



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: SEE BELOW

DATE: April 24, 2018

Approved

Date

4-24-18

SUBJECT: REPLACEMENT MEMO—AMENDMENTS TO THE TENANT PROTECTION ORDINANCE - TITLE 17 FOR IMMIGRATION AND CRIMINAL ACTIVITY

RECOMMENDATION

Accept the staff report and approve an ordinance amending the provisions in Part 12 of Chapter 17.23 of Title 17 of the San José Municipal Code to:

1. Include, as a separate just cause basis for eviction, to allow a landlord to serve a Notice of Termination of Tenancy when a tenant has committed a serious felony, as defined by Penal Code Section 1192.7(c), or a violent felony as defined by Penal Code Section 667.5(c), as long as:
 - a. The person allegedly committing the crime was indicted by a grand jury or “held to answer” for that crime pursuant to Penal Code Section 872;
 - b. The felony was committed during the tenancy of the person who was indicted or held to answer;
 - c. The felony was committed by an adult; and
 - d. The Notice of Termination of Tenancy was properly served on all tenants in the household within 90 days of the discovery by the property owner of the judicial determination of probable cause (i.e., the indictment or preliminary examination).
2. The Ordinance shall require landlords to allow a right to repossession of the unit where an acquittal or dismissal of the tenant’s felony charges results—subject to consent of any co-tenants—or rental of the next available unit, unless otherwise legally prohibited.
3. Specifically prohibit the use of past criminal history committed prior to the individual’s tenancy as the basis for eviction under the basis of “nuisance” in the TPO.
4. Include an “opportunity to cure” that provides that a landlord may not proceed with an eviction on the basis of criminal activity if the tenant household files a restraining order or provides evidence of similar steps being taken to remove the tenant who was held to answer for a serious crime listed above.
 - a. Landlords shall serve tenant households, before or at the same time as the Notice of Termination of Tenancy (because of the commission of a serious or violent felony) with written notice of the household’s opportunity to cure.

5. Include provisions that protect tenants who are immigrants and tenants who are victims of domestic violence by:
 - a. Prohibiting landlords from harassing, intimidating, threatening, or evicting a tenant because of their immigration or citizenship status and from disclosing the immigration or citizenship status of a tenant to any immigration authority or law enforcement agency, except to comply with a legal obligation under federal law, or subpoena, warrant, or court order, in compliance with Civil Code Section 1940.35(a), Code of Civil Procedure Section 1161.4, and Penal Code Section 518-19; and
 - b. Requiring landlords to post a notice in common areas, in the three most commonly-spoken languages, stating:

It is illegal for a landlord to harass, intimidate, threaten, or evict a tenant because of their immigration or citizenship status. It is also illegal for a landlord to disclose the immigration or citizenship status of a tenant to any immigration authority or law enforcement agency, except to comply with a legal obligation under federal law, or subpoena, warrant, or court order;
6. Including provisions protecting victims of domestic violence by:
 - a. Adding a provision that states that nothing in the ordinance “shall abrogate the protections afforded to survivors of violence consistent with California Code of Civil Procedure Section 1161.3, as amended, and the Violence Against Women Act, Public Law 103-322, as amended,” as recommended by staff; and
 - b. Allowing victims who have been residing in a unit with the leaseholder who is the alleged abuser a mechanism by which they can take over the lease, to the extent allowed by California law.

DISCUSSION

Landlords have a legal and moral responsibility to protect their tenants from foreseeable risks of harm. It is axiomatic that known criminal activity—particularly where those behaviors rise to the level of not merely felonies, but serious and violent felonies—can pose a foreseeable risk of harm to children and families living nearby.

Police officers who worked extensively in neighborhoods participating in such initiatives as: Project Hope, the Strong Neighborhood Initiative, and “Weed and Seed,” will recount their proactive work in troubled neighborhoods with drug dealing and violence. Families could often identify the source of much of the problem typically from a single building, or even a single apartment. Often, the most effective way of addressing the reasonable fear of the residents laid in persuading a landlord to simply evict a crime-committing tenant.

While often a landlord may rely on the “nuisance” basis for evicting such a tenant under our TPO as formulated, the standard definition of nuisance, as set forth in Civil Code Section 3479, typically requires proof that the conduct must “interfere with the comfortable enjoyment of life or property.” That may or may not require the testimony of a resident who can state under oath, in the presence of the alleged felon, that his behavior has interfered with her and her family’s use

of their home. Prior to conviction, it may also require the testimony of a victim of the criminal act.

To avoid this difficulty, I propose inclusion of language that ensures that the commission of a serious or violent felony enables landlords to do what they must do to protect their tenants without dragging a victim or a fearful neighbor into court to state the obvious: they're afraid, and reasonably so.

Legitimate fears arise on the other side of this argument. An understandable distrust—particularly among historically marginalized communities—persists of law enforcement and the criminal justice system, exacerbated by accounts of officer-involved shootings from Ferguson to New York, or of wrongfully convicted individuals freed by DNA evidence years after their sentence. Reasonable concerns also arise that the innocent families of the arrested person will also face displacement, particularly where domestic violence victims and immigrants could be illegally evicted or mistreated.

For that reason, I've sought to strike a balance with protections to ensure that:

- No juveniles are evicted under this provision;
- As staff recommended, families would have an opportunity to cure to remain in tenancy;
- The tenant would face a judicial finding of probable cause of having committed the offense, either through indictment or preliminary hearing;
- Only the commission of a "serious" or "violent" felony would qualify, and only if committed during the tenancy of the individual;
- Convictions resulting from conduct committed prior to tenancy could not form the basis for eviction under this provision;
- The landlord has 90 days from discovery of the crime to act, to avoid the use such incidents as a pretext to evict.

This memorandum reflects an effort to strike a balance between the safety of our community, and procedural protections against unwarranted eviction.

With this recommendation, I also seek to assure immigrant tenants with clear signage, in multiple languages, that landlords may not threaten them with the revelation of their status to the federal authorities. This notification effectuates the purpose of AB 291 (Chiu), which provides those basic protections.