years have lapsed. Those who aren’t aware of this have not done their homework or experienced what it’s really like in an ARO neighborhood with small buildings.

The cities with a Cause Ordinance are more dangerous because the Owner can’t protect the good Tenants from the bad “actors”. Here is proof a Cause Ordinance is bad for San Jose:

- Based on FBI violent crime statistics, 8 of the 9 most dangerous Bay Area cities have a “Cause" eviction ordinance.
- These cities all have crime above the state's average.
- San Francisco is the 10th worst big city in the USA for property crimes.
Los Angeles has 2 times more violent crime than San Jose. 

Who are the bad “actors” that will be protected by the TPO?

- California’s office of the attorney general report on crime says: 90% of the violent crime in California is due to illegal activities organized by Transnational Criminal Organizations. (TCO) San Jose is a hot spot for TCOs. “Transnational criminal organizations threaten the safety, health and economic wellbeing of all Americans, and particularly Californians. Gang membership is up 40% . . . involves human trafficking. . . significant seizures of drugs, weapons, and cash.” Source: https://oag.ca.gov/transnational organised crime
- San Jose is especially vulnerable with understaffed police force.
- In San Jose, drug dealing (meth, heroine, crack) is the most visible illegal activity. At higher levels in the organization, this has been accompanied by Human Trafficking. (Ex: Recent bust at a North 5th St house just 2 blocks from City Hall)

**PLEASE PROTECT TENANTS, AFFORDABLE HOUSING, AND SAN JOSE**

We (San Jose's ARO Owners) are the ones who provide affordable housing and protect our good Tenants from the bad “actors”. Be wary of copying other cities that have worse ratings for affordability, safety, and growth. (Data available upon request.)

Please find a more effective way to protect the at risk Tenants from the bad Owners. Please:

- Set the TPO aside until the Rent Registry is implemented and better data is available.
- Use other tools (including code enforcement and non profits) to identify and go after Owners who bully their Tenants as well as flout the law and common civility.

If you must vote for the TPO, please Keep San Jose safe for our vulnerable Tenants and make sure the following are fixed before the TPO is finalized:

- Exclude any illegal activity and things Tenants have control over (cars, garbage, graffiti, breaking things). Note: dangerous Tenants and their visitors are known to use inoperable cars to hide drugs, cash, and weapons.
- Simplify the process. Don’t put the minority and small mom and pop Owners at a disadvantage with the complex process proposed.
- Make the Tenant notify the Owner of any needed repairs first in writing. (This was in the original proposal for a Cause ordinance.)
Here are my comments about the Tenant Protection Ordinance for public comment:
Thank you for removing my name.

Regards,
Roberta
March 3, 2017

Rachel VanderVeen
City of San Jose Housing Department
200 East Santa Clara Street
12th Floor
San Jose, CA 95113
TPO@sanjoseca.gov.

RE: City of San Jose Draft Tenant Protection Ordinance

Dear Ms. VanderVeen:

We are writing regarding the Draft Recommendations for the City of San Jose Tenant Protection Ordinance ("TPO"), chapter 17.23 Part 10. This bill would enact anti-retaliation provisions for tenants in San Jose by creating good cause protections for tenants who complain about code violations and needed repairs in their units or otherwise exercise their rights under the Apartment Rent Ordinance ("ARO").

We write to comment on the Draft Ordinance because many of our clients fall under the intended beneficiaries of the proposed Ordinance. Our mission at Bay Area Legal Aid (BayLegal) is to provide meaningful access to the civil justice system through quality legal assistance regardless of a client’s location, language, or disability. We serve low- and very low-income members of our Bay Area communities, and serve Santa Clara County residents from our San Jose office. Our clients include the working poor, seniors, veterans, homeless individuals, youth at risk of homelessness, and people with disabilities.

The goal of having a mechanism that encourages Landlords to make repairs without subjecting Tenants to retaliation is laudable, but given the proposed steps and timelines it seems like a difficult process for tenants, especially for tenants with disabilities and limited English proficiency. This is a material concern, as "ARO renters have the largest share of residents who speak English 'Not Well' or 'Not At All.'\(^1\) The existence of two enrollment levels, all the various deadlines for tenant's to submit documentation, appeals, etc. all individually and collectively stand as an incredible barrier to the efficacy of the protection scheme.

Further, the specific fear of "no-cause" evictions will chill the number of tenant complaints filed with the City because any mistake or missed notice will deny Tenants the protections proposed in the TPO. In the extremely expensive and low vacancy rental market that currently exists in San Jose, tenants are often deeply afraid of exercising any of their legal tenant rights. For a tenant who has upset their landlord in any way, even if it is a completely legal tenant demand, they are in all practicality facing the specter of an eviction. A tenant that exercises their right to

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\(^1\) San José ARO Study Final Report, April 2016 at Page 75 available at https://www.sanjoseca.gov/DocumentCenter/View/55649
complain to the City, to Code Enforcement, to make habitability demands risks being served a "no-cause" notice when and if they fail to meet the incredible administrative burdens of the TPO.

It is imperative that "Know Your Rights" campaigns, workshops/presentations, and tenant materials should be provided to all tenants residing in units subject to the San Jose Apartment Rent Ordinance. Further, these materials should be made accessible to those with disabilities and provided in multiple languages. Whenever a notice, deadline, or other obligation is put on the Tenant those obligations must be clearly, explicitly, and repeatedly provided to Tenants to allow them the highest probability of success under the TPO procedure.

While we appreciate the City's efforts to provide additional protections for tenants, we continue to believe that the most comprehensive and effective manner of providing these protections is through a general good cause or just cause ordinance. In the absence of such an ordinance, BayLegal supports the concept of this more limited form of tenant protection but would like to articulate several key concerns of the ordinance as written.

17.23.1020 Qualification for Enrollment

(A): Limited Term Enrollment; Commencement

There is no clear guidance on how a Tenant notifies the Director of commencement via complaint with Code Enforcement or with the filing of the lawsuit. Because these remedies are exercised outside of the Director's purview, it would be greatly helpful to allow for a unified Tenant Commencement procedure. The Director or proper agency could make a unified Request for Necessary Repair or Replacement for the Rental Unit form/or online submission process that includes notice for the Code Enforcement complaint and the Tenant lawsuit. Further, that unified procedure should include explicit notice that if the repair is not completed within thirty days of Landlord's receipt of the request, Tenant is entitled to protections under Full Enrollment. Additionally, the unified process will need to be thoroughly publicized such that Tenants could exercise those protections.

(B) 1: Limited Term Enrollment, Term

The Landlord should be required to provide affirmative evidence that the Notice of Satisfaction was also provided to the Tenant. Further, the Notice of Satisfaction should be effective, only if it contains language indicating both:

- that the Tenant has ten (10) days from the receipt of the Notice of Satisfaction to appeal the presumption of Resolution
- and explicit instructions on how Tenant can appeal the presumption.

(B) 2: Limited Term Enrollment, Term

Relying on Code Enforcement to make determinations of Material Code Violations, without providing Tenants any appeal process is problematic. We have had clients contact Code
Enforcement to inspect properties. Code Enforcement has either failed to inspect, or to make proper findings about the

17.23.1025 Appeals of Enrollment Status or Completion of Repair

(A) Landlord Appeals of Enrollment

The procedures for Appeal of Enrollment under this section do not provide Tenants a meaningful opportunity to respond to the Landlord's allegations of diligence or Tenant misconduct under paragraphs 17.23.1025(A)2 through 17.23.1025(A)4. Unlike 17.23.1025(A)1, there is no opportunity for Tenant to contest any allegations raised by the Landlord. Tenant should be provided the full and fair opportunity to submit evidence and contest all allegations made by the Landlord during the Appeal of the Enrollment protections.

Further, 17.23.1025(A)4 should be amended as follows:

Landlord must provide written request for access pursuant to California Civil Code §1954; failure to comply with California Civil Code §1954 requirements presumes that Landlord did not have a right to access the premises, and Tenant may reasonably refuse access.

California Civil Code §1954 provides the proper procedure to protect Tenants from improper entry into the Rental Unit by the Landlord. By explicitly citing to this provision of the state law, the Tenant is ensured her rightful protections against unlawful entry by the Landlord and provides the Tenant adequate notice.

17.23.1030 (B)8. Substantial Rehabilitation of the Unit

The advance notice Landlord is required to provide to Tenant under 17.23.1030 (B)(8)(c) should be explicitly included into any Notice to Terminate based on Substantial Rehabilitation of the Unit. Failure to include this explicit notice in the termination notice should render the Notice invalid.

Further, under 17.23.1030 (B)(8)(d), the provision to allow the Landlord to submit a written waiver by the Tenant of their right to reoccupy the premises is ripe for abuse. As we discussed in our comment to the Draft Ellis Act Ordinance, we have seen Landlords provide stacks of papers to Tenants for their signature on myriad documents, including Mutual Terminations of tenancy and Tenants' Notice of Termination of Tenancy. Bombarding Tenants with documents confuses most tenants, but is particularly dangerous for Tenants who are elderly, disabled, and have limited English proficiency. The Director and/or the agency overseeing this procedure should provide a separate document or procedure by which a Tenant can waive their right to reoccupy. Allowing the Landlord to provide proof of a waiver of a substantive right of Tenant and from which the Landlord will materially gain is a clear conflict of interest and is vulnerable to systematic abuse.

BayLegal Comment on Draft Tenant Protection Ordinance
Material Code Violations and Necessary Repair and Replacement List

We have included as Exhibit I, a copy of common habitability deficiencies referenced when Breach of the Warranty of Habitability is raised as a defense in Unlawful Detainer to supplement the Draft Material Code Violations and Necessary Repair and Replacement list.

Registry of Tenants

The draft ordinance contemplates the creation of a "registry of Tenant contact information" in order to "facilitate communication regarding a Right to Return, Relocation Assistance, and other topics." Due to concerns about privacy and the potential for abuse, many members of our client population may feel that providing their physical location to a government entity leaves them vulnerable. Given recent events, our client's fears are well-founded. The Santa Cruz Police Department has accused United States Immigration and Customs Enforcement ("ICE") of using joint gang operations to make purely immigration-related detentions. Others concerns range from the cultural—distrust of the government based on experience in their home countries—to the practical—not being able to receive physical mail because the landlord neglects to provide or maintain a mailbox.

For example, a client who resides in San Jose lives in a unit without a mailbox. All her mail is routed through the main house, where her landlord lives. Her landlord has withheld important communication from her in the past. Our client may be reluctant to register since her landlord could withhold her mail and retaliate against her for contacting the Department of Housing and/or Code Enforcement.

For these reasons, we would like to see the inclusion of additional safeguards for tenants who are enrolled on the tenant contact registry. In particular, the City should include assurances that any private information collected for the purposes of enrollment on this tenant contact registry will not be shared with other governmental actors, particularly law enforcement. The City should also include an option for a tenant to include only her phone number and/or email address, rather than a physical address, or in the alternative to use a coding or anonymizing system in order to protect the privacy of these tenants.

Conclusion

California is experiencing a rental crisis of historic proportions, and we appreciate the intent behind this anti-retaliation ordinance. We reiterate our view that a general just cause ordinance would provide maximum protection to renters in San Jose. The success of the TPO and the efficacy of its protections require full participation of the Tenant in the consideration of any petition and in any hearing. Additionally, the City must do the utmost to ensure that Tenants,

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who are in a much weaker bargaining position from their Landlords, are fully informed of their rights and how to access the protections that the City has gone to great efforts to provide.

Sincerely,

Lisa Kye Young Kim
Staff Attorney
EXHIBIT 1: Common Habitability Deficiencies

Defective Walls, Floors, or Weather Protection:
- Falling plaster
- Holes in ceiling/walls
- Windows/doors leak
- Doors/windows lack locks, or are otherwise not secure
- Floor covering in dangerous condition
- Damp walls
- Ceiling leaks
- Broken or defective floors
- Broken windows
- Peeling Paint
- Mold or Mildew

Defective Plumbing (Gas, Water Supply, or Sewage System):
- Leaky piping for: gas water sewage disposal
- Drains clogged in: kitchen sink bath sink shower/tub
- Toilet defective: won't flush broken/leaks clogged
- Lack of hot/cold running water in: bathroom kitchen
- Sewage backs up in: kitchen sink bath sink shower/tub
- No hot water Unsafe hot water

Defective Electrical Lights, Wiring, and Related Equipment:
- Lights do not work
- Plugs do not work
- Switches or outlets lack safe cover plates
- Switches do not work Exposed wiring
- Exposed wiring

Defective Heating or Cooking Facilities:
- Not enough or inconsistent heat
- Heating system unsafe
- Stove/oven does not work
- No heat – Heater broken
- Air conditioning broken
- Stove/oven unsafe

Unsafe or Unsanitary Conditions in Unit or in Common Areas
- Pest\Vermin infestation: Roaches; Rats; Mice; Termites; etc
- Trash bins inadequate\unclean\not emptied often enough
- Stairs or railings broken\unsafe
- Inadequate lighting or security
- Unsafe paving\tripping hazards
- Missing or defective smoke detectors
- Building not properly maintained
- Structural defects in building

BayLegal Comment on Draft Tenant Protection Ordinance
Dear Ms. VanderVeen,

Please find attached a public comment from Bay Area Legal Aid regarding the Draft Recommendations for the City of San Jose's Tenant Protection Ordinance, Chapter 17.23 Part 10.

Thank you,

Amy Tannenbaum

Amy Tannenbaum | Law Clerk
Bay Area Legal Aid | Santa Clara County Regional Office
4 N. Second Street, Suite 600
San Jose, CA  95113

www.BayLegal.org

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Bay Area Legal Aid is the largest civil legal services agency in the San Francisco Bay Area. Our attorneys and advocates work tirelessly on behalf of our region's poorest individuals and families, keeping them in their homes, free from violence, with the economic support and health services they need. Please support BayLegal by clicking here to make a secure online donation today.
March 3, 2017

Rachel VanderVeen
City of San Jose Housing Department
200 East Santa Clara Street
12th Floor
San Jose, CA 95113
EllisAct@sjoseca.gov.

RE: City of San Jose Draft Tenant Protection Ordinance

Dear Ms. VanderVeen:

Bay Area Legal Aid joins the SV Renter’s Rights Coalition in their concerns and comments to the Draft Tenant Protection Ordinance as submitted, and attached.

Sincerely,

Lisa Kye Young Kim
Staff Attorney
Comments to the Tenant Protection Ordinance from the SV Renter’s Rights Coalition

The Tenant Protection Ordinance (“TPO”) recognizes the vulnerability of tenants to retaliatory evictions and seeks to protect tenants who make complaints. We commend Staff for their work and specifically strongly support the Good Cause provisions of the ordinance (Draft TPO, §17.23.1030), which thoroughly address the reasons by which a landlord may evict a tenant while a tenant has TPO protections. While we appreciate the efforts of staff and City Council to address the very real problem of retaliatory evictions, the TPO as drafted is an incomplete solution.

The Silicon Valley Renters’ Rights Coalition strongly advocates that San Jose once again consider a just cause ordinance, as we believe it is the only way to prevent retaliatory evictions and stop the displacement of low-income tenants. Short of enacting a just cause ordinance, we believe that San Jose should extend the good cause protections of the Tenant Protection Ordinance (section §17.23.1030) to all tenants and that these protections apply throughout a tenancy.

Given the economic insecurity felt by many in San Jose, where lower income renters, seniors and families with children live in fear of the threat of eviction in our high-priced rental market, eviction protection will provide much needed stability. Protecting the rights of tenants to be in stable housing, where landlords are empowered to evict only with a good reason, leads to stable communities. As detailed below, we strongly believe that providing all tenants with TPO that is not time limited will lead to stable communities and prevent the displacement of immigrants, seniors, people with disabilities, and low-income families. We strongly advocate that:

1. **TPO Should Apply to all Tenants and Not be Limited to those who Make a Complaint.**

2. **TPO Protections Should Last the Entire Tenancy, and Not Be Limited to Two Years.**

3. **Tenants Must be Able to Get Required and Admissible Evidence from the City to Defend Against Evictions in Court.**
1. **TPO Should Apply to All Tenants, Not Just Those Tenants Who Make Complaints.**

   The TPO has a strong good cause provision that articulates and explains the reasons by which a landlord can evict a tenant, and allows for both fault and no fault evictions but allows for eviction without good cause after a time period of no more than two years. (TPO, §17.23.1030). We additionally commend Staff’s inclusion of protections against evictions for adding family members to a tenancy so long as it does not violate the building code. (TPO, §17.23.1030 B. 2 B. ii). So many families have been forced to share housing because of the high cost of housing, and many live in fear of making complaints for fear of evictions for over-occupancy. We also commend the limitation on a landlord’s ability to evict for substantial rehabilitation to actual health and safety, and requiring relocation benefits for those tenants, to ensure that unscrupulous landlords do not use the cover of making repairs to circumvent rent control protections. (TPO, §17.23.1030 B. 8).

   While these protections will help keep families in stable housing, only tenants who make a complaint are afforded these important protections. (TPO, §17.23.120.) TPO protections should apply to all tenants, and not just those who make complaints.

   We acknowledge that the TPO was extended from prior drafts to include protections for tenants who make complaints related to code enforcement, fair housing, or violations of the Apartment Rent Ordinance. However, this does not encompass all instances where a landlord may take retaliatory actions against tenants including evictions after tenant organizing and political activism, victims of landlord harassment, complaints for reduction in services for non-ARO units, and complaints related to immigration status. In order to fully protect tenants from retaliatory acts, TPO should apply to all tenants.

   Moreover, given the political climate, many immigrants and people of color fear making complaints for fear of losing their housing, or even worse, that a landlord may retaliate by calling immigration enforcement. TPO will not be effective if tenants fear making complaints, as those protections only apply to tenants who make complaints. Extending TPO to all tenants will provide tenants with stability in their housing, as a landlord would need a reason to evict a tenant, and thus good tenants will become long-term tenants. Stable housing leads to stable communities.

   Lastly, requiring landlords to provide a reason to evict a tenant does not punish landlords. Rather, it provides both landlords and tenants with stability, and it provides clarity as to when evictions can occur. Extending TPO to all tenants will not limit a landlord’s power to evict a tenant. A landlord is still empowered to evict tenants who break the lease or who cause a nuisance. (TPO §17.23.1030).
2. **TPO Protections Should Last the Entire Tenancy, and Not Be Limited to Six Months or Two Years.**

As currently proposed the maximum a tenant can receive TPO protection is for two years. We strongly advocate that the TPO protection last for the duration of the tenancy. A tenant is not adequately protected against retaliation if an unscrupulous landlord may simply evict tenants after a two year TPO period is up. We have seen tenants who have lived in a property in fear of retaliatory eviction for nearly a decade. Moreover, as proposed, the time frame from which the two-year clock begins varies based on the situation. This may lead to confusion as a tenant and landlord may not know when the TPO protections are over, and a tenant could be evicted without cause. Additionally, City staff could face hurdles administering who has TPO protections and for how long. A landlord may attempt to evict a tenant for no cause when a tenant still may have time remaining for a TPO protection.

No other city limits eviction for good cause to two years only. Over twenty cities have good cause protections for all tenants for the duration of their tenancy. A notable exception is San Diego, where a good cause protection starts two years into a tenant’s tenancy. Even so, there when the two-year period is over and a tenant has shown that they can be a good tenant, a landlord may only evict by giving a reason to the tenant for the duration of the tenancy.

3. **TPO Should Ensure That Tenants Will Be Able to Defend Against Evictions**

TPO must have mechanisms in place to ensure that tenants will be able to defend against evictions. Just because tenants receive TPO protections does not mean that unscrupulous landlords will not try to evict tenants without cause. Tenants need a simple way to know that they have TPO protections, and when they expire. Tenants will also need a means to prove in Court that they do in fact have TPO protection.

If TPO applied to all tenants, a tenant could simply point to the law to support their claim. However, since not all tenants will have TPO protections, the City must be able to have a means to produce a witness who can testify that the tenant does in fact have TPO protections and whether these protections have or will expire. A document that the tenant receives or can access would likely not be admissible in Court, as the document would be considered hearsay, or an out-of-court statement. Therefore, in order for TPO to help tenants successfully fight retaliatory evictions, and given the short timeliness in eviction cases, the City must ensure a process to respond to subpoenas and tenant requests in a timely manner, and find City staff available to testify in Court to the TPO protection.
4. Conclusion

We strongly believe the best way to protect tenants against retaliatory evictions, and to prevent displacement is a robust just cause eviction ordinance. Just cause eviction protections prevent landlords from giving tenants who complain a no-cause eviction notice. Just cause eviction protections lead to a safer, more sustainable housing stock and a more stable housing environment for all tenants.

While falling short of the full protections afforded by just cause, we recognize that with these improvements, the TPO can be an effective tool to prevent retaliatory evictions. However, in order to meet its purpose of protecting tenants, the TPO would need to have the robust additional protections we have suggested here, as well as continuous monitoring by City staff.
Dear TPO,

Bay Area Legal Aid joins SV Renter’s Rights Coalition’s Public Comment on Draft TPO Ordinance. Please see attached letter.

Lisa Kye Young Kim | Staff Attorney
Bay Area Legal Aid | Santa Clara County Regional Office
4 N. Second Street, Suite 600
San Jose, CA  95113

www.BayLegal.org

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Bay Area Legal Aid is the largest civil legal services agency in the San Francisco Bay Area. Our attorneys and advocates work tirelessly on behalf of our region’s poorest individuals and families, keeping them in their homes, free from violence, with the economic support and health services they need. Please support BayLegal by clicking here to make a secure online donation today.
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who sells rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As a seller of investment properties, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead, we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, which is an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely,

Pat Chadwell, broker, ePro, CRS, SRES
Realty World - Residential Specialists
Anil Babbar ▪ Vice President of Public Affairs
California Apartment Association
1530 The Alameda, Suite 100, San Jose, CA 95126
March 3rd, 2017

**Via Electronic Mail Only**

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

Subject: Public Comments on the Tenant Protection Ordinance

The California Apartment Association would like to express serious concerns it has on the broad scope the Housing Department has taken with the draft Tenant Protection Ordinance (TPO). The TPO is overly complicated and takes a punitive approach to property owners who otherwise try to provide quality housing. It is generally agreed that the aim of the ordinance is to provide anti-retaliatory protections to the tenants, but the way this ordinance has been written there needs to be anti-retaliatory protections provided to the property owners as well. The TPO makes the general assumption that the tenant is always correct. This places the property owner in a defensive position rather than a cooperative one with their tenants. Property owners shouldn’t be considered guilty until proven innocent.

Outlined below are several structural changes that would allow the tenants to receive the anti-retaliatory protections that the Housing Department believes are necessary while protecting the property owners from the abusive nature of the ordinance. In addition to the structural changes, this letter goes on to cite specific portions of the ordinance where those suggested changes can be made.

**Limited vs Full Term Enrollment**

The ordinance takes a complicated approach to the application of limited term enrollment versus full term enrollment. Limited term enrollment should not only cover necessary repairs and replacements, but it also should cover material code violations. So long as the repair or violation was completed by the property owner and they provide a Notice of Satisfaction within 30 days from date of receipt of either a tenant’s request or a Code Enforcement violation. An owner should not be penalized for either a repair or a code violation that they were not aware of or happened because of the tenant.
Cases without Merit

The entire ordinance rests upon the assumption that every repair or request made by the tenant is a legitimate one and that the owner must accept that repair prior to appealing it. Furthermore, it assumes that the material code violation wasn’t tenant inflicted, therefore giving the tenant an automatic full-term enrollment. Each necessary repair or request that is submitted provided to property owner and should be given a 10 day period to review the request before the 30 day countdown for completing the repair starts. And each material code violation should be treated in the same manner. Outside of that, the current system is open to abuse by allowing tenants to file complaints for anything, merit or not, bogging down the property owner with what may be frivolous complaints.

Necessary Repairs vs Material Code Violations

These two are treated differently in the ordinance, and they should not be. Regardless of the type of repair, they should be initially treated with a limited term enrollment which converts to full term upon failure of the property owner to address it within 30 days of receipt of repair request.

Good Cause Protection Use

To prevent the strategic use of good cause protections, the application of limited term enrollment should be limited to one use per annual lease term. Otherwise, requests for repairs could be submitted at specific intervals to ensure constant good cause protection.

Illegal Activity

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant is commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. **Instead we ask that any illegal activity is exempt from the TPO.**

Beyond the structural recommendations made above, below are the specific sections of the code where those changes should be made.

17.23.1020 – Qualifications for Enrollment

In this section, the actions to qualify for limited or full term enrollment for tenant protections are detailed. What’s clear is that a tenant household just needs to contact the appropriate city agency to trigger protections. What isn’t clear is how a property owner can challenge if the issue raised by the tenants have any merit. This is concern that repeats itself throughout the ordinance. The ordinance was written with the assumption that any tenant complaint is valid, with merit and unquestionable. It assumes that a tenant will never abuse the system by employing these protections strategically to receive good cause protections on a permanent basis.

17.23.1020 (A) – Limited Term Enrollment

Section A states that tenants are entitled to immediate good cause protection when they file a complaint on a material code violation, request a necessary repair or replacement, or tenant files a fair housing suit. This section automatically entitles tenants to the protections without investigating if the events are with merit. There should be some review period to determine if
complaints filed by the tenant have merit. If the complaint lacks merit, then all forms of protections should be denied.

The Housing Department has proposed a 10 day period where qualifications for enrollment can be appealed. This process should be changed so that the property owner can have 10 days to review the request by a tenant prior to enrollment so they can decide to appeal it or not. If the appeal is lost, then the tenant is granted limited enrollment upon completion of the requested repair.

17.23.1020 (C) – Full Term Enrollment

17.23.1020.C.1 – Material Code Violation – As long as it is accepted by the owner and addressed similarly to necessary repair or replacement, then there should be no reason why it receives full term enrollment. The ordinance should be streamlined to say ‘tenants who have requested necessary repairs/replacements and resolution to material code violations that have been acknowledged and accepted will receive limited term enrollment.’ Providing full term enrollment would be justified should the property owner resist acknowledging these requests, assuming they have merit.

It is also unclear if a tenant experiences a material code violation pertaining to their specific unit, if the entire property would receive good cause protection. It should be clarified that if the material code violation pertains a specific unit, only that unit should receive limited term enrollment.

17.23.1020.C.3 – Landlord Refusal to Allow Inspections – This section is written much too broadly. It states that a tenant is entitled to good cause protection ‘when a Landlord refuses to allow a City official or personnel designated by the City to inspect a structure containing a rental unit.’ Refusing inspection to a non-residential aspect of building, such as a kitchen in a restaurant below the unit, should not allow good cause protections to be granted to the tenants’ upstairs who has no connection to the non-residential aspects of the buildings.

Regardless of a property owner’s refusal to allow an inspection, if no code violations are found then a full term enrollment should not be granted. There is no basis for that level of protection since the building has been found to be clear of code violations.

17.23.1020.C.5 – Ellis Act – This section places an unreasonable expectation on property owners because it requires them to know of their intention to utilize the Ellis Act a full year before submitting their notice of intent to withdraw to provide their tenants a full year of good cause protection. This section makes the owner liable to the City for penalties if they weren’t able to predict their future needs. Any evictions conducted without the anticipation of filing a notice to intent to withdraw should be considered legal and not be penalized. For those that file a notice to withdraw, they can be required to provide Ellis Act relocation benefits to only those tenants that were in place within the 12 month period preceding the filing date for the notice to withdraw.

17.23.1020.C.6 – Unregistered Unit – We would recommend that this be given limited term enrollment unless the owner refuses to register their units

17.23.1020.C.7 – Unpermitted Units – Units that cannot be permitted should be considered. The current language would make it impossible to ever evict a tenant if the unit cannot be permitted.

17.23.1025 Appeals of Enrollment Status or Completion of Repair
17.23.1025.A.1 – The ordinance states that any necessary repair or replacement completed within 30 days shall not be entitled to full enrollment. However, the section does not detail how the property owner would go about signaling to the Housing Department the repair was completed. The process for signaling completion and the review process should be clearly explained.

17.23.1025.A.3 – Limited or Full Term enrollment is denied to tenants if the necessary repair or replacement was caused by the tenant. This section should also deny protections to tenants who are the cause of the material code violations.

17.23.1025.A.4 – Full term enrollment is denied to the tenant if they refuse access to the rental unit to conduct the repair or for an inspection by Code Enforcement. If the tenant is refusing access to the unit, it should be grounds for denying limited term enrollment as well.

17.23.1030 Good Cause Protections

17.23.1030.B.2.a.ii – When a tenant signs a new lease, it may contain terms that were not part of the original lease when they moved in. Those terms were not part of the initial creation of the tenancy. If the tenant moved in 10 years ago, this section implies that the property owner can only enforce what was written in the lease 10 years ago versus the terms of the current lease agreement. Amend this section to strike any mention of initial tenancy and to only refer to the most recent lease agreement.

We are confident that with the changes proposed, this ordinance can provide the tenant with the protections that the Housing Department has deemed necessary while protecting the property owner from unmeritorious complaints and the strategic abuse of the ordinance.

Sincerely,

[Signature]

Anil Babbar
Vice President of Public Affairs
California Apartment Association, Tri-County Division
Dear Department of Housing,

I am writing to you as a rental housing provider in the City of San Jose. We are concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As property owners, we have a limited awareness of the conditions inside our units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the just cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant is commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Please remove GFCI requirement from the TPO. Older buildings did not have GFCI. This will impact a larger number of buildings.

Sincerely,

Property Owner
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences.

As a property owner, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term.

Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead, we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that.

Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, which is an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely,

Brad Gill
 Draft Recommendations for the City of San Jose Tenant Protection Ordinance

(formerly referred to as the Anti-Retaliation Ordinance)

Released for public comment January 18, 2017

Written comments must be received by 5pm on March 3, 2017

Please email comments to TPO@sanjoseca.gov
or send hard copy comments to

Attention: Rachel VanderVeen, 200 East Santa Clara St., 12th Floor, San Jose CA 95113

Table of Contents

Purpose ........................................................................................................................................2

Background ................................................................................................................................2

Process-to-Date ............................................................................................................................3

Ordinance ....................................................................................................................................4

Attachments

A. List of proposed items to be included as “Material Code Violation” and “Necessary Repair or Replacement”

Public Meetings:

February 8: City Hall Wing Rooms 118-120 6:30-8:30pm
February 15: Bascom Community Center 6:30-8:30pm
February 27: Cypress Community Center 6:30-8:30pm
March 9: HCDC Meeting – City Hall Wing Rooms 5:45pm
Purpose of this Document

The purpose of this document is to provide draft recommendations for public comment regarding the proposed San Jose Tenant Protection Ordinance (TPO), as directed by the City Council on April 19, 2016. These draft recommendations were released on January 18, 2017 and are available for a 45-day public comment period. Written comments are due to City staff by 5pm on March 3, 2017.

Background

The City does not currently restrict no-cause terminations of tenancy other than to require certain noticing under the Apartment Rent Ordinance (ARO). On April 19, 2016 the City Council directed staff to develop an Anti-Retaliation and Protection Ordinance. After receiving feedback that the “Anti-Retaliation and Protection Ordinance” name was cumbersome and difficult to understand, staff renamed this proposed ordinance to the Tenant Protection Ordinance.

This ordinance was proposed because Staff received multiple statements from tenants who asserted they were afraid to complain about issues impacting their housing because they feared receiving a no-cause eviction. Issues that tenants have stated they were afraid to pursue included of housing, building, or fire code violations, harassment, intimidation, unfair and excessive rent or service charges, discrimination, participation in City public meetings, and threats pertaining to immigration status.

The City Council directed staff to develop an ordinance that created protections for tenants living in apartments that were experiencing housing, building, and fire code violations, or needed important repairs as well as those who exercised their rights under the ARO. Tenants facing these circumstances would be enrolled and receive just/good cause protections for up to two years from resolution of the complaint. Good cause protections work by requiring cause for the eviction of protected tenants. As in all other good cause based ordinances in California, under the proposed tenant protection ordinance, an enrolled tenant can still be legally evicted for violating the terms of the rental agreement, for non-payment of rent and various other causes to terminate their tenancy.

Staff conducted research of other cities in California with good cause protections similar to those in the draft ordinance. None of these cities require a tenant enrollment process, but some of the cities provide other limitations on tenant protection. 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 good cause protections for the duration of their tenancy.

Integration with the Apartment Rent Ordinance Rent Registry

Unless effectively monitored and enforced through a rent registry, no-cause terminations of tenancy can undermine the effectiveness of rent stabilization ordinances. In cases where a property owner wants to rent to a new tenant that may be less knowledgeable of their rights or illegally utilize vacancy decontrol to reset rents after a no-cause termination, the owner can issue the tenant a no-cause notice to move their existing tenant out after 60 or 90 days. Other cities have tightened this loophole by enacting just/good cause eviction ordinances, which clearly define the list of reasons that tenants can lose their housing. These protections are given to either rent stabilized or all tenants in jurisdictions that enact these protections.

As proposed, the TPO will be a complaint-based program that provides protections only to tenants experiencing one of the conditions outlined in the ordinance. Effective implementation of the TPO will require use of the rent registry to ensure that tenants receive the proper term of good cause and that clear communication is occurring with the property owner.
Process to Date

Staff met with a wide range of stakeholders while developing the proposed Tenant Protection Ordinance. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with Property owners and Managers of small properties, large properties, and a variety of Tenants and tenant advocates on multiple occasions. The Department also hosted three public meetings on the proposed ordinance. Staff was invited to attend three additional meetings hosted by stakeholders.

Public Meetings:

November 7th – Cypress Community Center
November 14th – San Jose City Hall
November 16th – Bascom Community Center

December 5th – Housing & Community Development Commission

Stakeholder Meetings – Invited By:

November 30th – Santee Tenants
December 4th – Small Property owners
December 13th – Sacred Heart Community Service
Chapter 17.23 Part 10 TENANT PROTECTION ORDINANCE: PROTECTIONS FOR CERTAIN TENANTS

17.23.1000 Title.
17.23.1005 Policy and purposes declaration. 17.23.1010 Definitions.
17.23.1015 Scope; Regulations.
17.23.1020 Qualification for Enrollment.
17.23.1025 Appeals of Enrollment Status or Completion of Repair. 17.23.1030 Good Cause Protections.
17.23.1040 Notice of Termination to the Tenant and City. 17.23.1050 Anti-Retaliation Protections.
17.23.1060 Affirmative Defense to Eviction; Penalties and Remedies.

PART 10. TENANT PROTECTION

17.23.1000 Title.

This Part shall be known as the “Tenant Protection Ordinance.”

17.23.1005 Policy and purposes declaration.

The purposes of this Part 10 are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. This Part is intended to enable tenants in the City to participate in the Apartment Rent Ordinance petition process, request correction of code violations and necessary repairs, and exercise their rights under local, state, and federal laws without fear of retaliation. This Part 10 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 rights and obligations created by this Part 10 for landlords and tenants are created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and are in addition to any rights and obligations under state and federal law.

17.23.1010 Definitions.

In addition to the definitions provided in Chapter 17.23, Parts 2 and 9, for purpose of this Part 10 the following terms are defined as follows:

A. “Director” means the Director of the Housing Department or the Director's designee.

B. “Enrolled Tenant” means the Tenants, and their Tenant Household, who have received Full Enrollment, or Limited Term Enrollment in Good Cause Protections.

C. “Enrollment Term” means the time period during which a Tenant, and the entire Tenant
Household is entitled to Good Cause Protections. The Enrollment Term shall be determined pursuant to Section 17.23.1020.

D. “Full Enrollment” means the Tenant, and the entire Tenant Household, are granted Good Cause Protections that commence as described in Section 17.23.1020(C) and end two (2) years after resolution of the event triggering enrollment, unless the Good Cause Protections are either extended or terminated.

E. “Good Cause Protections” means those protections afforded to a Tenant Household under Section 17.23.1030.

F. “Guesthouse” shall have the meaning provided in Sections 20.200.470 and 20.200.480.

G. “Guest Room” shall have the meaning provided in Section 20.200.460.

H. “Habitual” shall have the meaning provided in regulations adopted by the City Manager for administration of this Part.

I. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.

J. “Limited Term Enrollment” means the Tenant, and the entire Tenant Household, are granted Good Cause Protections that commence as described in Section 17.23.1020(A) and end six (6) months after resolution of the event triggering enrollment as described in Section 17.23.1020(B), unless the Good Cause Protections are extended or terminated.

K. “Material Code Violation” shall have the meaning provided in the regulations adopted by the City Manager for administration of this Part.

Material Code Violation needs to be spelled out more specifically instead of just relying on practice adopted by the city manager. Otherwise it will be open to so much interpretation that enforcement will be uneven and lead to all sorts of abuses, and costly litigations will occur.

L. “Necessary Repair or Replacement” shall have the meaning provided in the regulations adopted by the City Manager for administration of this Part.

Necessary Repair or Replacement needs to be spelled out more specifically instead of just relying on practice adopted by the city manager. Otherwise it will be open to so much interpretation that enforcement will be uneven and lead to all sorts of abuses, and costly litigations will occur.

M. “Notice of Satisfaction” means the notice from a Landlord, on a form approved by the Director, informing both a Tenant Household and the Director that the Landlord believes a Material Code Violation and/or Necessary Repair or Replacement has been resolved in accordance with Section 17.23.1020.

N. “Notice of Termination” means the notice informing a Tenant Household of the
termination of its tenancy in accordance with Civil Code section 1946.1 and Code of Civil Procedure section 1162. Each Notice of Termination delivered to an Enrolled Tenant or to a Tenant Household residing in a Rent Stabilized Unit must use the form approved by the Director, and the Landlord must deliver a copy of such notice to the Director in accordance with Section 17.23.1040.

O. “Rent Stabilized Units” means Rental Units that are subject to the City's Apartment Rent Ordinance provided in Chapter 17.23, which includes rooms or accommodations occupied for thirty (30) days or more in a Guesthouse and units in any Multiple Dwelling building for which a certificate of occupancy was received on or prior to September 7, 1979, as those terms are defined in Sections 20.200.340, 20.200.470, and 20.200.480 of the San José Municipal Code.

This ordinance should explicitly spell out that it covers buildings with 3 units (tri-plex) or above. While the ordinance is already problematic for multi-unit property owners, it will be extremely problematic for owners of single family houses, condos, and duplexes. While single family houses, condos and duplexes are not currently covered under San Jose’s rent control ordinance, this may change. This ordinance should not be automatically applied to those units as there will be all sorts of unintended consequences.

P. “Rental Unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays Rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the San José Municipal Code. For purposes of this Part 10, Rental Unit includes Guest Rooms in any Guesthouse.

Q. “Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.

This definition of tenant is overly broad. Property owners by law are not allowed to intrude on the privacy of their tenants, and subtenant/sublessee/occupant/any other person could be brought into the properties without our knowledge. Those people (subtenant/sublessee/occupant/any other person) should not become tenants automatically without written agreement.

R. “Tenant Household” means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.

17.23.1015 Scope; Regulations.

A. Subject to any exceptions, additions, and clarifications included in regulations that may be adopted by the City Manager for administration of this Part, this Part applies to the following:

1. Rent Stabilized Units;

2. Rental Units in any Multiple Dwelling as defined in Chapter 20.200 of Title 20, excepting permitted hotels and motels;

3. Guest Rooms in any Guesthouse; and
4. Structures or parts of a structure that are being rented as a home, residence, or sleeping place, where the use as a home, residence, or sleeping place is not authorized, permitted, or otherwise approved by the City.

This ordinance should explicitly spell out that it covers buildings with 3 units (tri-plex) or above. While the ordinance is already problematic for multi-unit property owners, it will be extremely problematic for owners of single family houses, condos, and duplexes. While single family houses, condos and duplexes are not currently covered under San Jose’s rent control ordinance, this may change. This ordinance should not be automatically applied to those units as there will be all sorts of unintended consequences.

B. The City Manager may adopt regulations for the administration and implementation of this Part. The Director of Housing, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of this Part.

17.23.1020 Qualification for Enrollment.

Tenants, and the entire Tenant Household, shall qualify for Limited Term Enrollment and/or Full Enrollment for the specified Enrollment Term(s) as provided in Sections 17.23.1020(A), (B), and (C) below. Qualification for Limited Term Enrollment and/or Full Enrollment may be appealed by a Landlord pursuant to Section 17.23.1025(A) within ten (10) days after the Tenant and the Tenant Household have become entitled to Limited Term Enrollment or Full Enrollment status, as applicable.

A. Limited Term Enrollment; Commencement. A Tenant, and the entire Tenant Household, are entitled to Limited Term Enrollment immediately upon the occurrence of one of the following events:

1. Tenant files a complaint with Code Enforcement for a Material Code Violation.

   Tenants should be required to demonstrate that they have made good faith and documented effort to contact their property owners to fix the problem associated with alleged material code violation. There should be a reasonable time period for the property owner to respond and correct the problem. The time period should be based on the nature of the problem and as long as property owner is making a good faith effort to respond to the problem, limited term enrollment should not kick in. Otherwise a tenant can abuse the system by damaging the property, creating a material code violation, and reporting the tenant-inflicted problem as a code violation, and limited term enrollment would kick in.

2. Tenant requests the Landlord provide a Necessary Repair or Replacement for the Rental Unit or the building in which the Rental Unit is located and informs the Director of the request. For purposes of this Section 17.23.1020(A)(2), a Tenant may inform the Director in a writing via online submission, email, or other method of communication identified in the regulations adopted by the City Manager, and accompanied by photographs (if applicable) documenting the Necessary Repair or Replacement.

Once again, the property owner should be in the loop of this communication process. Tenants should be required to demonstrate that they have made good faith and documented effort to
contact their property owners to fix the problem associated with alleged material code violation. See above comment.

This section should be reworded as:

Tenant requests the Landlord provide a Necessary Repair or Replacement for the Rental Unit or the building in which the Rental Unit is located using a method of communicating to the Landlord that is previously agreed upon by both parties. For critical problems that impact the habitability of the structure, if a Landlord or a designated contact of the Landlord has not responded within 7 calendar days from the day when the problem was communicated to the Landlord and show good faith effort to remedy the problem, such as investigating the problem, identifying a remedy or fixing the problem, the tenant may and informs the Director of the request. The waiting period shall be extended to 14 days for all other less critical problems. The For purposes of this Section 17.23.1020(A)(2), a Tenant may inform the Director in a writing via online submission, email, or other method of communication identified in the regulations adopted by the City Manager, and accompanied by photographs (if applicable) documenting the Necessary Repair or Replacement

3. Tenant files a lawsuit or complaint alleging violation of state or federal fair housing laws by the Landlord with a court or the administrative agency with jurisdiction over handling such claims. For purposes of this subsection (3) of Section 17.23.1020(A), fair housing laws include but are not limited to the Federal Fair Housing Act, the Federal Americans with Disabilities Act, the Age Discrimination Act, the California Fair Employment and Housing Act (Government Code section 12900 – 12996), and the Unruh Civil Rights Act (Civil Code section 51.

The lawsuit or complaint should be reviewed and be determined to be truthful before Limited Term Enrollment kicks in.

B. Limited Term Enrollment, Term. Limited Term Enrollment for Good Cause Protections shall terminate upon the earlier of: six (6) months after resolution of the issue underlying the complaint or request identified in subsections 1 through 3 of Section 17.23.1020(A) or the Tenant’s voluntary vacation of the Rental Unit. For purposes of Sections 17.23.1020(A) and (B), complaints and requests are resolved when one of the following events has occurred:

1. If a Tenant made a request for a Necessary Repair or Replacement, it was completed by the Landlord and the Landlord provides a Notice of Satisfaction on a form approved by the City to both the Director and the Tenant within thirty (30) days from the date of the Landlord's receipt of the Tenant's request then the Necessary Repair or Replacement is presumed to be resolved. If a Notice of Satisfaction is not delivered to both the Director and the Tenant within thirty (30) days from the date of the Landlord's receipt of the Tenant's request, then the Limited Term Enrollment of the Tenant and the entire Tenant Household shall be extended to Full Enrollment in accordance with Section 17.23.1020(C). The Tenant may contest the Notice of Satisfaction and appeal the presumption of resolution within ten (10) days of the Tenant's receipt of the Notice of Satisfaction on the grounds that the repair was not completed or was completed incorrectly under Section 17.23.1025(B).

2. If Code Enforcement does not find a Material Code Violation when an inspection is conducted, then the complaint or request is resolved.
If Code Enforcement does not find a material code violation when an inspection is conducted, Limited Term Enrollment should be terminated immediately. Otherwise a tenant can file all sort of frivolous complaint about code violation to put the property into limited term enrollment.

3. If the Tenant complaint of violation of state or federal fair housing laws is dismissed by the court or administrative agency with jurisdiction over the matter or a lawsuit is resolved, including through a negotiated agreement, then the complaint is resolved.

If Tenant complaint of violation of state or federal fair housing laws is dismissed by the court, Limited Term Enrollment should be terminated immediately. Otherwise a tenant can file all sort of frivolous complaint about fair housing law violation to put the property into limited term enrollment.

C. Full Enrollment. A Tenant, and the entire Tenant Household, residing in a Rental Unit where any of the following conditions exist are entitled to Full Enrollment commencing with the existence of a condition defined in this Section 17.23.1020(C) and continuing until the earlier of or the Tenant’s voluntary vacation of the Rental Unit or two (2) years after resolution of that condition.

1. Material Code Violation. A Tenant Household is entitled to Good Cause Protections commencing with the existence of a Material Code Violation identified by Code Enforcement in a City-initiated inspection or as the result of a complaint from a City Department of a violation of Title 24 in the Rental Unit or structure containing the Rental Unit. Good Cause Protections shall continue for two (2) years after resolution of the Material Code Violation. For purposes of this subsection 1 of Section 17.23.1020(C), resolution shall mean the Material Code Violation was fixed, repaired, or otherwise addressed to the satisfaction of Code Enforcement and the code compliance case status is “Closed” with respect to the Material Code Violations.

If I understand this correctly, this means that if a tenant file complaint about material code violation, and code enforcement finds a violation, full enrollment is kicked in. This opens up the system for all sorts of abuse. Tenants can knock a hole in the wall, spray graffiti, places garbage all over the place to cause pest infestations and file complaint without notifying property owners first and giving them a chance to address the problem. City inspectors then show up and mark it as a material code violation and cause the property to fall into full enrollment. Property owners will be completely defenseless, as there is no easy way to prove that the tenants create problems in the first place.

2. Petition, Opposition Statement, or Claim of Violation. A Tenant Household in a Rent Stabilized Unit is entitled to Good Cause Protections commencing with the submission of a petition, opposition statement, or claim of violation of the Apartment Rent Ordinance (Chapter 17.23) by a member of the Tenant Household, so long as that petition, opposition statement, or claim is accepted for any administrative review process under the Apartment Rent Ordinance (Chapter 17.23). For purposes of this subsection (2) of Section 17.23.1020(C), resolution shall mean the issuance of a final administrative decision on the issue(s) underlying the petition, opposition statement, or claim.

3. Landlord Refusal to Allow Inspection. A Tenant Household is entitled to Good Cause Protections commencing when a Landlord refuses to allow a City official or personnel
designated by the City to inspect a structure containing a Rental Unit. For purposes of this subsection (3) of Section 17.23.1020(C), inspections shall include but are not limited to fire and life safety inspections, and Code Enforcement inspections. If no Material Code Violation or Necessary Repair or Replacement is identified following an inspection of the Rental Unit or structure containing a Rental Unit, Good Cause Protections shall continue for two (2) years after the City is allowed access to the structure for such inspection. If a Material Code Violation or Necessary Repair or Replacement is identified during the inspection, then the affected Tenant Household shall be entitled to Good Cause Protections for two (2) years after the resolution of the Material Code Violation or Necessary Repair or Replacement to the City's satisfaction.

4. Court or Administrative Order. A Tenant Household in a building containing a Rental Unit that is the subject of a court order, injunction or other administrative action related to a violation of the Housing Code (Chapter 17.20), Fire Code (Chapter 17.12), or Building Code (Chapter 17.04) is entitled to Good Cause Protections. The Good Cause Protections shall commence when a Tenant or the City files a case or claim, shall continue throughout the pendency of the case or claim, and shall conclude two (2) years after final judgement regarding the claim is issued, or in the event of an injunction, after the injunction is dismissed.

5. Ellis Act. A Tenant Household is entitled to Good Cause Protections commencing twelve (12) months prior to delivery by an Owner to the City of a Notice of Intent to Withdraw under Part 9 of Chapter 17.23 (the “Ellis Act Ordinance”) As an Enrolled Tenant, the Tenant Household is entitled to all applicable benefits under the Ellis Act Ordinance including but not limited to Relocation Assistance and the Right to Return, regardless of the actual Enrollment status of a Tenant Household upon termination of tenancy. The Good Cause Protections shall continue until the building is withdrawn from the residential rental market in accordance with Ellis Act Ordinance, or for two (2) years after revocation of a Notice of Intent to Withdraw.

6. Unregistered Unit. A Tenant Household in a Rent Stabilized Unit is entitled to Good Cause Protections if that unit is not in compliance with any registration requirement imposed under the Apartment Rent Ordinance.

7. Unpermitted Units. A Tenant Household in a Rental Unit that is not a conforming use permitted by the San José Municipal Code is entitled to Good Cause Protections commencing with the creation of the tenancy and continuing until two years after the unit has been permitted.

17.23.1025 Appeals of Enrollment Status or Completion of Repair.

A. A Landlord may petition the Director to appeal the Tenant's entitlement to Limited Term Enrollment, Full Enrollment, or both. Such petition shall be brought, if at all, no later than ten (10) days after the Tenant and the Tenant Household have become entitled to Limited Term Enrollment or Full Enrollment status, as applicable. To have grounds for a petition, a Landlord must assert one or more of the following in writing and support the assertion with substantial evidence:

How will the property owner be notified? The 10-day provision is especially problematic for small property owners, most of which have day jobs. Small property owners do not have a staff to handle stuff like this. They can get sick (especially likely for older property owners). They may want to take a vacation and be out of town for a few days. There needs to be ways to ensure that the property owners are properly notified about the complaint. This goes back to my earlier point about the complaint process being automatic. Tenants should demonstrate that they have
made a good faith effort to notify property owner of the problem and show that the property owner has not responded properly before tenants are allowed to file the complaint and place the property into limited enrollment. There should not be a limit on the timespan in which property owner can appeal the enrollment status or completion of repair.

1. The Necessary Repair or Replacement was completed within thirty (30) days, in which case the Tenant and the Tenant Household shall not be entitled to Full Enrollment. A petition claiming completion within thirty (30) days may be reviewed and a decision issued by the Director based on written materials provided by the Landlord and Tenant Household.

2. The Necessary Repair or Replacement could not be completed within thirty (30) days but the Landlord began meaningful repair or replacement activities and is diligently pursuing completion of the Necessary Repair or Replacement, in which case the Tenant and the Tenant Household shall not be entitled to Full Enrollment, but may have Limited Term Enrollment extended until six months after the Necessary Repair or Replacement is completed and a Notice of Satisfaction is delivered to the City and the Tenant. A petition claiming diligent pursuit of a Necessary Repair or Replacement may be reviewed and a decision issued by the Director based on written materials provided by the Landlord and Tenant Household.

Limited Term Enrollment should be extended to no more than 2 months after Necessary Repair or Replacement is completed and a Notice of Satisfaction is delivered to the City and the Tenant. The person should not be penalized with a 6 month enrollment in limited term enrollment.

What criteria will the Director use to make the decision with? Some repairs are not possible within 30 days because of a range of reasons, such as availability of repair workers, availability of material, weather, and so on… Repair durations are especially likely to be longer following a natural disaster such as the flood that we just had in San Jose.

3. The Necessary Repair or Replacement was necessitated by the willful misconduct or grossly negligent acts of the Tenant or Tenant Household. If, after a hearing, the Director determines that the Necessary Repair or Replacement was necessitated by the willful misconduct or grossly negligent acts of the Tenant or Tenant Household then the Tenant and the Tenant Household shall not be entitled to Limited Term Enrollment or Full Enrollment.

4. The Tenant unreasonably refused access to the Rental Unit for purposes of pursuing or completing the Necessary Repair or Replacement or for an inspection by Code Enforcement, after written request for access was provided to the Tenant. If, after a hearing, the Director determines that the Tenant unreasonably refused access to the Rental Unit then the Tenant and the Tenant Household shall not be entitled to Full Enrollment.

5. The Landlord has appealed the determination of the existence of the Material Code Violation(s) pursuant to Chapter 1.14 of Title 1 and the Landlord’s appeal has been sustained.

The appeal to Material Code Violation will probably take time to be determined. If that appeal is prolonged, how are property owners supposed to appeal the limited term or full enrollment. Once again, there should not be a 10-day window for filing the appeal.

B. A Tenant may petition the Director to contest the Notice of Satisfaction and appeal the
presumption of satisfaction. Such petition shall be brought, if at all, no later than ten (10) days after the Tenant and the Tenant Household have received the Notice of Satisfaction. To have grounds for a petition, a Tenant must assert either that the repair or replacement was not completed or that the repair or replacement was incorrectly completed and support the assertion with substantial evidence.

C. Specific petition requirements and hearing procedures shall be set forth in the regulations adopted by the City Manager.

17.23.1030 Good Cause Protections.

A. A Landlord may not terminate the tenancy of Enrolled Tenants during the Enrollment Term unless the Landlord can demonstrate:

1. that the Landlord possesses a valid Residential Occupancy Permit under Title 17, Chapter 20 of the San José Municipal Code (if applicable); and

2. that the Landlord served a Notice of Termination to the Tenant Household and delivered a copy of the Notice of Termination to the City in accordance with Section 17.23.1040 and California Civil Code Section 1946.1; and

3. that on the date of service to the Tenant Household of the Notice of Termination, the Rental Unit to which the Notice of Termination applies is substantially in compliance with the following requirements:

   a. The implied warranty of habitability, including but not limited to the requirements codified in Civil Code sections 1941 through 1941.7 (unless the Landlord is terminating the tenancy in accordance with subsections (7) or (8) of Section 17.23.1030); and

   b. The Apartment Rent Ordinance (if applicable), including but not limited to the maximum rents allowed thereunder, as codified in Chapter 17.23; and

   c. The Apartment Rent Ordinance (if applicable) Landlord/Rent Registry

4. that the termination qualifies as a Good Cause Termination, as defined below.

B. Good 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 "Good Cause Termination."

   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 subsection (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:

   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, the spouse or domestic partner, parent, brother, or sister of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the number of individuals authorized in the rental agreement or the number permitted by the City under Section 17.20.270B. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, spouse or domestic partner, parent, brother, or sister of a Tenant, provided that the approval is not unreasonably withheld.

   What does this mean?

   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, the spouse or domestic partner, parent, brother, or sister of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the number of individuals authorized in the rental agreement or the number permitted by the City under Section 17.20.270B. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, spouse or domestic partner, parent, brother, or sister of a Tenant, provided that the approval is not unreasonably withheld.

This is not reasonable. To increase the likelihood that tenants pay rent and reduce the likelihood that a tenant poses a risk to the neighbors and/or disturb the neighbors, it is necessary and is part of the application process to screen tenants based on credit score, employment, criminal offense, etc… This provision runs against the sub-leasing clause of rental contracts and completely expose property owners to people that they would not have permitted to rent their properties. There have been numerous cases in which a qualified tenant rent a property in bad faith with the intention of letting the rest of his/her family live in the unit without going through the proper application process.

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, 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 Civil Code Section 1954.

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 (7), the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and
   
   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 at comparable rent owned by the Landlord. Notwithstanding Section 17.23.1020, in either circumstance the Tenant's enrollment under this Part 10 of Chapter 17.23 shall continue in the new Rental Unit despite a change in location;
   
   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
There should be conditions in which property owners are not required to provide relocation assistance. For example, if rehab is needed following man-made or natural disasters such as the recent flood in San Jose. In those cases, the condition of the property was not due to a fault by the property owner. In fact, the property owner would be under financial distress, and it is not reasonable to impose additional financial burden on the owner to provide relocation assistance. Who is going to help the owner?

Furthermore, even if there were relocation assistance, it should be means tested. There are people making six figures salary that are literally make more money than the property owners. Property owners should not be required to provide financial assistance to people who already earn a certain level of income.

9. **Ellis Act Removal.** The Owner as defined in the Ellis Act Ordinance 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 Section 17.23.1030(C), 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 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) 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. For purposes of this subsection (9) of Section 17.23.1030(B), "Owner" means a fee owner of at least fifty (50) percent interest in the property. 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 36 consecutive months. The Owner shall have provided relocation assistance as required by Section 17.23.1030(C), below.

Relocation assistance should not be required for owner move-in. An owner may need to move into the property due to personal financial hardship, natural disaster, the need to take care of sick parents, and so on. The owner is already under financial distress and it is unreasonable to ask the owner to inquire more financial burden.

Furthermore, even if there were relocation assistance, it should be means tested. There are people making six figures salary that are literally make more money than the property owners. Property owners should not be required to provide financial assistance to people who already earn a certain level of income.

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. The Landlord shall have provided relocation assistance as required by Section 17.23.1030(C), below.

C. **Relocation Assistance.**
1. Enrolled Tenants who receive a Notice of Termination that relies on subsections (8) or (10) of Section 17.23.1030(B) as the good 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.

   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 Civil Code section 1950.5.

2. Enrolled Tenants who receive a Notice of Termination that relies on subsection (9) of Section 17.23.1030(B) as the good cause rationale to terminate the tenancy must have received, and the Landlord must have provided, Relocation Assistance as defined in the Ellis Act Ordinance.

3. Enrolled Tenants who receive a Notice of Termination that relies on subsection (11) of Section 17.23.1030(B) as the good cause rationale to terminate the tenancy must receive, and the Landlord must provide, relocation benefits 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, as set by resolution of the City Council.

17.23.1040 Notice of Termination to the Tenant and City.

A. The Notice of Termination provided to Enrolled Tenants must contain the reason for the termination of tenancy in accordance with Section 17.23.1030(B) on a form approved by the Director.

B. A Landlord must provide the City with a true and accurate copy of any Notice of Termination provided to an Enrolled Tenant.

17.23.1050 Anti-Retaliation Protections.

A. No Landlord may threaten to bring, or bring, an action to recover possession, cause the Tenant to quit the Rental Unit involuntarily, serve any notice to quit or Notice of Termination, reduce any housing services, or increase the rent where the Landlord's intent is retaliation against the Tenant for the Tenant's assertion or exercise of rights under this Chapter 17.23.

B. Any such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the Tenant for actual and punitive damages and injunctive relief. In an action by or against a Tenant, evidence of the assertion or exercise by the Tenant of rights under this Chapter 17.23 within six months prior to the alleged act of retaliation shall create a rebuttable presumption that the Landlord's act was retaliatory. For purposes of this Section 17.23.1050(B), "rebuttable presumption" means that the Court must find the existence of the fact presumed unless and until its nonexistence is proven by a preponderance of the evidence. A Tenant may assert retaliation affirmatively or as a defense to the Landlord's action without the aid of the rebuttable presumption regardless of the period of time which has elapsed between the
Tenant's assertion or exercise of rights under this Chapter 17.23 and the alleged act of retaliation.

“A Tenant may assert retaliation affirmatively or as a defense to the Landlord's action without the aid of the rebuttable presumption regardless of the period of time which has elapsed between the Tenant's assertion or exercise of rights under this Chapter 17.23 and the alleged act of retaliation.” - what does this mean?

17.23.1060 Affirmative Defense to Eviction; Penalties and Remedies.

A. **Affirmative Defense.** Each Landlord that seeks to terminate a tenancy of an Enrolled Tenant must comply with this Part 10 of Chapter 17.23. Non-compliance with any applicable component of this Part 10 shall constitute an affirmative defense for an Enrolled Tenant against any unlawful detainer action under Code of Civil Procedure section 1161.

B. **Criminal Penalties.** Any Landlord found by a court of competent jurisdiction to be guilty of violating any provision or failing to comply with any requirements of this Part shall be guilty of a misdemeanor punishable by up to a $500 fine for a first offense and up to a $1000 fine for any subsequent offenses.

C. **Civil Remedies.**

1. Any Landlord that fail(s) to comply with this Part 10 may be subject to civil proceedings for displacement of Tenant(s) initiated by the City or the Tenant Household for actual and exemplary damages.

2. Whoever is found to have violated this Part shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Part.

3. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.
To be fair to property owners, this section that talks about material code violation needs to be tighten up so that it is less open to interpretations. Property owners do want to keep our properties in good orders, as it is necessary to do so to attract and retain tenants. City government needs to provide easy-to-understand information material, with detailed descriptions and photographic examples, that helps property owner understand the reasonable standard that we need to maintain our property to. This is especially important for small property owners, most of which have regular jobs or are retirees, and do not have a full time staff to interpret and keep up with the regulations.

**Material Code Violations and Necessary Repair and Replacement List**

The Tenant Protection ordinance includes Material Code Violations and Necessary Repair definitions. This document provides a list of San Jose Municipal Code violations that would be considered either a Material Code Violation or a Necessary Repair. Please provide input on the categorization of violation and examples of other repairs that are not included on this list during the public review period (January 17 – March 3). The list Necessary Repairs and Replacement list is not an exhaustive list, but serves as clear examples of items that would be considered in this category under the ordinance.

When reviewing the list, please note if building conditions do not meet the standards outlined below, they will be considered a violation. If there is evidence that the damage was caused by the tenant, good cause provisions will not apply.

“If there is evidence that the damage was caused by the tenant, good cause provisions will not apply.” This sentence is confusing. If tenant damaged the property, shouldn’t the person be evictable under good cause provisions?

**Material Code Violations**

*Exterior walls* - In good condition, holes, missing sections or deterioration.

What is the definition of “deterioration” or holes or missing sections? For example, stucco walls by natural develops hairline cracks at the surface that do not impact the performance of the wall. Would a one inch surface crack be considered a material code violation?

*Stairway/ landing/decks/balconies/guardrails/handrails* - In good condition, no significant deterioration or safety hazard. Permits obtained and finaled for replacement of stairways and balconies.

What is the definition of “significant deterioration”? 

*Exterior lighting* - All lights function and have proper covers, no exposed wiring.

This should be defined as “all light sockets function”. Light bulb replacement can be a responsibility of the tenant.
**Electrical Service** - Permits obtained and finaled for service upgrade and/or panel replacement.

**Heaters** - Are permanently installed and properly functioning. Permit obtained and finaled for replacement of heater.

What is the definition of “properly functioning”?

**Flooring** - No deteriorated floor supports.

What is the definition of “deterioration”? Even brand new or recently built structure can have deteriorated floor support as the structure settles.

**Roof and ceilings** - In good condition without any leaks. Permit obtained and finaled for re-roof.

**Windows** – No broken or missing glass.

**Water heaters** - Water heaters are installed in an approved location, and have seismic strapping, operable temperature relief valve, drain line and venting. Hot water is supplied to plumbing fixtures at a temperature of not less than 110 degrees Fahrenheit. Permit obtained and finaled for replacement of water heaters.

**Fire Detection** - Smoke detectors are operable and are located in hallways leading to rooms used for sleeping purposes and also in each bedroom as required by Code.

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**DRAFT – Tenant Protection Ordinance**

Material Code Violations, Necessary Repairs & Replacements List

**Carbon Monoxide Detectors** - Located outside each sleeping area and on each level of a dwelling (including basements). Installation must be per manufacturer’s instructions and per California Building Code.

**GFCI required locations** - GFCI properly functioning and installed where outlets have been replaced in the bathrooms, above kitchen counters, on the exterior of building, in garages and basements.

**Electrical** - no exposed wiring. Permit obtained and finaled.

What is the definition of exposed wiring? Are we talking about conducting elements such as copper wires being exposed?

**Pest Control** - No infestations of insects or rodents/vermin. Professional extermination utilized as needed for pest control.

Pest infestation is an extremely difficult problem for property owners to deal with, as it greatly depends on the hygiene practice of the tenants. You can have a perfectly clean building, but if the tenant spew food all over the place and don’t clean things up, all sorts of pest (ants, rodents, etc…) would show up. This condition should not be included in the TPO.

**Plumbing/Piping** – Adequate running water, adequate sewage disposal.
What does “adequate” mean?

**Necessary Repairs and Replacements**

**Exterior Premises** - No abandoned or inoperable vehicles, overgrown vegetation, discarded household items, trash, debris or graffiti. Landscaping is being maintained. No deteriorated fencing or driveway/parking surface areas.

What is the definition of "deteriorated"? With the amount of potholes that we are hitting on a regular basis, especially due to the amount of rain that we have been having in the region, it is unreasonable to expect property owners can maintain perfect driveways when the city, with all the resources, staff and equipment, cannot do so on a large number of streets.

The existence of trash and debris can be and often are caused by tenants. This provision places undue burden for property owners to literally pick up the tenants’ discarded possessions. Property owners’ attempt to remove discarded possessions of tenants also create conflicts with tenants as it is debatable whether discarded household items are indeed discarded.

Graffiti is another intractable problem. All it takes for a tenant to abuse the system is a trip to the store to get a can of spray paint and put graffiti on the building. There is no practical way for property owners to monitor and catch this sort of behavior. Some graffiti is done by gang members, and people have faced life threatening situations as they try to remove those graffiti. While it is in the interest of property owners to remove the graffiti, it is not practical to place the burden solely on property owners.

**Vent screens** - No missing or damaged crawl space, attic or foundation vent screens.

Damage to vent screen can literally mean a quarter inch break, which would have no material functioning of the screen. This should be rewritten as: “No missing or significantly damaged crawl space, attic or foundation vent screens with major missing sections that prevent the screen to function as it is intended to keep out pests.”

**Electrical Service** - Multi-unit panels are identified; all breakers/fuses labeled, no missing tie bars, broken breaker handles and no exposed wiring.

**Common Areas** (including Laundry Room) - In a safe and sanitary condition. Fire Extinguishers (minimum 2-A: 10B:C rating) installed with visible gauge and annual re-charge date tag.

What is the definition of “safe and sanitary condition”?

**Windows and window locks** - Windows can be opened and closed easily. Bedroom egress windows are not blocked by furniture or air conditioners, and any security bars can be released from the interior. Window locks as required by Code.

What is the definition of “opened and closed easily”?

**Entry doors** - All doors and door jambs have strike plates that are secure; entry doors have standard deadbolt with thumb latch at interior and are weather sealed.

**Kitchen counters and sink surfaces** - Surfaces are in good condition, no significant cracked, chipped or missing pieces.
What is considered “significant”?

**Flooring** - Coverings do not create tripping hazards due to torn, missing, deteriorated sections of flooring.

**Plumbing fixtures / piping** - Properly installed and in good condition without any leaks or clogs, no missing handles or spouts.

**Bathroom ventilation** - Bathrooms have an operable window and/or exhaust fan.

**Electrical** - General outlets, lights, switches and cover plates are installed properly and in good condition.

**Exterior walls** – No peeling paint.

This should be changed to change - “no significant sections of the wall with peeling paint that would cause water penetration into the living unit.” All paint deteriorates and peels eventually. The way that this is written basically means that if there will be material code violation even when there is an inch of peeling paint in a difficult to access area of the property.
To San Jose City Staff,

I am writing to share my input on the draft San Jose’s Ellis Act and Tenant Protection Ordinances. While the ordinances were drafted with good intentions, there are specific items that carry unintended consequences and exacerbates already challenging housing market conditions, as they create a hostile regulatory environment for housing providers that will lead to reduced rental housing supply.

A summary of my key concerns include:

- Overly broad definitions of tenants, which eliminate housing providers ability to ensure only qualified tenants stay at our properties and creates all kinds of problems.
- Imprecise Material Code Violation (MCV) definitions and reporting process for MCV and state/federal fair housing laws open up opportunities for significant abuses.
- Severe impacts on small housing providers, who are less well financed and have less ability to weather the negative impacts of these ordinances.

In a recent survey carried out with 144 Bay Area Housing Network (BAHN) members, who are predominantly small mom-and-pop housing providers, over 60% indicated that given a more hostile regulatory environment, they will reduce their investment or consider selling their properties altogether. Another 23% indicated that they definitely will sell their properties. Many of these properties will end up leaving the rental market when they are sold.

Small housing providers make up a significant and important part of the San Jose rental housing supply. Criminalizing them, increasing costs for them, and creating risks and uncertainties for them not only is unfair, it will force these housing providers to exit the rental housing business, reducing rental housing supply, and making housing market condition worst for everyone. This is the last thing that we want to happen. Please consider the input of housing providers and revise these ordinances to make their more balanced and fair for everyone.

Chung Wu
Small Housing Provider

p.s.: Please see more specific concerns about the ordinance below, as well as inline comments in the attached ordinance documents (blue text).

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Imbalance between supply and demand is the root cause of our challenging housing market conditions. The only sustainable way that we can address the problem is to increase supply, and private funding makes up most of the resources that our city has available to increase housing supply. Our housing providers in BAHN are discouraged from investing to provide housing in the San Jose market because of the hostile environment that these two ordinances create, which increase costs, risks and uncertainties for us to provide our service in the San Jose market. Specifically:

The definition of who is a protected tenant (TPO 17.23.1010(Q), Ellis Act 17.23.920(K)) is overly broad. Under the definitions, “subtenant, . . . sublessee, . . . or any other person” can become a tenant just by sufferance, even without property owner permission. Furthermore, good cause eviction is not applicable (17.23.1030(B)(2)(b)(ii)) against
dependent/foster child, spouse, domestic partner, parent, brother and sister of a tenant even when these people did not get permission by property owner to stay at the property. This is totally against sub-leasing rule in most rental contracts. As property owners and housing providers, in order to increase the likelihood that rent gets paid, and questionable people do not live at our properties and endanger neighbors, we need to have control over who becomes our tenant. Under the current measure, a violent criminal can become our tenant at our property and we have no way of preventing that, and these people will be protected by the TPO and Ellis Act, making it extra difficult to remove them also. A tenant needs to be defined strictly as the individuals who are formally included in written lease agreement to live at the property.

Another problematic element of the TPO is that Material Code Violations (MCV) are vaguely defined in Attachment B and will lead to all sorts of abuse and litigation. The process for reporting MCV is also problematic. A tenant can literally create a MCV by doing something as simple as kicking a hole in the wall, or spray painting graffiti on the wall, reporting the problem to city code enforcement, and gain instant Limited Term Enrollment (LTE) protection (TPO 17.23.1020(C)(1)). While the proposed ordinance does contain provision for housing provider to appeal a claim (TPO 17.23.1025), it is practically impossible to collect evidence that tenant deliberately create the MCV. By then it is too late anyway, as LTE is already in effect. Worst yet, a tenant can abuse the system by creating MCV, and continue to generate new MCV. In this case, even if the tenant stops paying rent or create other problems that would qualify for good cause eviction, eviction cannot be done as MCV is in effect (TPO 17.23.1030). A better system that prevents the above abuses would require the tenant to demonstrate that good faith attempts have been made with housing provider to address a potential MCV before the tenant is allowed to report such a problem.

The same abuse also exists for federal/state fair housing law complaints and lawsuits. A tenant can file a frivolous fair housing law complaint and lawsuit and cause LTE to become effective. There should be a review process to examine the validity of the claims first.

If we believe that tenants would never abuse the system, consider the following. In our survey of BAHN members, we asked the problematic tenant behaviors that our members have encountered. Here are some of the responses:

- "They turned on the hot water many hours when they are not happy at me. [I paid for their hot water]."
- "Tenant got divorced and stop paying rent. Also rent rooms to other parties. House was left in bad condition with large furniture left behind."
- "Person who rented property used false documents and had no intention of moving in. Gave possession to a family member who ultimately had to be evicted at a cost of approximately $7,500.00. Of course occupant had no legal cost. Could have made many improvements to the property but will have to wait now."
- "Repeated late payments and finally no rent payment. By the time I went through court and got him evicted, he already owed three months of rent and still won't move out on his own. I had to call the Sheriff to kick them off. The unit was heavily damaged and I had to pack up his things. He also had others unauthorized people with him and it took another month before he finally came and pick up his things. I had spent $2K + in legal fees and over $15K in repair on top of loss of rent for over six months."
- "All sorts of violations of leases, criminal activities. Took 5 yrs still there. Tenants just use free lawyers and ask their church protest in front of the house so no sheriff wants to go there to evict even the judge ordered them to leave."

These are not isolated incidents. 93% of our members have encountered problems with their tenants in one form or another over time. 19% of our members have had tenants who committed criminal activities at their properties, and 25% have been personally harassed or attacked by their tenants. The ordinances as they are written are unbalanced and overly favor tenants. In fact, Ellis Act 17.23.955 said “It is presumed that the Owner’s termination of a tenancy without cause during the 12 month period is an action in bad faith intended to avoid the requirements of this Part, to the detriment of the affected Tenants and the health and welfare of the City.” The ordinance is literally written to presume guilt on the part of housing providers. This is unfair to housing providers and in total violation of due process that our system of law is based on.

The proposed ordinances are especially problematic for small mom-and-pop housing providers. Relocation assistance easily equates more than half a year’s worth of actual rent that our members are collecting, creating undue financial hardships, even in cases when housing providers are forced to remove tenants due to the need to rebuild/repair after a natural disaster, such as the recent flood that hit San Jose. The ability for tenants to abuse the system and prevent eviction will also bankrupt small housing providers. Lastly, criminal penalty (Ellis Act 17.23.990(B)) is especially problematic for
small housing providers. The ordinance, with its numerous provisions and interdependencies with other complex state laws, creates all sorts of traps that these small housing providers can land onto, which create undue risks for criminal offense and jail time.
Dear San Jose Housing Department,

I am writing to you as a rental housing provider in the City of San Jose. I am concerned that the Tenant Protection Ordinance (TPO) is overly complicated and convoluted. As someone who owns rental property, I want to urge the Housing Department to adopt changes to the TPO that would simplify it. This would eliminate the need for each property owner to require a legal interpretation for each application of the ordinance. The ordinance, as written, will have a number of unintended consequences. As a property owner, I have a limited awareness of the conditions inside my units unless there is an inspection or the tenant reports a code violation. Therefore, it is difficult to determine if the reports of code violations are being rationed out to extend the term of the good cause protection. The ordinance is written to allow for repeated instances of good cause protections up to 6 months at a time if used strategically. Instead, we ask that a tenant only be permitted one instance of a 6-month good cause protection per lease term. Under TPO, owners must show that code violations have been corrected prior to beginning an eviction for just cause, such as non-payment of rent. If the tenant commits an illegal act but the code violation has not yet been corrected, then the property owner is powerless from preventing further criminal activity until the code violation is corrected. Instead, we ask that any illegal activity is exempt from the TPO. As property owners, we must provide our tenants a safe place to live. This ordinance, as written, prevents that. Under the Ellis Act, a property owner is required to provide one year of just cause protection to the tenant prior to filing a notice of intent to withdraw. This provision requires us to know a full year in advance of our intent to utilize the Ellis Act, which is an unreasonable expectation. This ordinance would also hurt the resale ability of our buildings as this one year requirement would impact the subsequent owner. Instead we ask that you strike the requirement that good cause protection be provided to tenants for one year prior a notice to intent to withdraw the property is served.

Sincerely, Jaime Gonzalez
Discussion:
Publica
Proyecto de Ordenanzas: Draft Ellis Act and Tenant Protection Ordinances

Share Your Comments
Comparta sus comentarios

Name: ___________________
Email: ___________________ 

Check all that apply / marque todo que corresponda: 

☐ I live in an ARO apartment
☐ I own or operate an ARO apartment

About You / Acerca de usted

I am a member of the public / Soy un miembro del público

I disagree with the changes / Disentengo con los cambios

I agree with the changes / Acuerdo con los cambios

I have experience with Ellis Act problems / Tengo experiencia con problemas del Acto de Ellis

I do not have experience with Ellis Act problems / No tengo experiencia con problemas del Acto de Ellis

I do not live at an ARO apartment / No vivo en un apartamento alquiler ordenanza

I do not own or operate an ARO apartment / No soy dueño o opero un apartamento alquiler ordenanza

City of San Jose / Capital de la Exarquía de San José

Print Clearly / Escriba claramente
Please read & consider this change for more flexibility before you sign.

Thank you.

3. I almost never see a $500 security deposit for a 1 BR apt, only double digit. So I believe this amount needs to be increased to give more flexibility in a extremely tight market when you're forced to rent for less than we could just get that amount for the SD.

4. Require that all of the units be under PBO after an owner renovates or demolishes to replace their building. IE: If an owner has 10 units, tears them down & replaces them with 20 units, all 20 units needs to be under PBO they're on the same land as the original 10.