

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Jimenez

SUBJECT: VACANT STORE FRONTS
INITIATIVE

DATE: November 7, 2017

Approved

Date

11/7/17

RECOMMENDATION

1. Accept my colleagues' memo dated November 3, 2017; and
2. Accept the staff report dated October 13, 2017 with the following adjustments;
 - a. Bring back the results of the pilot program to the Community and Economic Development Committee and full Council for consideration within the next 12 months;
 - b. In considering city-wide expansion of the ordinance, address the lack of staffing within the Code Enforcement Department by developing strategies to fill current vacancies necessary to scale this program city-wide;
 - c. Develop strategies to include vacant storefronts in strip malls which currently are not included in the ordinance;
 - d. Direct OED staff to work with each council office to engage property owners and property management companies by:
 - i. Proposing that vacant storefronts be used as temporary galleries for art installations or time-limited, pop-up shops;
 - ii. Promoting the availability of specific storefronts on sjeconomy.com, with a link to a description of the space and property owner contact information;
 - iii. Offering the Storefront Grant Assistance Program (up to \$15K for permit reimbursements and \$10K for exterior improvements) as a cost reduction incentive to property owners with tenants with an active lease agreement. Although this program is offered city-wide in approximately 15 Neighborhood Business Districts, **areas with no Neighborhood Business District should NOT be excluded from participation in this program.**
 - iv. Assisting the City's Small Business Ally team, available city-wide at no additional charge to business and property owners, to

facilitate a smooth and expedient permitting process for incoming tenants.

ANALYSIS

It is extremely important that San Jose holds property owners accountable to residents, neighborhoods, and the broader community. In District 2 and across San Jose we continuously see property owners neglect their buildings and seemingly do nothing to fill vacant spaces. These neglected and abandoned buildings, spaces, and storefronts not only have a negative impact on our economy, but they deteriorate the quality and vibrancy of our shopping centers and neighborhoods. Ultimately, it is our residents who pay the price of litter, blight, loitering and other unsafe conditions caused by negligent property owners. Simply placing a "for lease" sign in a window and allowing a space to languish empty for months and in some cases years is unacceptable and should not be tolerated.

This pilot program is a laudable attempt at addressing these issues, and I commend my colleagues for their efforts. The few changes I recommend in this memo will further our shared goal of creating vibrant storefronts that increase revenue and provide residents the active neighborhoods they seek and deserve.

Asking for the item to return to CEDC within 12 months instead of the staff recommended 18 months is in recognition that these buildings are a major problem across San Jose and there is an urgent need to address the problem.

Furthermore, the policy needs to include vacant storefronts within strip malls. These types of vacancies are everywhere within our city, and we cannot afford to allow them to linger vacant. Any policy that excludes strip malls will fall short in addressing this pressing issue.

The Office of Economic Development (OED) has qualified staff and resources that can assist council offices in dealing with vacancies around our communities and should play a more prominent role when situations arise. Each council office has knowledge of their respective districts and the issues around the many properties, and combined with OED's expertise, our efforts will certainly lead to better outcomes. It is important to acknowledge that not all districts have Neighborhood Business Districts (NBD). Therefore, we must make certain efforts are made in all areas regardless of the existence of an NBD.

Lastly, it is important to acknowledge that if this pilot proves successful and we aspire to expand it city wide, we cannot do so with current staffing. My short time at the city has shown me that we often have great enthusiasm when talking about policies around technology, but we often forget that some of the core services and needs of our community come down to having people on the ground doing the work. For that reason, part of my recommendation ties in the need to find strategies in filling the seven or so vacant Code Enforcement positions. Without these positions, this program cannot be expanded.

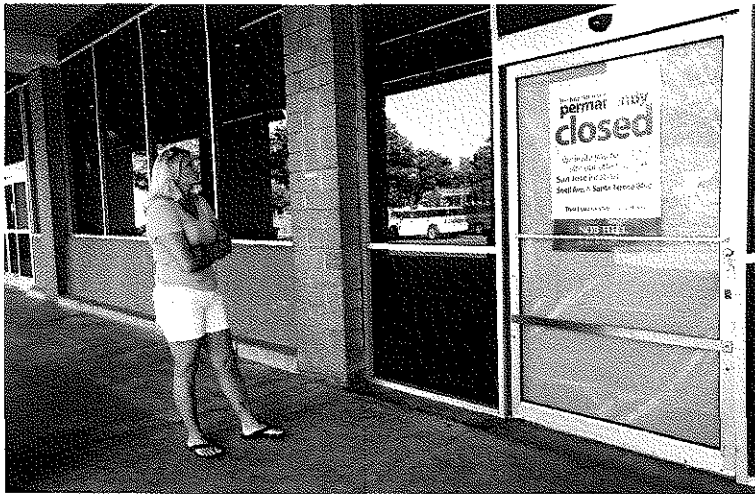
I look forward to following this issue closely and anticipate that with a concerted effort by all departments and council offices, we will be successful.

Attachment A: <http://www.mercurynews.com/2017/08/22/san-jose-retailers-hold-community-hostage-by-keeping-leases-on-empty-buildings/>

Business

San Jose: Retailers hold “community hostage” by keeping leases on empty buildings

By **RAMONA GIWARGIS** | rgiwargis@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: August 22, 2017 at 9:00 am | UPDATED: August 23, 2017 at 7:01 am



Deirdre Wyness stands in front of the empty storefront vacated by Nob Hill Foods on Santa Teresa Blvd. in San Jose, California, on Friday, July 21, 2017. (Gary Reyes/ Bay Area News Group)

SAN JOSE — After an anchoring Nob Hill grocery store closed in a prominent shopping center two years ago, the owners of a Chinese restaurant a few doors down hoped a new retailer would jump right in.

It hasn't happened. The former supermarket building at 7076 Santa Teresa Boulevard has sat empty. And instead of drawing hungry shoppers, it gathers trash and a pesky new tenant — rats.



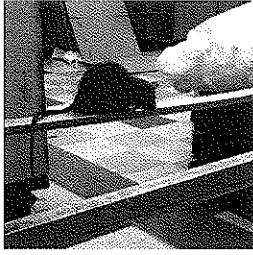
Residents say the empty Nob Hill store at 7076 Santa Teresa Boulevard became a target for blight, trash and rodents. The rats have since been exterminated. (Photo courtesy of Councilman Sergio Jimenez)

“We don't want them to travel here,” said Tom Phung, co-owner of Golden House Restaurant.

Empty retail space is nothing new as stores come and go. But the situation at the former Nob Hill building is unusual — and alarming to neighbors — because the supermarket chain continues to lease the space until 2021 with no immediate plans to fill it. There's at least one other similar situation in the city with a former supermarket sitting empty for years. City officials are now considering legislation that could limit how long lease-holders can leave the space vacant.

“The community feels like they're being held hostage by these corporations,” said City Councilman Sergio Jimenez, who represents the district and is considering a measure that could curb similar situations. “You've got this vacant building where there is no commerce happening and people don't have a grocery store simply because of their bottom lines — their profit.”

Jimenez is pushing hard to get a new retailer in there — but he can't force the property manager, Retail Opportunity Investments Corp. or ROIC, to terminate Nob Hill's lease — creating frustration among neighbors and sparking a fight over private property rights versus the public interest.



Residents say the empty Nob Hill store at 7076 Santa Teresa Boulevard became a target for blight, trash and rodents. The rats have since been exterminated. (Photo courtesy of Councilman Sergio Jimenez)

Community leaders speculate retailers purposely kept the buildings vacant to thwart competition against their nearby stores. Nob Hill, for example, has another store 3 1/2 miles away on Snell Avenue.

But Chelsea Minor, a spokeswoman for Raley's — Nob Hill's parent company — says that's not the case. She said the Santa Teresa store closed in 2015 because of declining sales and increasing competition.

Minor acknowledged the community's concerns, and said "it's not typical" for Nob Hill to maintain a lease when the store is gone. In this case, Minor said, the grocer in 2015 extended the lease by five years hoping to open a distribution center there. That plan didn't pan out.

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Now it's turned into finger-pointing: Minor says Nob Hill offered ROIC a chance to sublease the space — but they haven't heard from their landlord since May. Top ROIC officials say the grocer refuses to give up

the lease or let anyone else move in.

"Keeping an empty lease is not our normal business protocol. It happened and we want to make sure we do right by the community," Minor said. "We have offered to ROIC to sublease the space. We have given keys and full access to the building."

ROIC's CEO Stuart Tanz said Raley's won't surrender the lease because it doesn't want competition. ROIC has tried to find another tenant, Tanz said.

"Raley's, in my humble opinion, won't surrender the lease because they don't want another grocer there," Tanz said. "They're trying to protect market share. They won't give the location back to us or put any effort into subleasing the building because they don't want competition to come in."

Tanz added that his company had no choice but to renew Nob Hill's lease — it was an automatic option — and that the grocer "has demanded a large sum of money to relinquish the lease back to us."

Even more alarming: The grocery chain can renew its lease again until 2026, according to ROIC.

Minor declined comment on "private real estate negotiations," but said Nob Hill would be open to subleasing to another grocer.

As the two companies battle it out, Jimenez said the community loses.

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"As a community, we don't know what to believe," said Deirdre Wyness, 41, a high school teacher who's lived in the area for a decade. "It's all corporate greed. We're pissed and we're not going to let this stay dormant."

Not far from the prestigious Valley Fair and Santana Row, an empty Safeway store on the corner of Payne Avenue and Winchester Boulevard also sits dark. Councilman Chappie Jones said the store closed a few years ago after another Safeway opened about a mile away in Campbell. The community wants another grocery store, he said, but Safeway still holds the lease.

"It's frustrating — Safeway has the lease and they're just keeping the space vacant," Jones said. "And the landlord can't do anything in terms of making Safeway open a store as long as they're paying rent. It's attracted blight infused with homelessness, trash and illegal dumping."

Safeway spokeswoman Wendy Gutshall declined to answer questions about the lease, and said only that the company has a "robust pipeline of new stores" coming. The property manager, Regency Centers, did not respond to requests for comment.

Peter Liebow, a shareholder at Creech, Liebow & Roth who specializes in real estate law, said the situation sounds unusual. Liebow hasn't seen the Safeway and Nob Hill contracts, but said most commercial leases allow termination if the tenant leaves it vacant for too long.

"It's difficult for me to believe that the property owner has no recourse," Liebow said. "Normally abandonment is a ground for termination."

Community pressure, including the threat of picketing at the Nob Hill on Snell Avenue, has brought some improvements. The rats were exterminated and ROIC increased security patrols at the shopping center. City code enforcement officials paid a visit but found no violations.

"This finger-pointing back and forth needs to stop," said Issa Ajlouny, who's lived in the area for 33 years. "If they care about the community, both ROIC and Nob Hill need to come together and fix this problem and get a grocery store in there again."