



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** AMENDMENTS TO THE TENANT  
PROTECTION ORDINANCE

**DATE:** October 26, 2017

Approved

D. P. S. Y. L.

Date

11/3/17

## RECOMMENDATION

Approve an ordinance amending Part 12 of Chapter 17.23 of Title 17 of the San José Municipal Code modifying the definition of Rental Unit to exempt restricted affordable or government operated rental units, to remove the suspension of Part 6 and 7, and to modify the scope of the exception to the material or habitual lease violation of tenancy cause for eviction to:

- a) Remove the exception for the addition of a brother or sister to a tenant household; and
- b) Reduce the maximum occupancy limit on that protection to the greater of the number allowed by the rental agreement or two adults per bedroom.

## OUTCOME

The proposed amendments to the Tenant Protection Ordinance (TPO) reduce the categories of additional family members covered by the exemption to the TPO's allowed eviction for material or habitual rental agreement violation by removing brother and sister. That amendment limits these protections to family members that are a spouse, domestic partner, child, foster child and parent. Additionally, the protection for adults is limited to circumstances where the number of adults in the apartment do not exceed the greater of the number of occupants allowed by the rental agreement or two adults per bedroom. These changes address landlord concerns regarding the material and habitual lease provision exceptions included in the TPO and concerns raised by affordable housing developers, while continuing to provide protections for tenants and their immediate families. The amendments also provide an exemption for apartments with recorded affordability restrictions and government owned or operated apartments from the TPO and end the suspension of Parts 6 and 7 of Chapter 17.23.

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## **BACKGROUND**

On May 9, 2017, the City Council adopted the TPO which specified the reasons landlords may use to terminate or evict tenants. Since May 9, 2017, the Housing Department held public outreach meetings with owners and tenants to address outstanding issues pertaining to the adoption of the proposed Apartment Rent Ordinance. Through the Apartment Rent Ordinance public outreach process, additional issues were raised related to the cause for eviction for material or habitual violation of the tenancy in the TPO.

The issues raised pertaining to the material or habitual violation of the tenancy provision of the TPO are related to specific proposed provisions of the Apartment Rent Ordinance regarding petitions to add an additional tenant. Therefore, staff is bringing that issue to the City Council at the same time that the Apartment Rent Ordinance is considered. Staff is recommending that the suspension of Parts 6 and 7 be terminated as those Parts are revised in the Apartment Rent Ordinance. Staff is also bringing forward a recommendation regarding the exception for government owned or operated units and restricted affordable rental units already subject to just cause requirements.

The City Council previously provided direction for staff to return with an amendment to include criminal activity as a "just cause" in the TPO. The Housing Department has begun research on the issue of criminal activity, however the issue is complex and requires additional outreach with the community. The Housing Department will return with a proposed amendment to the TPO addressing criminal activity in Spring 2018. Additionally, the City Council requested research related to providing protections for tenants from landlords threatening notification of immigration authorities based on tenants' immigration status. Subsequently, the State legislature passed AB 291, a bill providing these protections to all tenants in California effective January 1, 2018. This bill is discussed in this memorandum.

## **ANALYSIS**

The Housing Department is recommending changes to the TPO in conjunction with City Council consideration of the final Apartment Rent Ordinance. These changes pertain to the following three areas:

- 1) Habitual or material violation of the lease - exception for addition of certain family members (including occupancy based limits and covered family relationships);
- 2) Apartments with Affordability Restrictions and Government Owned/Operated Apartments – exemption from TPO; and
- 3) Suspension of Parts 6 and 7 in the Apartment Rent Ordinance.

1) **Habitual or Material Violation of the Lease - Additional Occupants**

Under the TPO, there are several listed allowable causes for eviction, including habitual or material violation of the rental agreement, after failure to comply with a written notice to cease. The TPO contains an exception to that allowable cause for eviction, that pertains to the addition of tenants as, described in Section 17.23.1250.A.2.b. which prohibits eviction where the violation of the rental agreement is based on the addition by a tenant of certain family members, if the total number of adults in the apartment after such addition does not exceed the stated “occupancy limit.”

a) **Occupancy Limits**

- **Current Language** – The current ordinance has an occupancy limit for the exception of the greater of 1) the maximum allowed in the rental agreement or 2) the number of occupants allowed under subsection B of Section 17.20.270 of the Municipal Code **Section 17.23.1250.A.2.b currently reads as follows:**

*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 (which terms may be further defined in the regulations adopted by the City Manager), 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 subsection B of Section 17.20.270. 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.*

Typically, the number of individuals allowed under subsection B of Section 17.20.270 of the Municipal Code exceeds the number allowed within a rental agreement provision. That subsection includes the following standards for determining the area needed for each occupant based on square footage of the rooms in an apartment. It can also be used to determine a maximum number of occupants.

*Floor Area. 1. Every dwelling unit shall have at least one room which shall have not less than one hundred fifty square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than seventy square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of fifty square feet for each occupant in excess of two.*

**Table 1: Example of Occupancy Limits for 2 Bedroom Apartment based on this limit**

	Bedroom ft <sup>2</sup>	Allowed Person(s) when 2 person per 70 ft <sup>2</sup>	Remaining ft <sup>2</sup> - Allowed Person(s) when 1 person per 50 ft <sup>2</sup>
Bedroom #1	100 ft <sup>2</sup>	70 ft <sup>2</sup> = 2 people	100 - 70 = 30 ft <sup>2</sup> = 0 people
Bedroom #2	100 ft <sup>2</sup>	70 ft <sup>2</sup> = 2 people	100 - 70 = 30 ft <sup>2</sup> = 0 people
Common living	400 ft <sup>2</sup>	70 ft <sup>2</sup> = 2 people	400-70 = 330 → 330 / 50 = 6 people
Kitchen / Bathroom	300 ft <sup>2</sup>	0	0
Total Allowed Occupants		2 + 2 + 2 + 6 = <b>12 people</b> <i>Based on current limit</i>	

Landlords were concerned about using the occupancy standards provided in the municipal code, which would limit occupants based on the amount of square footage in the apartment potentially resulting in overcrowding, increased noise, parking issues, and impacts to existing tenants. Concerns identified by landlords included increased difficulty in monitoring the occupants living in apartments covered by the Tenant Protection Ordinance. Lastly, owners expressed concerns about the increase in costs and wear and tear on the apartment as a result of having more tenants in the apartments. This issue is being addressed as a part of the amended Apartment Rent Ordinance.

- **Proposed Amendment** – Replaces limit based on Section 17.20.270.B with two adults per bedroom. The maximum adults are listed below by number of bedrooms:

**Table 2: Revised Occupancy Limits**

Bedroom	# of Adults
Studio	2
1 BR	2
2 BR	4
3 BR	6

The recommendation allows tenants to add adults up to a maximum of two adults per bedroom and allows the addition of children without a specified limit. This

proposal will provide additional protection to families with children. For example, a mother and father with three children in a two-bedroom apartment (which would meet the “two persons per bedroom plus one rule” used by many landlords) would be protected against eviction when they add a fourth child to the family.

**b) Permitted Familial Relationships**

- **Current Language** – Under the Tenant Protection Ordinance, the landlord has the right to evict for habitual or material violation of the rental agreement, after failure to comply with a written notice to cease. An exception to that pertains to the addition of tenants as, described in **Section 17.23.1250.A.2.b**. Currently, this provision prohibits eviction when certain related occupants added to the household including... *“a dependent child or foster child, the spouse or domestic partner, parent, brother, or sister of a Tenant.”*

Landlords raised several concerns regarding the provision allowing tenants to add certain family members as discussed in the previous section. Additional concerns identified by landlords were about the challenge of providing documentation and proof of relationship for siblings, step-siblings, half-siblings and the likelihood of the desire to move in nieces and nephews. In comparison, documentation for the relationships of spouse or domestic partner, parent, or child can be more readily verified, by the production of with a birth certificate or marriage license/registered domestic partnership. As a result of this feedback, the Housing Department is recommending changes to the adopted TPO.

- **Proposed Amendment** – Staff is proposing that the addition of family members covered by the exception be limited to the following relationships: dependent child, foster child, spouse or domestic partner, and parent. This means the elimination of brother and sister.

It is important to note that the staff recommendation includes parents as an allowed relationship under the exception. This change was recommended by the Housing and Community Development Commission, which is a change from the first draft released by the Housing Department on September 28, 2017. San José has committed to being an Age-Friendly City, supporting ideals to build a healthy community for all ages. One of the priorities for the plan is to address housing needs of the aging population. Access to affordable housing options for seniors has been identified as an action item. The exception within the TPO may prevent the eviction of families who have to move their parents into their apartment, protecting a potentially affordable option for seniors to live with their children. Furthermore, many households within San José are three-generational families. For cultural reasons, families choose to include their parents in their household in order to provide long-term care for their aging parents. For these reasons, the

recommendation includes allowing the addition of a parent without fearing eviction.

## 2) **Apartments with Affordability Restrictions – Exemption from TPO**

Property managers of affordable apartments with income and rent restrictions indicated a conflict with the just cause provisions within the TPO. Property owners of apartments with affordability restrictions must comply with the regulatory requirements for their individual funding sources, some of which require that the tenant's rental agreement include just cause protections. Requiring these apartments to comply with the TPO created a second layer of requirements that were not consistent with the funding source requirements. Eliminating the additional layer of regulation allows property managers to maintain compliance with their current requirements. Therefore, the Housing Department is proposing to modify the definition of Rental Unit as defined in the Tenant Protection Ordinance.

- ***Proposed Amendment*** – Exclusion of affordable rental units with recorded affordability restrictions, if the required rental agreement or rental agreement provides that tenants shall only be evicted for just cause, from the TPO.

## 3) **Suspension of Section 6 and 7 of the Apartment Rent Ordinance**

Currently in the Ordinance, Section 17.23.1290 Notices to Vacate; Chapter 17.23 Suspended states: *“As of the effective date of this Tenant Protection Ordinance, eviction of Tenants may not be accomplished by service of a notice to vacate (as defined in Section 17.23.125) may be served on Tenants. Part 6, Evictions, or Part 7, Evictions from Certain Units Built after the Effective Date of this Chapter, shall be suspended and no arbitration or mediation hearings shall be held, unless they are for evictions where notices to vacate were properly served or given before the effective date of this Tenant Protection Ordinance.”*

This section will be amended to unsuspend and reinstate Part 6 “Evictions” and Part 7 “Evictions from Certain Units Built after the Effective Date of this Chapter” to allow the amended Apartment Rent Ordinance to take effect as intended.

## **EVALUATION AND FOLLOW-UP**

This ordinance amending the TPO will have a second reading by the City Council two weeks following the first reading of the ordinance. The amendments to the TPO ordinance will be effective 30 days following the second reading and adoption by the City Council. The policy research related to including criminal activity as a just cause under the TPO will be brought back to City Council for consideration in Spring 2018. Prior to the City Council hearing, the Housing Department will conduct additional public outreach, including public discussion at the Housing and Community Development Commission.

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Additionally, City Council directed staff to amend the TPO to prohibit landlords from threatening notification of immigration authorities of their tenants' immigration status, or from sharing information regarding the immigration status of their tenants. On October 5, 2017, the governor signed AB 291 (Chiu) Protecting Immigrant Tenants prohibiting landlords from threatening to report tenants to immigration officials in retaliation for engaging in legally-protected activities or to influence tenants to vacate. This bill also bars landlords from disclosing information related to tenant's immigration status or codify an existing defense to unlawful evictions based on immigration status. This bill extends itself to prohibit attorneys from reporting or threatening to report, immigration status of persons involved in housing cases. AB 291 also provides tenants a right to sue landlords who report them to immigration authorities. The Housing Department will analyze this new bill and determine if it meets the goals intended by the City Council.

The Housing Department will return with a proposed amendment to the TPO addressing criminal activity and an analysis of the new State law in Spring 2018.

### **PUBLIC OUTREACH**

The Housing Department met with a wide range of stakeholders while developing amendments to the Tenant Protection Ordinance and the new Apartment Rent Ordinance. With the assistance of the California Apartment Association, Bay Area Homeowners Network, and the Renters' Coalition, the Housing Department met with property landlords and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. Staff met with any individual or group that requested a meeting during the public comment period. The Department also hosted 16 public meetings on the proposed Ordinance listed in **Attachment A**. The public comment files can be found on the website.

The most recent comment files are posted on the website:

- Comments received July 11, 2017 to July 31, 2017 included here:  
<http://www.sanjoseca.gov/DocumentCenter/View/70783>
- Comments received August 15, 2017 to September 22, 2017 included here:  
<http://www.sanjoseca.gov/DocumentCenter/View/71919>

### **COORDINATION**

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

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### **COMMISSION RECOMMENDATION/INPUT**

The draft amendment to the TPO was presented to the Housing and Community Development Commission (HCDC) on September 14, 2017. HCDC recommended to include “parent” as a familial relationship included in the material and habitual lease provision within the Tenant Protection Ordinance. The Commission recognized that the family structure, especially within a cultural diverse environment, is multi-generational. With this one amendment, HCDC voted 11-0-1 supporting the staff recommendation.

The memorandum considered by the HCDC on September 14, 2017 includes additional background and analysis regarding the TPO policy issues. This report and attachments is available at the following link: <http://www.sanjoseca.gov/index.aspx?NID=4744>

### **CEQA**

Statutorily Exempt, File No. PP17-030, CEQA Guidelines Section 15061(b)(3), No potential for causing a significant effect on the environment.

/s/

JACKY MORALES-FERRAND  
Director, Department of Housing

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

### **ATTACHMENT:**

- Attachment A – Summary of Outreach Meetings



**Summary of Tenant Protection Ordinance Meetings  
From March 2, 2017 to October 5, 2017**

***Housing & Community Development Commission – 3 Total***

March 2, 2017	San José City Hall Wing Rooms	5:45 PM
April 13, 2017	San José City Hall Wing Rooms	5:45 PM
October 5, 2017	San José City Hall Wing Rooms	5:45 PM

***Public Meetings – 6 Total***

May 31, 2017	Roosevelt Community Center	6:30 – 8:30 PM
June 26, 2017	San José City Hall Wing Rooms	6:30 – 8:30 PM
July 11, 2017	Cypress Community Center	6:30 – 8:30 PM
July 12, 2017	San José City Hall Wing Rooms	9:00 – 11:00 AM
July 18, 2017	Seven Trees Community Center	6:30 – 8:30 PM
August 16, 2017	District 2 – Hosted by Councilmember Jimenez	6:30 – 8:30 PM

***Stakeholder Meetings – 7 Total***

May 23, 2017	Renters' Coalition
June 15, 2017	Bay Area Homeowner Network (BAHN)
June 28, 2017	Real Estate Connections
August 24, 2017	Santa Clara County Housing Authority Board
September 14, 2017	Burbank/Sherman Oaks Neighborhood Association
September 21, 2017	Colonial Gardens Apartment Owners
September 21, 2017	EACH Housing/CalBRE

**TOTAL: 16 meetings**