

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







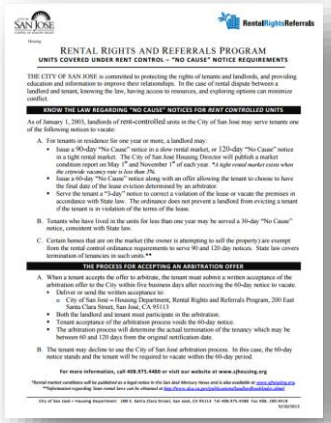

Council Direction – Impact on Development

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



RENTAL RIGHTS AND REFERRALS PROGRAM

UNITS COVERED UNDER RENT CONTROL – "NO CAUSE" NOTICE REQUIREMENTS

THE CITY OF SAN JOSE is committed to protecting the rights of tenants and landlords, and providing education and information to improve their relationships. In the case of rental dispute between a landlord and tenant, knowing the law, having access to resources, and exploring options can minimize conflict.

KNOW THE LAW REGARDING "NO CAUSE" NOTICES FOR *RENT CONTROLLED* UNITS

As of January 1, 2003, landlords of rent-controlled units in the City of San José may serve tenants one of the following notices to vacate:

A. For tenants in residence for one year or more, a landlord may:

- Issue a 90-day "No Cause" notice in a slow rental market, or 120-day "No Cause" notice in a tight rental market. The City of San José Housing Director will publish a market condition report on May 1st and November 1st of each year. **A tight rental market exists when the citywide vacancy rate is less than 5%.*
- Issue a 60-day "No Cause" notice along with an offer allowing the tenant to choose to have the final date of the lease eviction determined by an arbitrator.
- Serve the tenant a "3-day" notice to correct a violation of the lease or vacate the premises in accordance with State law. The ordinance does not prevent a landlord from evicting a tenant if the tenant is in violation of the terms of the lease.

B. Tenants who have lived in the units for less than one year may be served a 30-day "No Cause" notice, consistent with State law.

C. Certain homes that are on the market (the owner is attempting to sell the property) are exempt from the rental control ordinance requirements to serve 90 and 120 day notices. State law covers termination of tenancies in such units.**

THE PROCESS FOR ACCEPTING AN ARBITRATION OFFER

A. When a tenant accepts the offer to arbitrate, the tenant must submit a written acceptance of the arbitration offer to the City within five business days after receiving the 60-day notice to vacate.

- Deliver or send the written acceptance to:
  - City of San José – Housing Department, Rental Rights and Referrals Program, 200 East Santa Clara Street, San José, CA 95113
- Both the landlord and tenant must participate in the arbitration.
- Tenant acceptance of the arbitration process voids the 60-day notice.
- The arbitration process will determine the actual termination of the tenancy which may be between 60 and 120 days from the original notification date.

B. The tenant may decline to use the City of San José arbitration process. In this case, the 60-day notice stands and the tenant will be required to vacate within the 60-day period.

For more information, call 408.975.4480 or visit our website at www.sjhousing.org

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

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

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

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

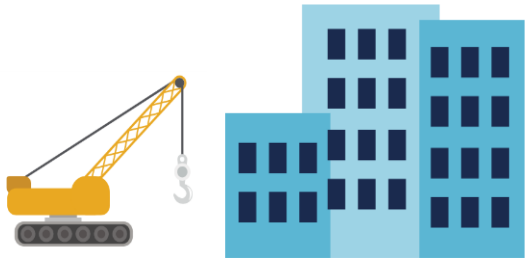
Experience of Other Cities

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

Policy Choices

- **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		Waiver
10 Existing Units		**10 Existing Units**
20 New Units Built are:		**20 New Units Built are:**
Deed Restricted Affordable = 3 units • 9% at 80% AMI = 2 units • 6% at 50% AMI = 1 unit	**OR**	**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 = 10 Units		**Re-controlled = 0 units**
Market Rate = 7 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

Include apartments with three units under the Ellis Act



Proposed Amendment #3:
Apartments Built After 1979

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

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

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

- 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

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

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

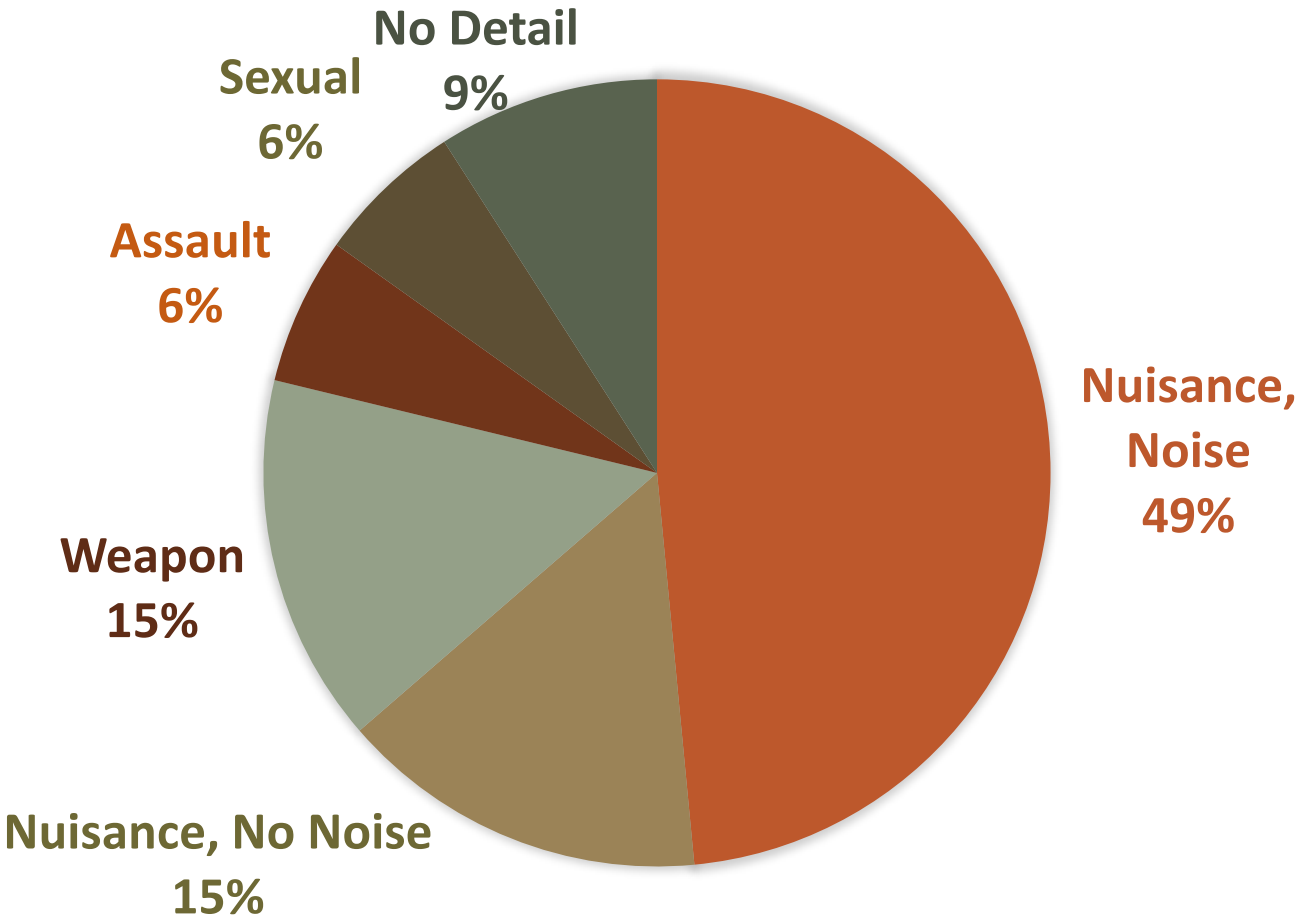
Alternatives – Criminal Activity

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

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





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

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



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



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



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



Low Flow Shower Heads



Leak Prevention



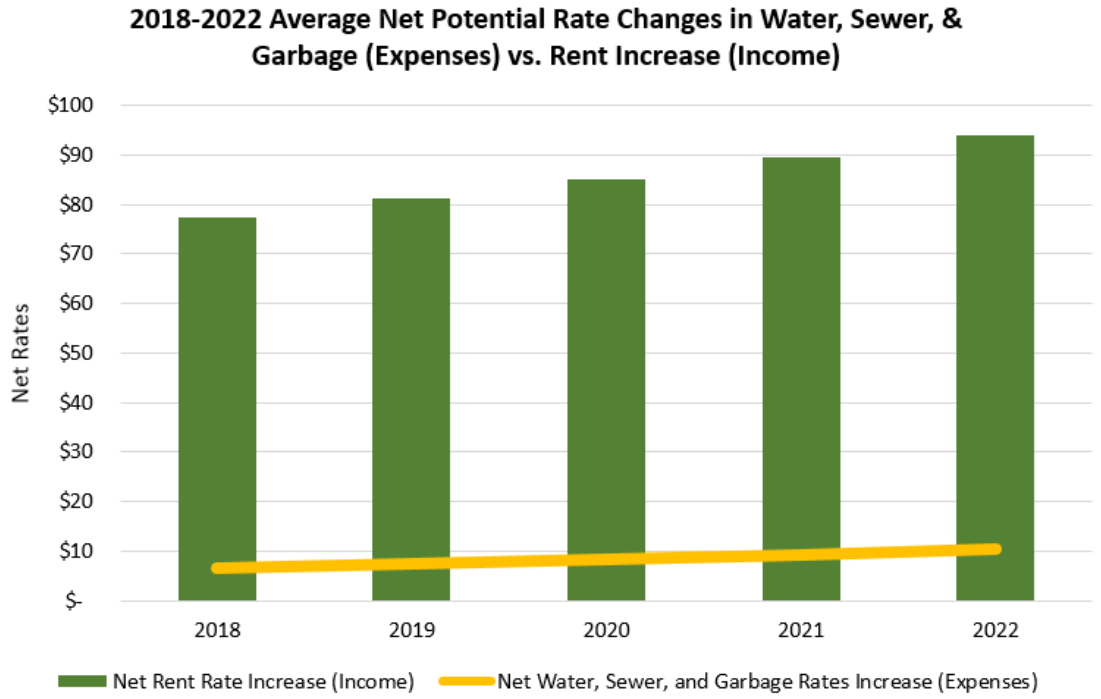
Drought Resistant Landscape



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

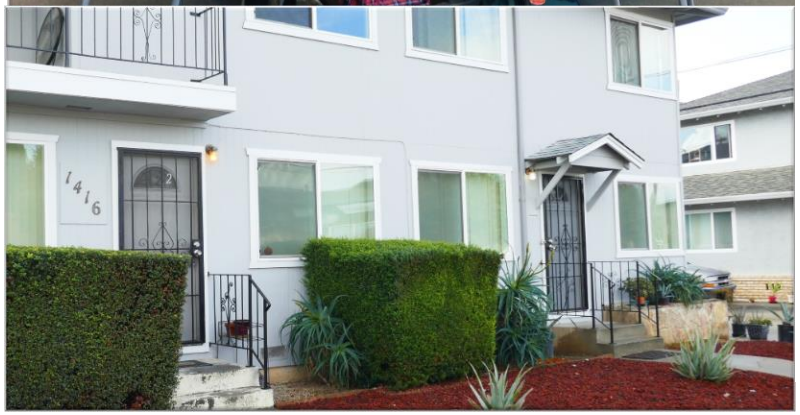
Costs are based on utility petitions filed with the Rent Stabilization Program from 2012-2017

Framework for One-Time Petition Process

Guideline	Proposal
Qualified RUBS Contracts	Must have been an executed RUBS contract prior to January 1, 2018
Petition	• Landlord must petition by October 31, 2018 • Tenants can challenge
Allowed Utilities	Water, sewer, garbage, electricity, and/or gas
Basis	Average utility costs over calendar year 2017
Limit	HUD Utility Allowance cap
Voided Contracts	• All oral agreements • Any new written RUBS contracts or amendments after January 1, 2019







City of San José

Department of Housing

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY