



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** April 28, 2017

Approved

*D. D. SYL*

Date

*4/28/17*

**SUBJECT: ACTIONS RELATED TO A TENANT PROTECTION ORDINANCE WITH JUST CAUSE PROTECTIONS**

## RECOMMENDATION

- 1) Approve an Ordinance adding Part 12 to Chapter 17.23 of the San José Municipal Code to include a Tenant Protection Ordinance that restricts no-cause evictions and establishes requirements for landlords to state a just cause for eviction.
- 2) Adopt an Urgency Ordinance to adding Part 12 to Chapter 17.23 of the San José Municipal Code to include a Tenant Protection Ordinance that restricts no-cause evictions and establishes requirements for landlords to state a just cause for eviction.

## OUTCOME

The adoption of the Tenant Protection Ordinance implementing just cause protections will greatly enhance housing stability for tenants. It will achieve this by eliminating the lawful use of no-cause notices to vacate, which allows landlords to remove tenants by issuing a 30-60 day notice. It will require landlords to state one of the causes listed in the Ordinance as reason for the termination of tenancy of a multifamily apartment, a guestroom in a guesthouse, or an unpermitted unit. If the Urgency Ordinance is adopted, these protections will be provided immediately.

## EXECUTIVE SUMMARY

Under the Tenant Protection Ordinance, landlords of multifamily dwellings, guesthouses and unpermitted units will only be authorized to terminate tenancy under one of the twelve listed

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causes. Protection from eviction except on specified grounds is called “just cause” protection. Tenants will be provided these protections immediately and the protections will not expire.

Landlords will continue to be able to evict tenants that damage the building, refuse to pay rent, or otherwise materially or habitually violate their lease. Additional causes for eviction include necessary repairs, owner move-ins, withdrawal of the property from the market or demolition; however, these additional causes also trigger relocation assistance. The Tenant Protection Ordinance will regulate all multifamily apartments including those covered by the Multiple Housing Roster (3-apartments or more, built at any time, excluding motels/hotels, sororities/fraternities), guesthouses, condominium mapped buildings that operate as an apartment, and unpermitted units (together, the “covered units”). Excluding the condo-mapped apartments, there are approximately 6,600 buildings and 87,520 apartments that meet this requirement. By contrast, there are only 43,800 apartments covered by the City’s Apartment Rent Ordinance.

## **BACKGROUND**

In 1979, the City Council created the rental dispute mediation and arbitration ordinance, currently codified in San José Municipal Code Chapter 17.23, in order to address the “substantial upward pressure on residential rents.” Commonly known as the Apartment Rent Ordinance (ARO), the program’s public policy purposes are further clarified in the Ordinance’s statement:

“In order to protect the health, safety and welfare of the citizens of San José, this chapter is a necessary measure designed to alleviate some of the more immediate needs created by San José’s housing situation. These needs include but are not limited to:

- the prevention of excessive and unreasonable rent increases,
- the alleviation of undue hardship upon individual tenants,
- and the assurance to landlords of a fair and reasonable return on the value of their property.”

The ARO, adopted at a time of high inflation rates, has not had its original, core requirements modified for the 37 years it has been implemented. However, Parts 6 and 7 of the Ordinance were added in 2003 in order to:

- include noticing requirements when owners of ARO apartments provide tenants a “no-cause” termination of tenancy; and
- provide tenants of non-ARO apartments to seek relief through the mediation and arbitration program when served a no-cause notice.

On June 23, 2015, after several years of significant rent increases that resulted in the highest rents in San José’s history, the City Council identified potential modifications to the ARO as its second highest policy priority. On September 1, 2015, the City Council approved staff’s

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workplan to explore potential modifications to the ARO. As part of this workplan, staff was directed to consider a just cause ordinance.

Several actions strengthening tenant protections in San José were brought forward for consideration by the City Council on April 19, 2016. The City Council directed staff to develop an Anti-Retaliation and Protection Ordinance that created termination of tenancy protections for tenants living in apartments that were experiencing housing, building, and fire code violations, needed important repairs, or who exercised their rights in the Apartment Rent Ordinance (ARO). The Anti-Retaliation and Protection Ordinance was subsequently renamed as the Tenant Protection Ordinance.

Since April 19, 2016, staff conducted six public meetings and held stakeholder meetings with owners and tenants regarding tenant protections. Throughout these meetings, participants were asked the following questions. Which just causes for termination should be included in the proposed ordinance? Should a ramp-up period be considered? What should be the qualifications for enrollment under the ordinance? Staff also performed additional research to identify best practices for tenant protections in other cities.

Based on the outreach and the research, the Housing Department completed a Proposed Tenant Protection Ordinance that conformed to the prior direction of City Council. The Proposed Ordinance presented to City Council on April 18, 2017, included “limited” tenant protections that would be effective when a tenant was “enrolled” into the Program. This “limited term enrollment” period was to begin under certain circumstances. These circumstances included: when the tenant made a claim of material code violation; when a necessary repair and/or replacement was needed; when a tenant filed complaint under state and federal fair housing laws; or when a tenant filed a petition under the ARO.

The Housing Department’s memorandum indicated that while tenant protections would be improved under the limited protections provided by the enrollment-based system, there would continue to be situations in which tenants could be displaced by no-cause notices to vacate. Without full just cause protections from the time a tenancy begins, tenants could continue to be displaced from their homes with little or no recourse. In addition, best practice research revealed that all other cities in California with robust rent-stabilization ordinances have just cause eviction protections to ensure that tenants are not arbitrarily displaced.

For these reasons, the Department’s Tenant Protection Ordinance memorandum included an alternative recommendation that the City Council reconsider adopting a Tenant Protection Ordinance that provides just cause protections without requiring enrollment. The full report can be found on the City’s website at:

[http://sanjose.granicus.com/MetaViewer.php?view\\_id=&event\\_id=2680&meta\\_id=628025](http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2680&meta_id=628025).

On April 18, 2017, after over four hours of public testimony, the City Council voted to request staff to return with a Tenant Protection Ordinance that included just cause protections without enrollment requirements or timeframes. The direction given was that the protections would commence at the beginning of the tenancy for all apartments covered by the prior version of the

Proposed Ordinance reviewed by the Council on April 18th. Staff was also directed to prepare an urgency ordinance to allow protections to be implemented immediately. These ordinances will be presented for the Council's consideration at the May 9 meeting.

### **ANALYSIS**

The Housing Department has developed a proposed Tenant Protection Ordinance that conforms to the direction from City Council received on April 18, 2017. The scope includes tenants with fixed term leases and tenants with verbal rental agreements. Under the Tenant Protection Ordinance, landlords of multifamily dwellings, guesthouses and unpermitted apartments will only be authorized to terminate tenancy under one of the twelve just cause termination grounds stated in the Ordinance. The following is a summary of the twelve just causes:

*Just cause reasons based on  
tenant actions*

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

*Just cause reasons based on  
landlord decision or  
consequence of action*

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

### **Added Protections in the Tenant Protection Ordinance**

The prior version of the Tenant Protection Ordinance brought to City Council on April 18, 2017 had some tenant protections. With the City Council's approval of a Tenant Protection Ordinance with just cause protections, tenants will receive the following additional protections.

- **Immediate Full Protections:** Protections against no-cause evictions will be available for all tenants without the need for an action to occur that "triggers" the enrollment. There is also no end date to the protections other than when the tenant voluntarily vacates the apartment. Relocation assistance for tenants affected by substantial building rehabilitation and owner move in will now apply to all tenants of covered units.
- **Elimination of No-Cause Notices:** An ordinance with stronger tenant protections will eliminate unwarranted or arbitrary no-cause notices.
- **Increasing Effectiveness of the Ellis Act:** The Tenant Protection Ordinance includes a cause for property owners to provide a notice to vacate under the Ellis Act provisions. This stated cause for termination of tenancy acts as the link between the Tenant

Protection Ordinance and the Ellis Act Ordinance. Without just cause protections, owners could have potentially evaded the Ellis Act provisions and payment of benefits by serving no-cause notices for termination prior to filing a Notice to Withdraw under the Ellis Act Ordinance.

- **Substantial Rehabilitation** – The just cause provision for substantial rehabilitation will require relocation benefits for all tenants displaced by substantial rehabilitation. Without this protection, tenants not enrolled in the Tenant Protection Ordinance would not receive the relocation benefits necessary to temporarily relocate in the tight rental market.

### **Data in Support of the Need for Just Cause Eviction Protections**

Since 2012, the Rental Rights and Referrals Program staff has received 1,962 no-cause notices to terminate. The following is a table summarizing the number of no-cause notices filed by year:

Year	# of Notices Filed
2012	252
2013	358
2014	395
2015	503
2016	366
2017 (to date)	88
Total	1,962

The trend of no-cause notices appears to be correlated with the strength of the rental housing market. This suggests that in past years, landlords were motivated to issue no-cause notices to increase rents in ARO apartments. Considering the total number of apartments in San José, it is likely not all landlords are submitting copies of the notices as required by the ARO. Under the current ARO Program, there is no mechanism in place that allows the staff to effectively ensure compliance with the noticing requirements. The just cause provisions will ensure that all tenants experience the same rights when facing a termination of tenancy. Based on the number of notices filed to date in 2017, it is anticipated there will be nearly 300 no-cause notices in the current year.

### **Recent Experience with Santee**

Because of limited staff resources, the Housing Department has not proactively tracked or analyzed notices of terminations by owner or property over an extended period of time. This type of analysis could be helpful to determine if there were a pattern of excessive terminations. Due to complaints from Santee residents and neighborhood representatives that tenants were being forced to vacate their homes for arbitrary reasons, the Housing Department staff analyzed no-cause notices pertaining specifically to the Santee neighborhood. This neighborhood is comprised of approximately 94 four-plexes which provide homes to approximately 380 Hispanic and Vietnamese households. Staff found that since September 2012, a total of 122 no-cause termination notices were issued to tenants of the Santee properties. This data demonstrates the

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impact that involuntary terminations can have on the stability of individual residents and a neighborhood as a whole. In response to the complaints from residents, the City Council approved one-time funding to procure resources to investigate issues pertaining to tenant displacement. These efforts are on-going.

#### Recent Experience with the Coyote Creek Flood

The Housing Department has been heavily engaged in assisting tenants from the Rock Springs neighborhood displaced by the Coyote Creek flood. Staff has been in direct contact with many of the flood victims. This experience, has confirmed that displaced low-income families face extreme challenges in finding new housing. Rock Springs is a rent stabilized community. The majority of the tenants were long term tenants who were paying below market rents ranging from a low of \$900 for a one-bedroom and \$1,100 for a two-bedroom apartment. Apartments available on the rental market are listed at rents of \$2,000 for a one-bedroom and \$2,500 for a two-bedroom. Even with the help of relocation services being provided to flood victims, displaced tenants are finding it extremely difficult to find replacement housing. Of the 170 households in case management after 60 days, only 17 households have moved into permanent housing -leaving 90% of the households in temporary housing situations. In addition, two families who wanted to return to their homes were served with no-cause notices within weeks following the flood. Without the immediate financial assistance provided by the San José Flood Relief Fund, many Rock Springs residents would have been facing homelessness due to the lack of affordable housing available in San José.

#### Recent Experience with Displaced Tenants from Order to Vacate

On March 16, 2017, three families living in a rent-stablized apartment building on Randolph Drive were forced to leave their home due to code enforcement action. (The families had already received a no-cause eviction.) Over the ensuing weeks, the displaced tenants were placed in hotels on a temporary basis. One month later, two of the three families were not able to find housing and have moved in with family members as they continue to search for housing. The cost of rental housing in San José does not provide housing choices for these impacted families.

#### Need for Urgency Ordinance

As an Urgency Ordinance, pursuant to section 605 of the City Charter the ordinance requested by the City Council must be “adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency” and adopted by not less than eight (8) members of the Council. In addition to all of the other facts described in this memo, the following findings provide arguments in support of an Urgency Ordinance.

No Cause evictions have a negative, destabilizing impact on the peace, health and safety of Tenants and on the City as a whole:

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- **Hardship Caused by Displacement** – Displacement through evictions destabilize the living situation of renters and have a direct impact on the health of San Jose's residents by uprooting children from schools, disrupting social ties and networks that are integral to citizens' welfare and the stability of communities, and create undue hardship for low-income residents through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing. Studies have shown students who have moved multiple times are more likely to have lower engagement in school, poorer grades in reading, and have a higher risk of dropping out.
- **High Cost of Rents** – The City of San José has long been one of the most expensive cities in the country in which to live. 47% of all rental households are cost burdened (Pay over 30% of their income on housing.) 25% of renters are severely cost burdened (Pay over 50% of income on housing). San José continues to have a severe housing affordability crisis with one of the highest rates of rent increases in the nation. In March 2016, the median rental price for a one-bedroom apartment in San Jose was \$2,244 per month (\$28,928 per year). This equated to a 9% increase in costs over March 2015. The median rental price for a two-bedroom apartment was \$2,792 per month (\$33,504 per year) which was a 7.3% increase over costs in March 2015. The rent burden caused by the high cost of rent in San José leads to challenges for families affording necessities including food, clothing and medical care.
- **Overcrowded Housing Conditions** – The high costs of rents often lead to an overcrowding living environment. 15% of San José's rental households experience overcrowding. Research on overcrowded living conditions has found that these environments harms family relationships, negatively impacts children's education and can lead to depression, stress, and anxiety.

The need for action to preserve the public peace, health, and safety and immediate based on the following facts:

- **Incentive to Serve No-Cause Notices** – Due to the lack of monitoring and oversight of no-cause notices, landlords have a financial incentive to serve no-cause notices and increase rents to new tenants. The approval of an urgency ordinance will reduce the amount of time for landlords to serve no-cause notices to residents while waiting for a second reading of the ordinance and the additional 30 days prior to the effective date of the new restrictions (potentially 45 days).
- **Recent Increase in No-Cause Notices** - Since the discussion of the Tenant Protection Ordinance on April 18, 2017 through April 27, the City has received nine no-cause notices, six were all in one building. This is an abnormally high number of notices for such a short period of time.

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### **PUBLIC OUTREACH**

The outreach efforts pertaining to this Ordinance were discussed as part of the April 18, 2017 memorandum. This memorandum and the draft Ordinance were posted to the City's website on April 28, 2017, prior to inclusion on the May 9, 2017 City Council agenda.

Additional written public comment received since the April 18 City Council meeting is provided as **Attachment A**.

### **EVALUATION AND FOLLOW-UP**

The Housing Department is prepared to immediately implement the Tenant Protection Ordinance. Program Administration will be focused on educating the public on tenant's rights and landlord responsibilities and working with nonprofit partners to support tenants in exercising these rights. The following is a summary of the action items that will follow the recommended City Council action on May 9.

- **Public Meetings** – Information regarding the approved action by City Council will be discussed at the regular meeting of the Housing and Community Development Commission on May 11, 2017. Additional Public meetings will be starting the following week to educate tenants and landlords on the Tenant Protection Ordinance.
- **Outreach** – Outreach will commence the effective date of the Ordinance including eblasts, website development, frequently asked questions handouts, mailers, radio, television in multiple languages in order to reach both landlords and tenants regarding their rights and responsibilities.
- **Nonprofit Partners** – As a part of the Annual Action plan and 2017-2018 budgeting process, funds will be identified to support nonprofit partners in providing clinics and legal advice to tenants facing notices of termination.

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

### **COORDINATION**

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

**COMMISSION RECOMMENDATION/INPUT**

Pursuant to Section 7.01 of the existing regulations, the proposed draft Ordinance was presented to the Housing and Community Development Commission at their regularly scheduled meeting on April 13, 2017 for recommendations to the City Council. At the April 13, 2017 meeting, the HCDC recommended that the City Council consider including just cause protections for all tenants in the Tenant Protection Ordinance.

**COST SUMMARY/IMPLICATIONS**

In the April 18, 2017, memorandum to City Council, the administration stated that it intended to bring forward five new position additions as part of the 2017-2018 Proposed Budget. Two of those positions will no longer be needed due to the City Council’s decision to approve a Tenant Protection Ordinance with full just cause protections. Because all tenants receive the benefit immediately, there is no need to create a system to enroll and track tenants and apartments. As a result, the Enrollment Analyst and the Code Enforcement inspector are no longer needed. The table listed below shows the positions that are needed at this point in time to begin implementation of the ARO, the Tenant Protection Ordinance and the Ellis Act Ordinance. With the change to the Tenant Protection Ordinance, the functions of the reallocated Senior Analyst have been modified from the prior memorandum.

**Apartment Rent Ordinance Implementation Support**

<b>Position</b>	<b>Department</b>	<b>Description</b>
<b>Senior Analyst</b> (Reallocated from a current Senior Development Officer Position)	Housing Department	The Senior Analyst will establish and implement the initial communication strategy regarding new Tenant Protection Ordinance and ARO requirements. The position will also oversee customer interactions.
<b>Enrollment Analyst</b>	Housing Department	<del>The Analyst will work with tenants and landlords to ensure tracking of enrollment is accurate and communicated effectively.</del>
<b>Code Enforcement Inspector</b>	Planning, Building and Code Enforcement	<del>This position will respond to complaints made by tenants and will coordinate with Housing to track enrollment.</del>
<b>Senior Deputy Attorney</b>	City Attorney’s Office	This position will develop the legal documents and forms necessary to implement the ordinance and provide ongoing support to the overall ARO program.
<b>Information System Analyst</b>	Housing Department	This position will develop and support the system necessary to track the enrollment process and will support the ARO databases ongoing.

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The estimated net costs for these positions is approximately \$200,000. As mentioned, the Senior Analyst position is already built into the fee calculation for the program. The positions, which are currently under review, and the associated impact on the fees, will be brought forward to the City Council for consideration as part of the annual 2017-2018 Budget process. These increased costs do not address all of the additional staffing and resources that are expected to be necessary to implement the fully modified ARO that is expected to be brought forward in fall 2017.

**CEQA**

Exempt under Section 15061(b)(3) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA; Public Resources Code 21000–21189). This action has no potential for causing a significant effect on the environment. File No. PP17-030.

/s/

JACKY MORALES-FERRAND  
Director, Department of Housing

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

**Attachments:**

A: Written Public Comment Received After April 18, 2017

# **Draft Tenant Protection Ordinance**

City of San José – Department of Housing

Public Comments Received as of April 28, 2017

## Nguyen, Viviane

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**From:** Nguyen, Viviane  
**Sent:** Tuesday, April 25, 2017 5:01 PM  
**To:** Nguyen, Viviane  
**Subject:** RE: Proposed Changes to the Rent Ordinance

**From:** dave limbocker [REDACTED]  
**Sent:** Wednesday, April 19, 2017 4:10 PM  
**To:** Grabowski, Ann <[ann.grabowski@sanjoseca.gov](mailto:ann.grabowski@sanjoseca.gov)>  
**Subject:** Proposed Changes to the Rent Ordinance

Dear San Jose Housing Department:

As a rental property owner in San Jose, I am deeply troubled by the proposed amendments to the city's Apartment Rent Ordinance. The proposed regulations will jeopardize safe, quality housing for our residents.

I am a responsible landlord and follow the rules of the law. We don't need punitive rent control regulations or robust bureaucracy to regulate 1/3 of the city's rental housing stock.

Punitive rent control measures lead to troubling consequences. Limiting annual rent increases to CPI will spark an increase in the deterioration and under-maintenance of rent-controlled rental units. Owners may reduce or eventually abandon upkeep, creating blighted neighborhoods where rental housing is clustered. Rental owners should not have to petition the city to add regulations for capital improvements and investments. This uncertainty over whether or not certain improvements can be passed-through will only lead to fewer improvements and a decrease in critical investments in our city's housing stock. This proposal is contrary to the city's' commitment of "being open for business."

Rental owners, like their residents, value certainty, reliability, and stability. A fixed-rate maximum allowable rent increase with a clear process for passing on capital expenses is far superior to the staff proposal. Using CPI fails to take into account rising costs of insurance, taxes, maintenance, and utilities while ensuring a return on my investment.

No one can deny that we do not have enough housing to meet demand. The only way we can address housing affordability is to make more housing available and support the construction of more housing for families of all income levels. Stricter regulations won't solve our problems.

Sincerely,

Dave Limbocker