



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 23, 2018

Approved

D. DSYL

Date

4/23/18

SUPPLEMENTAL

SUBJECT: POTENTIAL AMENDMENTS TO THE TENANT PROTECTION ORDINANCE REGARDING IMMIGRATION AND CRIMINAL ACTIVITY

The purpose of this memorandum is to provide clarification on the proposed changes to the Tenant Protection Ordinance related to protections for survivors of domestic violence and feedback from the San José Police Department.

ANALYSIS

The proposed amendment to the Tenant Protection Ordinance includes the following language:

Nothing in this section 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.

This language is included in the ordinance to clarify that survivors of violence may access protections afforded under state and federal law. Including this language in the Tenant Protection Ordinance will allow Housing Department staff to provide education and outreach to tenants and landlords regarding these protections.

The following provides additional information regarding the state and federal laws that provide protections for domestic violence survivors.

Additionally, the San José Policy Department has provided feedback on the staff recommendation to include a Felony Conviction reason under the Tenant Protection Ordinance.

California Law

California Code of Civil Procedures Section 1161.3 creates an affirmative defense for categories of survivors of violence who are subjected to an eviction proceeding. California Code of Civil Procedures Section 1161.3 specifies the documentation a tenant must provide to demonstrate their survivor status and sufficiently assert an affirmative defense.

Specifically, California Code of Civil Procedures Section 1161.3, explains that under certain circumstances, a landlord may not terminate a tenancy or fail to renew a tenancy based upon an act or acts against a tenant or a tenant's household member that constitute domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult, if both of the following apply:

- 1) The act(s) of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult are documented by one of the following:
 - A temporary restraining order, emergency protective order or protective order are issued within the last 180 days protecting a tenant or household member from domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult; or
 - A copy of a written report, written in the last 180 days, by a peace officer stating that the tenant or household member has filed a report alleging that he or she or the household member is a survivor of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult.
- 2) The alleged abuser does not live in the same unit as the survivor of violence.

California Code of Civil Procedures Section 1161.3 affirmative defense is not available to survivors of violence where both of the following apply:

- 1) The tenant either permits the alleged abuser to visit the property OR the landlord reasonably believes that the presence of the alleged abuser poses a physical threat to other tenants, guest, invitees, or licensees, or to a tenant's right to quiet possession.
- 2) The landlord previously gave at least three days' notice to the tenant to correct a violation of the above paragraph (1).

Federally Subsidized Housing Providers Affected by the Violence Against Women Act (VAWA)

The federal VAWA law applies only to tenants living in housing subsidized by federal programs including the Section 8 voucher program, project-based section 8 apartments, Section 202, and Section 811 housing. This law states an incident of domestic violence, dating violence, or stalking is not grounds for terminating the survivor's assistance, tenancy or occupancy rights. Additionally, a landlord may bifurcate a lease to evict or terminate assistance to the tenant who committed the act of violence.

San José Police Department Feedback on Criminal Activity

The Police Department also had an opportunity to review staff's recommendations regarding criminal activity and has input with two aspects of the proposed provisions. The proposed language is specific to serious and violent felonies as defined by the penal code. These are all serious offenses and due to the nature of the crimes, there is input about the following components of the proposal:

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- 1) Conviction – the criminal process may take years to resolve; therefore, utilizing the “held to answer” standard would be more effective.
- 2) On the Premises – the crimes committed are serious and violent felonies; the location of the crime should not be tied to the premises but should extend to any location.

This input was considered by the staff while developing recommendations for consideration by the City Council. 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. Due to the concerns raised by the public, staff determined the recommendation to City Council should be based on conviction.

Additionally, staff considered options for the location of crime committed. 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.

/s/

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Director, Housing Department

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