



COUNCIL AGENDA: 4-24-18

FILE: 18-549

ITEM: 4.4

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 6, 2018

Approved

Date

4/11/18

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

- (a) Include a provision that prohibits landlords from disclosing or threatening to disclose tenants' and/or associates of tenants' immigration or citizenship status to authorities for the purposes or intent of retaliation, harassment, intimidation, or recovering possession of a rental unit consistent with Civil Code 1940.35(a), as amended; and
- (b) Include "Felony Conviction" as a separate just cause basis for eviction to allow a landlord to serve a Notice of Termination of Tenancy when a tenant has been convicted, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), that was committed during his or her tenancy and on the premises. Require that landlords, prior to serving a Notice of Termination of Tenancy, provide tenant households a written notice to remove the tenant who was convicted from the unit or the tenant's name from the lease agreement within a reasonable time, using one of the following methods:
 - (1) Filing a restraining order or providing evidence of similar steps being taken to remove them from the household; or
 - (2) Removing the member of the household who was convicted and providing written notice to the landlord that said tenant has been removed.

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OUTCOME

If Council approves the recommended actions, the Anti-Retaliation Protection section of the Tenant Protection Ordinance (Section 17.23.1270) will be amended to prohibit landlords from threatening tenants and/or their associates with notification of immigration status for purposes or intent of retaliation, harassment, intimidation, or recovering possession of the rental unit. This would make San José's Tenant Protection Ordinance (TPO) consistent with applicable provisions of AB 291. In addition, a new just cause for eviction based on criminal activity would be added to the Ordinance, permitting landlords to serve a notice of termination of tenancy when a tenant has been convicted of a serious or violent felony. Other household members will be afforded the opportunity to remove the convicted tenant in order to remain in their home.

EXECUTIVE SUMMARY

On May 9, 2017, the City Council adopted the Tenant Protection Ordinance (TPO) which established 12 separate "just cause" basis a landlord must use to terminate a tenancy and pursue an Unlawful Detainer. The City Council also directed staff to provide additional protections pertaining to a tenant's immigration status and include criminal activity as an additional just cause reason.

The 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. Staff has drafted an amendment to the TPO which includes provisions that are consistent with applicable parts of the new state law (AB 291). AB 291 prohibits landlords from threatening notification of their tenants' immigration status to immigration authorities, for the purpose or intent of retaliation, harassment, or intimidation, or to gain possession of the rental apartment or to influence tenants to vacate their rental apartment.

The 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. Staff is recommending that the criminal activity just cause pertain to a tenant who is convicted for a violent felony committed on the premises. In order to alleviate the possibility of displacement of an innocent household member, tenant households will be provided with the "opportunity to cure" by filing a restraining order or removing the member convicted of the felony and providing the landlord with a written notice of said removal.

BACKGROUND

On June 23, 2015, the City Council identified potential modifications to City's Apartment Rent Ordinance as its second highest policy priority. This subsequent policy rankings, this was raised to the top priority and expanded to include the creation of ordinances to address retaliatory evictions.

On May 9, 2017, the City Council adopted the Tenant Protection Ordinance (TPO) which established 12 separate "just cause" basis a landlord must use to terminate a tenancy and pursue an Unlawful Detainer. Prior to the adoption of the TPO, tenants could be given notices of termination of tenancy without any stated reason (no-cause evictions). The 12 just cause reasons for eviction are listed below.

Table 1: Twelve Just Cause Reasons Included in the Tenant Protection Ordinance

#	Reason
1	Nonpayment of Rent
2	Material or Habitual Violation of the Lease (Tenancy)
3	Damage to the Apartment
4	Refusal to Agree to Similar or New Rental Agreement
5	Nuisance - Disorderly Behavior Disturbing the Peace
6	Refuse Access to the Apartment
7	Unapproved Holdover Subtenant
8	Substantial Rehabilitation of the Apartment
9	Removal of Apartments from the Rental Market Under Ellis Act
10	Owner Move-In
11	City Code Enforcement Actions Requiring a Move Out
12	Convert an Unpermitted Apartment for Permitted Use

The City Council also directed staff to provide additional protections pertaining to a tenant's immigration status and to provide an additional just cause for criminal activity. The specific direction is provided below.

- Amend section "17.23.1270 Anti-Retaliation Protections," 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; and
- Direct the City Attorney to return to Council subsequent to implementation with an amendment to the ordinance to make changes in the ordinances: Amend '17.23.1250 Just Cause Termination' to ensure that criminal activity committed on or near the premises shall provide an independent basis for tenant's eviction, without requiring neighbors to testify or provide other evidence that the criminal conduct constitutes a legal 'nuisance'.

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Additionally, City Council approved Mayor Liccardo and Councilmember Jones' memo pertaining to criminal activity. This memo directed staff to:

- Establish a list of specific crimes or types of crimes that could serve as the basis for an eviction.
- Require that the tenant be provided "written notice to cease" before an eviction. Such notice would allow the tenant an opportunity to remedy the problem before being evicted.
- Establish specific criteria as to the timeframe and location of the criminal activity, to ensure that tenants are not evicted for crimes committed in the past or which are not related to their tenancy.

On October 5, 2017, Governor Brown signed AB 291. AB 291 provides tenant protections that restrict landlord actions regarding an individual's immigration status. Specifically, the legislation: Prohibits landlords from disclosing information related to tenants' immigration status, whether in retaliation for engaging in legally-protected activities or to influence them to vacate; bars landlords from disclosing information related to tenants' immigration status for the purpose of retaliation, intimidation, harassment, or in order to evict a tenant without using proper procedures; provides a defense to unlawful evictions based on immigration status; and prohibits attorneys from reporting, or threatening to report, the immigration status of persons involved in housing cases. AB 291 became effective January 1, 2018. Staff has included the state law language and an AB 291 fact sheet provided by the Office of Assemblymember Chiu's Office as **Attachment A**.

On November 14, 2017, City Council approved amendments to the Tenant Protection Ordinance regarding modifying the scope of the exception to the material or habitual lease violation of tenancy cause for eviction. The second reading of these amendments to the Tenant Protection Ordinance was held on November 28, 2017 and effective December 29, 2017. The staff report discussed by City Council on November 14th did not include recommendations on criminal activity or immigration.

ANALYSIS

This memorandum addresses City Council direction to modify the TPO to incorporate Immigration Status Protections and provide an additional just cause for criminal activity.

Immigration Status Protections

As mentioned, the City Council directed staff to amend the TPO to prohibit landlords from threatening or sharing immigration status of their tenants' to authorities or sharing information regarding the immigration status of their tenants.

In response to this direction, staff began the public outreach process in June 2017. Tenants and landlords encouraged staff to research other cities for ordinances that addressed immigration protections. Both tenants and landlords acknowledged that drafting ordinance language at the local level is challenging in light of the focus on immigration issues at the national level. Tenant advocates indicated including anti-retaliation language based on immigration status would protect tenants in an unbalanced power dynamic with landlords. Some tenants also stated that having their landlord notify authorities of their immigration status is a major concern for them.

Subsequent to these discussions, AB 291 was signed into law. This legislation changed the public discussion. Tenants and landlords reviewed the language in the new state law and generally recommended that staff incorporate sections of AB 291 into the TPO. Additionally, tenant advocates requested that the TPO require landlords to post a notice in English, Spanish, and Vietnamese, informing tenants that it is illegal for landlords to threaten to call immigration authorities regarding their immigration status.

Staff considered the public input while working with the City Attorney's Office to incorporate relevant language from AB 291 into the TPO. By having language in the TPO that is consistent with applicable sections of AB 291, tenants will have the opportunity to learn about their rights through the Housing Department's Rent Stabilization Program. This will ensure that tenants have an accessible, local resource to assist them. Staff will provide education and outreach on all aspects of the TPO in multiple languages.

Staff Recommendation Regarding Status Immigration Protections

Staff is recommending that the following language be included in an amendment to the Anti-Retaliation Protections Section of the TPO (17.23.1270):

No Landlord shall provide information to any immigration authority regarding the immigration or citizenship status of any Tenant, Tenant Household, or individual the Landlord knows to be associated with the Tenant or Tenant Household, for the purposes of harassing, intimidating, or retaliating against a Tenant or Tenant Household, influencing a Tenant to vacate a Rental Unit, or recovering possession of a Rental Unit, in accordance with Civil Code Section 1940.35(a), as amended.

Criminal Activity as a Separate Just Cause Basis for Eviction

The TPO protects tenants from unwarranted evictions by requiring just cause reasons for termination of tenancy. It also provides landlords with a means to remove tenants via one or more of the 12 just cause reasons cited in the Ordinance. The following section describes how tenants can be evicted for criminal activity using the existing just causes in the TPO.

Addressing Criminal Activity Through the Adopted TPO

As currently adopted, Material or Habitual Violation of the Lease and Nuisance Behavior are the two primary just cause terminations in the TPO that are available to landlords to address criminal activity. The TPO defines these two causes as summarized below.

- *Material or Habitual Violation of the Lease:* After receiving a written notice to cease violating a material term(s) of the rental agreement and being given a reasonable time to fix the issue identified in the notice to cease, tenant continues to engage in conduct identified in the notice to cease or has engaged in a habitual or material violation of the rental agreement.
- *Nuisance Behavior:* After receiving a written notice to cease, the tenant continues to engage in behavior that destroy the peace, quiet, comfort, or safety of the landlord or other tenants living within the apartment complex. Behavior may include violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the landlord or tenant living within the apartment complex.

Owners can utilize these causes by serving a notice to cease the behavior, followed by a notice of termination of tenancy. For example, the Nuisance Cause was effectively used in San José to serve a notice of termination of tenancy to a tenant who had been warned multiple times for yelling at other tenants and ultimately for threatening a tow truck driver in the parking lot.

From June 16, 2017 through February 28, 2018, the Rent Stabilization Program received 31 notices of termination filed under the Nuisance Behavior just cause. In reviewing these notices, staff found approximately 30% of the notices of termination cited a criminal activity as the reason for the termination of tenancy. Although the data set is limited, it suggests landlords are able to use the Nuisance Behavior just cause to address criminal activity.

Staff Efforts to Address City Council Direction

The Housing Department undertook various efforts to inform the policy recommendations directed by the City Council. These included:

- Evaluating criminal activity provisions of just cause protection ordinances in other cities;
- Obtaining input from a working group created to discuss criminal activity;
- Reviewing the results of the City's previous work on the Crime-Free Concept; and
- Reviewing input received from landlords and tenants through the public outreach process.

These efforts are described in more detail below.

Criminal Activity Provisions of Just Cause Protection Ordinances in Other Cities

The Housing Department completed an analysis of other California cities with just cause eviction ordinances to determine how they address criminal activity. This analysis included:

- How the different cities address criminal activity;
- How the cities define the type crime that can be used as a just cause basis for eviction;
- The notification required for evicting tenants engaged in criminal activity; and
- The location of the criminal activity as it pertains to evictions.

The Housing Department focused its research on Los Angeles, Santa Monica, Berkeley, San Francisco, and Oakland as these cities had ordinance provisions related to criminal activity within their just cause protections. **Attachment B** summarizes the provisions related to just cause for these jurisdictions. The provisions of each city have distinguishing characteristics. Some key aspects are highlighted below.

- **Los Angeles** does not have a separate criminal conviction or illegal use cause of action. Its nuisance cause of action is descriptive in defining the list of crime included in the nuisance reason, and provides for a 1,000-foot boundary for nuisances committed outside the premises.
- **Santa Monica** has a criminal conviction provision which requires a conviction of the crime committed in the rental unit.
- **Berkeley** relies on the nuisance just cause reason to address undesirable behavior. The Berkeley ordinance does not have a criminal conviction cause of action. Nor does it have specific crimes described in its nuisance cause of action.
- **San Francisco** has a cause of action for use of the apartment for an illegal purpose and requires a warning.
- **Oakland** has a cause of action for use of the apartment or on the premises for an illegal purpose which does not require a warning and includes provisions to address drug-related crimes.

The information gathered from other cities show that some cities utilize the nuisance cause and others established a separate reason for criminal activity. Cities that have criminal activity provisions have a range of standards for determining the basis for the eviction. In discussions with cities that have a separate criminal activity cause, staff from these agencies stated that the criminal activity reasons are not used frequently by landlords. Instead, landlords overwhelmingly utilize the nuisance reason to address unwanted behaviors. Cities that use the nuisance cause have been able to use it effectively to evict tenants for criminal activity.

City Working Group Input

In addition to conducting research on other cities, the Housing Department convened a working group with a staff representative from both the San José Police Department and the Mayor's Gang Prevention Task Force. The working group reviewed the criminal activity provisions in

jurisdictions with just cause protections. This included: the definition of crime; the notification required; basis for eviction; and the location of criminal activity. As part of the discussion, the working group considered the work that the City previously did in evaluating the Crime Free Concept.

Crime Free Multiple-Housing Concept

In March and June of 2016, staff provided information to the Rules and Open Government Committee regarding the Crime Free Multiple-Housing Concept. At its core, the concept would have created a lease agreement between tenants and landlords that would authorize eviction based on the suspicion of criminal activity. This concept was not supported by the City Council Committee for the following reasons:

- *Household Impacts* – Many households in San José contain large families. Because evictions are often based on a single household member's actions and result in the removal of the entire household, all family members could be at risk of losing their housing if one individual committed a crime.
- *Due Process* – The concept allowed an eviction for an arrest related to a misdemeanor or felony crime. This would not allow a tenant the due process necessary to determine if they were guilty of a crime.
- *Fair Housing Concerns* – The proposal could have a disproportionate impact on tenants with disabilities (including mental health disabilities) who may be arrested more frequently than other groups.

Instead, the City Council Committee determined that a more effective approach to addressing crime is to engage community members to identify and address criminal activity. One example of this method is the Responsible Landlord Engagement Initiative (RLEI) program which engages community members and data from the police department to identify problem apartment complexes, then engages property owners to take actions to address the crime. When considering these issues, the City Council Committee recommended staff to develop and implement the *Safe Communities Multi-Housing Pilot Program* as an alternative to the Crime Free Program.

Based on review of the research from other cities and discussion regarding the challenges faced by families living in our community, the working group recommended moving forward with a just cause for a conviction of a violent crime committed on the premises. The working group determined that perpetrators of violent crimes should not be provided a warning prior to receiving an eviction notice, while individuals involved in non-violent crimes should be given a warning prior to an eviction notice. Finally, the group determined crime prevention programs are the most effective tools in addressing crime in our community.

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A. Summary of Input Received Through the Public Outreach Process

The Department completed an extensive public outreach process to help inform its recommendations. The meetings held are listed in the Public Outreach Section of this Memorandum. The input of the public meetings is included in **Attachment C**. Participants in the public meetings raised concerns regarding crime in our neighborhoods. Generally, both tenants and landlords were interested in more support from the City in programs designed to address crime in ARO neighborhoods such as the RLEI and the *Safe Communities Multi-Housing Pilot Program*. There was also a general concern for victims of domestic violence when addressing criminal activity in apartments. Participants felt that eviction protections should be consistent with state and federal law and exist for victims of domestic violence. When tenants and landlords were asked if a criminal activity just cause should be added to the TPO, the majority of landlords supported the action, while tenants did not think the change was necessary.

Owner Input

Landlords were presented with the proposal from the working group to develop a new just cause based on a conviction for a violent crime committed on the premises. Landlords expressed concerns with the requirement for a conviction. Landlords stated convictions may take several months and the tenant may return to the apartment during this period of time, increasing fear and potential for additional crimes to take place at the apartment complex. In consideration of the proposal, landlords stated the new cause for termination based on conviction would not be effective in providing a tool for landlords to address crime at their properties. Instead, landlords would be resigned to continue using the nuisance cause to address unwanted behavior.

Tenant Input

During the public outreach process, tenants were specifically concerned about creating another version of the "Crime Free Multiple-Housing Program" that may result in evictions of vulnerable populations. As mentioned, the City Council previously took action not to pursue this concept. Tenants were not interested in allowing a version of Crime Free Multiple-Housing to be incorporated into the TPO.

Additionally, tenant advocates submitted a letter stating their position on including a criminal activity just cause basis for eviction. The tenant advocates stated there was no need to add a separate just cause basis for eviction based on criminal activity, as the TPO's nuisance just cause basis sufficiently addresses criminal behavior. They continued to explain that if the City were to move forward with a just cause for criminal activity, the landlord should be required to provide an opportunity to cure the situation by either removing the offending household member or by filing a restraining order against the individual who has been convicted of committing the crime.

Staff Conclusions Regarding Establishing Criminal Activity as a Separate Just Cause

The Housing Department considered the pros and cons of the alternatives for each aspect of criminal activity. Staff carefully considered the research from other cities, input from the working group and input from landlords and tenants. The following section summarizes staff's conclusion regarding the type of crime, basis for eviction, location of crimes, and notification that build the proposed criminal activity Just cause for the TPO.

The Type of Crime

The first element of criminal activity that must be considered is the type of crime committed. In the context of the TPO, the penalty for committing a crime is displacement from someone's home. Staff was mindful of connecting the severity of the crime with the severity of the loss of housing in our community.

Staff analyzed the State's definition of crime and found that the California State Penal Code defines hundreds of crimes. Some of these crimes have a greater impact to residents living in an apartment building. For example, a tenant's shoplifting conviction may have little to no impact on his neighbors, whereas, a deadly assault committed on the premise is likely to have a great impact on those tenants residing in the apartment complex. **Taking these scenarios into consideration, staff recommends that the definition of crime for the purposes of the Ordinance should be based on serious felony and/or violent felony as defined in state (Attachment D).** These crimes include severe behaviors that would impact the community.

Basis for Eviction

The staff working group recommended that a conviction should be required as the basis for the eviction. As discussed by the staff working group, a conviction is a formal finding that someone is guilty of a criminal offense, made by the verdict of a jury or the decision of a judge in a court of law. Because convictions are maintained by the courts, in an unlawful detainer action, courts may look to its own records to determine whether a conviction has occurred for purposes of an eviction. This alleviates the concern that other tenants would have to provide witness testimony.

However, when this proposal was discussed with landlord stakeholders, landlords indicated convictions take extended periods of time prior to an actual decision by the court. Due to this delay in timing, landlords expressed concern that the proposed just cause would be ineffective. These comments were taken into consideration and staff began reviewing additional alternatives to conviction of a crime. Staff reviewed the process for punishment of a felony as described on the Santa Clara County Court website (**Attachment E**) and considered using the preliminary hearing for an individual facing a felony charge as a more immediate step in the legal process.

Generally, a preliminary hearing is held within 10 days from the day the tenant enters a not guilty plea. At the preliminary hearing, a judge will determine whether there is enough evidence that the tenant committed the crime to "hold the defendant to answer" for trial on the charges

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presented. The preliminary hearing is a public hearing that a landlord could access if they wanted to pursue a notice of termination based on the outcome of the preliminary hearing.

Staff presented the idea of allowing a landlord to serve a notice of termination based on a tenant who is held to answer for a crime to the Housing and Community Development Commission (HCDC) meeting on March 22, 2017. Members of the community, both tenants and landlords, testified that this proposal was not consistent with one of the founding principles of our judicial system, which holds that all people are innocent until proven guilty. Landlords provided examples of difficult scenarios where someone may be evicted who was wrongfully charged with a crime. **Staff considered this public input and determined the recommendation to City Council should be based on conviction.**

Location of the Criminal Activity

Staff considered options for the location of crime committed. Options included crimes committed within a 1,000-foot radius (used by Los Angeles), on the premises (used by Berkeley and Oakland) or within the apartment (used by Santa Monica and San Francisco). Staff discussed the arbitrary nature of the proximity option and had concerns that the distance of a criminal act from the tenant's apartment did not provide a clear nexus between the crime committed and the notice to terminate the tenant's tenancy.

On the other hand, when considering the types of crimes that may take place in the common areas or on the premises of an apartment complex, staff determined that limiting the crime to inside of the apartment may be too restrictive because it would not allow the landlord to address criminal activity that occurs on the premises (outside of the apartment). **Therefore, staff is recommending that the criminal activity cause for eviction include the requirement that it had to occur on the property.**

Notification Required

Staff considered the type and level of notification that should be provided to a tenant. As discussed above, some cities utilize the nuisance provision that requires a notice to cease be served prior to a notice of vacate. The issue of notification is sensitive to our community because the impact of displacement on families is significant. When a notice of termination of tenancy is served to a tenant followed by an unlawful detainer, all tenants in the apartment are displaced. Finding alternative housing following a notice to terminate may result in moving into a less desirable neighborhood or paying higher rent. The community has expressed a concern that other members of the household should not lose their housing due to actions of an individual.

To address the concern of displacing an entire family based on the action of an individual household member, tenant advocates proposed a process whereby the family would be allowed to stay if they took action to remove the family member responsible for the crime. Staff believes that such a process should be incorporated into the TPO to provide family members with

additional protections from displacement. **Therefore, staff is recommending that landlords be required to serve a “notice to quit,” asking the family to remove the individual from the household or issuing a restraining order to remove the individual from the apartment.**

After analysis of other cities just cause language, convening the staff working group, meeting with various stakeholders, and holding public meetings, **staff is recommending an amendment to the Tenant Protection Ordinance to include a criminal activity just cause to permit landlords to serve a notice of termination on a tenant household, where one of its members was convicted for a serious or violent felony committed on the premises.** In order to alleviate the possibility of an innocent household member being displaced, tenants will be provided with the “opportunity to cure” if a tenant household does either of the following:

- 1) Removes the member of the household convicted of a serious or violent felony and provides written notice to the landlord that the household member has been removed: or
- 2) Files a restraining order or provides evidence of similar steps being taken to remove the convicted tenant from the household.

POLICY ALTERNATIVES

Alternative #1: Do not establish a separate just cause category for criminal activity. Landlords would continue to use a nuisance cause to evict for criminal activity.

Pros: Research demonstrates that the nuisance and material or habitual lease violations are effective in removing tenants that have engaged in criminal activity. Using existing language would not require an amendment to the TPO.

Cons: Landlords have expressed concerns that the TPO does not allow them to take immediate action to address criminal activity.

Reason for not recommending: The proposed modification provides an additional tool for owner and clarifies noticing requirements.

Alternative #2: Use “Held to Answer” for a violent or serious felony as the basis for eviction.

Pros: A defendant generally appears at a preliminary hearing for a serious or violent felony within 10 days of a crime. This option will allow a landlord to take swift action following a serious or violent felony committed on the premises.

Cons: Moving forward with a notice to vacate prior to a conviction may result in a wrongful eviction. This option does not allow due process to take place for the defendant.

Reason for not recommending: A fundamental premise of our judicial system is that an individual is innocent until proven guilty. This proposal could likely result in the

eviction of a tenant who has not been found guilty of a crime, and therefore, is innocent. This may result in an eviction of a tenant who was wrongfully held to answer for a violent or serious felony.

PUBLIC OUTREACH

The Housing Department met with a wide range of stakeholders while developing amendments to the Tenant Protection Ordinance. With the assistance of the California Apartment Association, Bay Area Homeowners Network, the Renters' Coalition, the working group, the District Attorney's Office, 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 tenants in the Los Madres group, Washington Guadalupe Neighborhood Association, Santee and Valley Palms neighborhoods to specifically discuss the proposed criminal activity provisions. Staff met with any individual or group that requested a meeting during the public comment period. The Department hosted public meetings on the amendments to the Ordinance listed in **Attachment F**.

EVALUATION AND FOLLOW-UP

Staff intends to bring the amendments to the TPO to the City Council for consideration in Spring, 2018. If the amendment is approved, a second reading will be held by the City Council two weeks later. The amendments to the Ordinance then would be effective 30 days following the City Council's second reading. Adoption of this recommendation will complete the Administration's work on the City Council's top priority as it pertains to the TPO.

COST IMPLICATIONS

Although the introduction of a new just cause reason of criminal activity may result in more notices to process to the Rent Stabilization Program and create a new burden on staff, the Housing Department's recommendation is to absorb these costs into the current staffing levels.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Office of Immigrant Affairs.

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COMMISSION RECOMMENDATION/INPUT

Pursuant to Section 7.01 of the existing regulations, the proposed amendments to the TPO were presented to the Housing and Community Development Commission (HCDC) on:

- February 8, 2018: HCDC provided the recommendation to accept the report and amend the recommendation to include the additional requirement that staff bring the City Council a full legal analysis of adding the limitation to prevent landlords from sharing immigration status for any purpose.
- March 22, 2018: HCDC recommended maintaining the Tenant Protection Ordinance as written, rejecting staff's recommendation to add a criminal activity just cause. HCDC made a second motion stating, whereas utilizing nuisance as the preferred option, should a criminal activity reason be brought forward to the City Council, conviction should be used as a basis for eviction.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND

Director of Housing

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

ATTACHMENTS:

- **Attachment A** – AB 291 Bill and Fact Sheet
- **Attachment B** – Summary of Jurisdictions with Provisions Related to Criminal Activity
- **Attachment C** – Tenant Protection Ordinance Public Comments
- **Attachment D** – California State Law and Definition of Serious Felony and Violent Felony
- **Attachment E** – Santa Clara County Court Process for Punishment of a Felony
- **Attachment F** – Tenant Protection Ordinance Public and Stakeholder Meetings