

# City of San José Department of Housing Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance)

## April 24, 2018 City Council Item 4.3



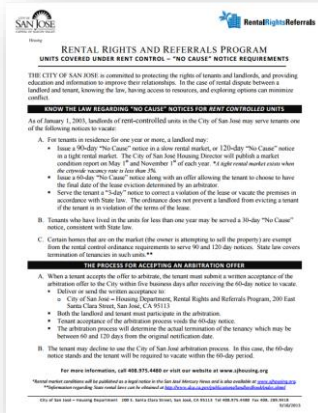
# Council Direction – Impact on Development

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- 1 Researching regarding impact of subjecting replacement units to be re-controlled by Ellis Act**
- 2 Additional research regarding existing Ellis Act Ordinances throughout California**

# Review of Ellis Act

1



Create a standardized & formal process for issuing notices

2



Provide relocation benefits to tenants

3



Establish rent stabilization for future tenants

# Why Re-control is Important

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## Reasons for re-control of apartments under Ellis Act:

- 30% of ARO apartments are in Urban Villages
- Goal of 10,000 more housing apartments in San José
- Retain rent stabilized apartments
- Long term stability for future tenants

# Study: 5% Rent Increase Limit has No Impact on Financing New Project

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**David Raul Rosen and Associates report concludes about lenders response:**

- 1** First tier: 5% would not be a limitation to this financing
- 2** Second tier: may be a perceived risk to developing under annual rent limits

# Potential Impact on Developers

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**Small Scale**

**Large Scale**

Financing is not a limitation

Acknowledge that 100%  
will be controlled

Perception that annual  
increases can change

# Potential Impact of Ellis on Redevelopment

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## Experience of Other Cities

- **Berkeley:** Low density
- **San Francisco:** Landlords avoiding rental
- **Santa Monica:** Down zoning and avoidance of new development of rental

# Policy Choices

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- **Recommendation: 50% re-control**
  - San Jose's annual increase is higher
  - San Jose's density is higher
  - Want to continue rental housing development
- **Alternative: 100% re-control**
  - Provides maximum stability for future tenants





# Proposed Amendment #1: Exemptions from Re-Control

## Inclusionary

10 Existing Units

20 New Units Built are:

Deed Restricted Affordable  
= 3 units

- 9% at 80% AMI = 2 units
- 6% at 50% AMI = 1 unit

Re-Controlled = 10 Units

Market Rate = 7 Units

OR

## Waiver

10 Existing Units

20 New Units Built are:

Deed Restricted Affordable  
= 4 units

- 9% at 80% AMI = 2 units
- 6% at 50% AMI = 1 unit
- 5% at 100% AMI = 1 unit

Re-controlled = 0 units

Market Rate = 16 Units

# Characteristics of Buildings Covered by Tenant Protection Ordinance vs. Ellis Act Ordinance



Characteristics	Tenant Protection Ordinance	Ellis Act Ordinance
3 units or More	✓	✗
4 units or more	✓	✓
Built Before 1979	✓	✓
Built After 1979	✓	✗

# Proposed Amendment #2: Three Apartments

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Include apartments with three units under the Ellis Act



# Proposed Amendment #3: Apartments Built After 1979

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**Allow non-ARO apartments with three units or more built after 1979 to provide:**

- 120-day notification to tenants and the City, and
- Relocation consultant services to impacted tenants





**City of San José Department of Housing**

## **Potential Amendments to the Tenant Protection Ordinance Regarding Immigration & Criminal Activity**

**April 24, 2018 City Council Item 4.4**



# City Council Direction – Immigration

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## The City Council directed staff to:

- Provide protections for a tenant's immigration status
- Prohibit landlords from:
  - Threatening notification of immigration authorities of their tenants' immigration status, or
  - Sharing information regarding the immigration status of their tenants



# Amendment to TPO with Provisions Applicable Parts of AB 291

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**AB 291 (effective Jan. 1, 2018) prohibits landlords from threatening notification of their tenants' immigration status to immigration authorities for:**

- retaliation,
- harassment,
- intimidation,
- gain possession of the rental apartment, or
- influence tenants to vacate their rental

# City Council Direction – Criminal Activity

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- City Council also directed staff to include criminal activity as a separate just cause reason for eviction.
- Under the current version of the TPO, Material or Habitual Violation of the Lease and Nuisance Behavior are the two primary just cause reasons landlords can use to evict tenants for criminal activity.



# Factors of Consideration Per Council Direction – Criminal Activity

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- 1. Type of Crime:** Based on serious felony and/or violent felony
- 2. Basis for Eviction:** Conviction
- 3. Location of Criminal Activity:** Occur on the property
- 4. Notification Required:** Household serve a “notice to quit” & for landlords to serve a notice of termination on tenant household

# Public Feedback – Criminal Activity

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## Landlord Input

- Convictions may take several months
- Conviction basis would not be effective in providing a tool to address crime at their properties
- Would be resigned to continue using the nuisance cause

## Tenant Input

- Concerns about creating version of “Crime Free Multiple-Housing Program”
- No need to add a separate just cause basis for eviction based on criminal activity
- Provide an opportunity to cure the situation

# Alternatives – Criminal Activity

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## No Change

Do not establish a separate just cause category for criminal activity. Landlords would continue to use a nuisance cause to evict for criminal activity.

## Use “Held to Answer”

Use “Held to Answer” for a violent or serious felony as the basis for eviction.

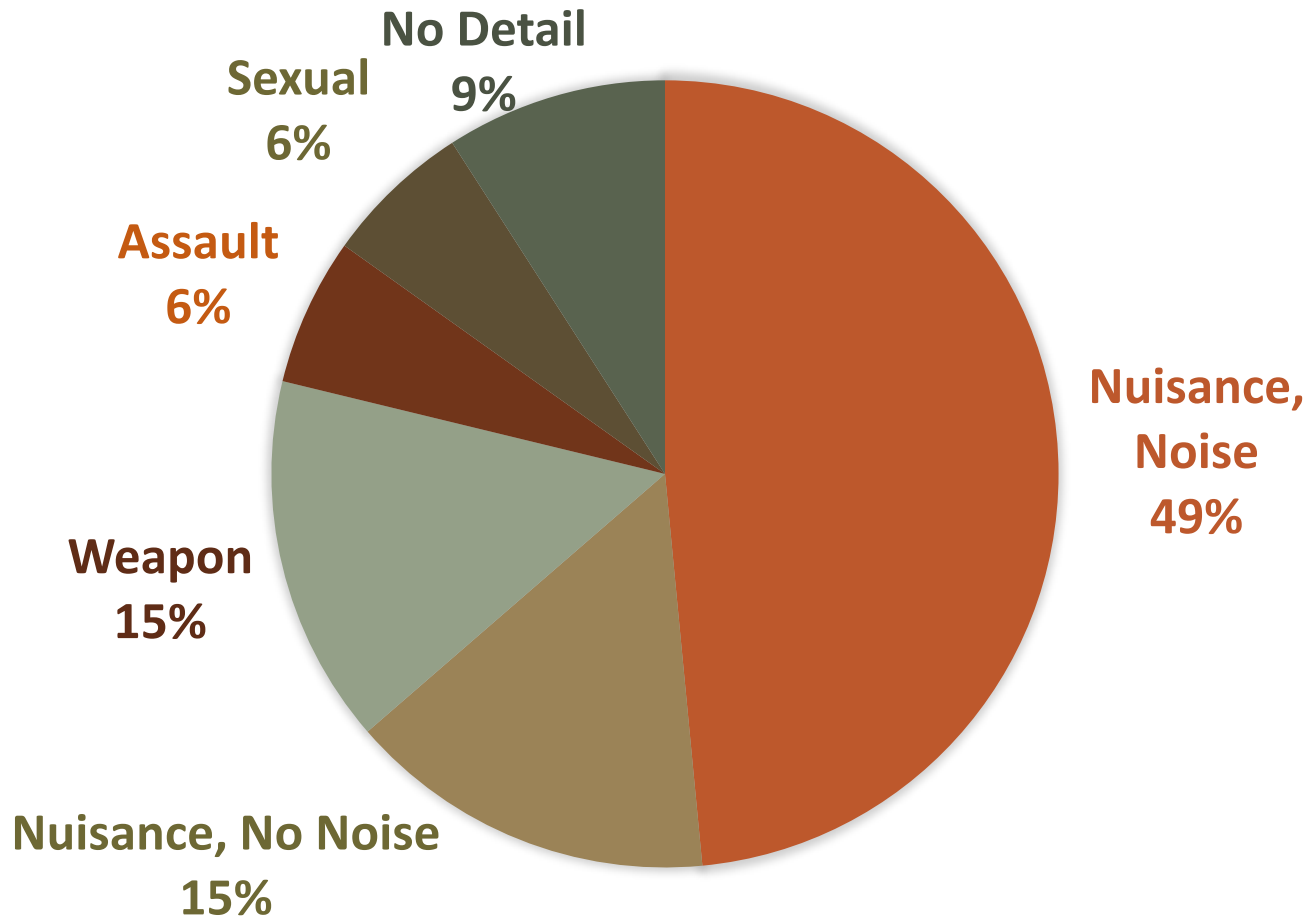
# List of Just Cause Terminations

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1. Nonpayment of rent
2. **Material or habitual lease violation**
3. Damage to the apartment
4. Refusal to sign a new agreement
5. **Nuisance behavior**
6. Refusing access to the apartment
7. Unapproved holdover subtenant
8. Substantial rehabilitation
9. Ellis Act removal
10. Owner move-in
11. Order to vacate
12. Vacation of unpermitted apartment

# Breakdown of Notices of Termination Received Related to Nuisance or Criminal Activity

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City of San José Department of Housing  
**Amendments to the  
Apartment Rent Ordinance  
Regarding Utility Pass  
Throughs to Tenants**

**April 24, 2018 City Council  
Item 4.5**



# Council Direction

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- 1 Options to address RUBS**
- 2 Research cost of submetering in ARO buildings**
- 3 Research incentives for financing submetering**

# Rent as Defined in City of San José's Apartment Rent Ordinance

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**Original ARO intended to regulate rent as a single charge including all housing services.**



**Rent has been unbundled**



# Challenges Pertaining to the Use of RUBS

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**Rents in Excess of 5% Annual General Increase**



**Fluctuating Rents**



**Lack of Transparency**



**Does not reflect tenant's actual usage**

# Conservation Efforts in Multifamily Housing

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## **Submetering is expensive**

- Total per unit cost can range from \$5,770 to \$15,870.



## **Limited programs incentivizing the installation of water meters:**

- Santa Clara Valley Water District
- City of San Jose
- Property Assessed Clean Energy Program (PACE)

# Investments to Conserve

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**Low Flow  
Shower Heads**



**Leak  
Prevention**



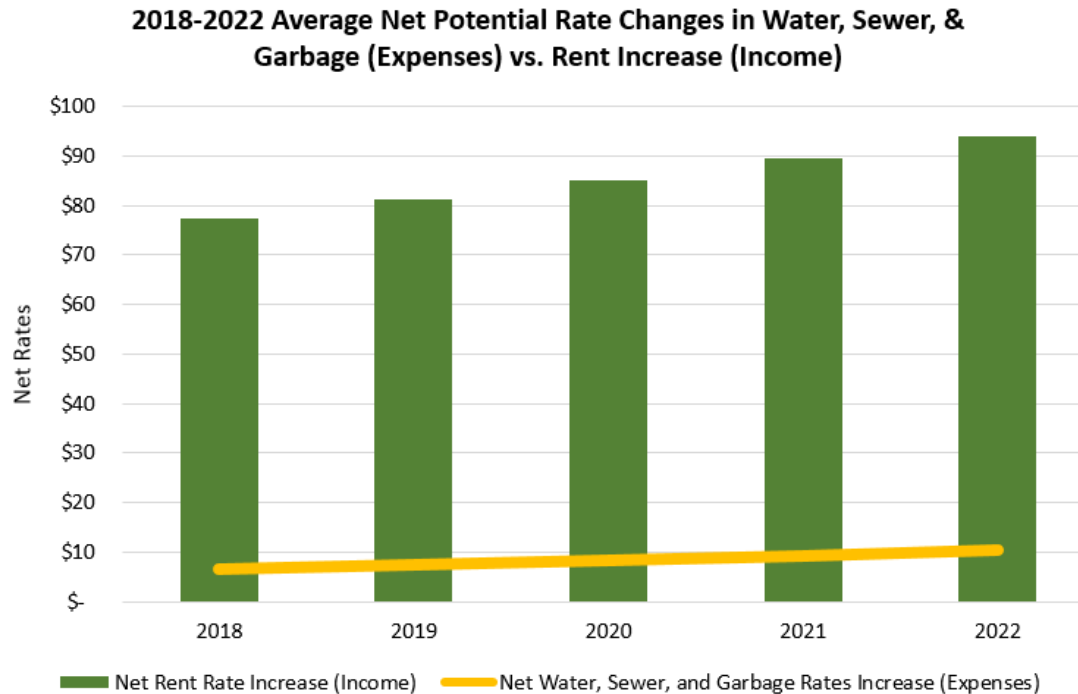
**Drought  
Resistant  
Landscape**



**Financial  
Incentives  
Programs**

# Impact of Increased Utility Rates

The 5% annual allowable rate is adequate in covering future increases in utility costs.



**Assumptions:**

*Assuming average rate increases for water, sewer, and trash from 2013-2017, and repeated into the future*

*Assuming San Jose Water Company, which has the highest rates*

*Costs are based on utility petitions filed with the Rent Stabilization Program from 2012-2017*

# Framework for One-Time Petition Process

Guideline	Proposal
<b>Qualified RUBS Contracts</b>	Must have been an executed RUBS contract prior to January 1, 2018
<b>Petition</b>	<ul style="list-style-type: none"><li>• Landlord must petition by October 31, 2018</li><li>• Tenants can challenge</li></ul>
<b>Allowed Utilities</b>	Water, sewer, garbage, electricity, and/or gas
<b>Basis</b>	Average utility costs over calendar year 2017
<b>Limit</b>	HUD Utility Allowance cap
<b>Voided Contracts</b>	<ul style="list-style-type: none"><li>• All oral agreements</li><li>• Any new written RUBS contracts or amendments after January 1, 2019</li></ul>



# City of San José

# Department of Housing

