

From: Cheryl []

Sent: Friday, November 23, 2018 9:19 PM

To: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Nguyen, Viviane <viviane.nguyen@sanjoseca.gov>; Wright, Sara <sara.wright@sanjoseca.gov>; Clements, Kristen <Kristen.Clements@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>

Subject: TPO: right to repossession" after eviction for criminal reason - 11dec2018 Council Action Item

Dear Mayor Liccardo, Council Members, & SJ Housing Dept.

RE: TPO agenda item for 11 Dec 2018 Council Meeting

“Add a tenant's right to return to the household if acquitted/dismissed from criminal action which caused termination of tenancy” – offer next available unit at same amount of rent.

I have several concerns about the “right to repossession”:

- What are the rules for the “first available unit”? How is a comparable unit defined?
- Will there be a petition process if tenants or the property manager have fears about the tenant returning?
- Will there be a time limit?
- Will the landlord still be allowed to apply their usual qualification criteria? (income, etc.)
- Will it apply to the landlord or to the property? (If the landlord has more than one property).

Presumably, if a tenant is evicted based on being held to answer for a violent felony, the landlord's reason for evicting the tenant is to maintain a safe environment for the other tenants. The cost to the landlord may be several thousands of dollars for an Unlawful Detainer, Storing the Tenants Possessions, and lost rent.

Here are some questions:

How will the landlord and the evicted tenant stay in contact so that the landlord can notify the tenant when a unit becomes available? If the tenant is in jail, they may not have a forwarding address to provide the landlord in the event the charges are dismissed. Or, the tenant leaves a forwarding address and then moves from that address.

Will there a time limit? If 5 years pass before the landlord has a vacancy, is the landlord expected to keep track of the evicted tenant?

On a small property, such as a four-plex, a unit may not become available for 10 years or more. Will the landlord still have to provide the next available unit at the same rent after 10+ years?

If the tenants and/or property manager have reason to believe the return of the evicted tenant would endanger other tenants, will there be a petition process to request denial of the tenant returning?

If the tenant was “held to answer” for multiple charges (felonies and misdemeanors), and the felony charge was dismissed or reduced, but the tenant is convicted of the misdemeanor charges (which would not have been grounds for eviction); would the tenant have a “right to repossession”?

How does a plea bargain for a reduction of charges apply to the “right to repossession”?

If the charges are dismissed because a witness or victim decided not to testify, must the landlord still provide their next available unit if that victim or witness was living with the tenant at the time of eviction? Must both of them be permitted to return?

If the tenant household has three adults, and they choose not to remove the accused tenant, then all three are evicted, does the “right to repossession” apply to any of the three adults, or only to the tenant who was arrested and held to answer?

If the eviction judge ruled that the tenant was responsible for unpaid rent, attorney fees, or other damages, will the tenant be expected to pay for those prior to returning?

Will the tenant be required to go back to court and have the eviction overturned (based on the charges being dismissed) before the “right to repossession” is applicable?

What if the landlord has a unit available and the previously evicted tenant cannot move in for a month, but there are other applicants who can move in immediately? Must the landlord lose a month’s rent, or can the landlord accept another applicant who is ready to move in?

If the landlord has upgraded the unit (maybe spent \$20,000) and has rented it for a higher rent, and the new tenant moves out, how is this considered a comparable unit such that the rent must be reduced to let the evicted tenant return?

What if there is another one-bedroom at the same property, but it rents for \$150 more per month because it is larger and has other amenities? Must the rent be reduced?

If the tenant resided in a one-bedroom unit, would the “right to repossession” only apply to the next one-bedroom unit? What if a studio or two-bedroom becomes available?

If the landlord sells the property six months after the eviction, will the **new** landlord have to honor the “right to repossession” when his next unit becomes available?

If the landlord owns two properties in San Jose, and the tenant resided in one where the rent was \$1400 for a one-bedroom, but the landlord owns another property where the one-bedroom rents for \$1700, would the landlord be obligated to provide the \$1700 unit if that becomes available first?

If the owner has another property in San Jose, but it is partly owned by another partner, would they have to provide the next available unit?

I understand with the Ellis Act that a tenant has the right to return because action was taken by the landlord to vacate the building. But, when a judge grants an eviction for Just Cause for a criminal reason (which is to protect other tenants in the building), the evicted tenant(s) **should not** have a right to return, as the landlord has no control over the outcome of the criminal proceedings. I am opposed to the “right to repossession”.

Thank you,

Cheryl

WORKING PARTNERSHIPS USA



November 29, 2018

San José City Council
San José City Hall
200 East Santa Clara Street
San José, CA 95113

Via Electronic Mail Only

**Re: Amendments to TPO and Ellis Act Ordinances
San José City Council Meeting, December 11, 2018**

Dear Mayor, Vice Mayor, and Council Members:

Every family in San José should have the right to be housed without fear of wrongful evictions or unfair discrimination. Silicon Valley Renters' Rights Coalition thanks the City Council and housing staff for your efforts in helping to address displacement by passing the Tenant Protection Ordinance and other tenant protections. However, the ongoing crisis still needs bold action. Therefore,¹ SVRRC strongly urges the City Council to take the strongest actions to protect tenants from displacement by enacting the following amendments to the Tenant Protection Ordinance and the Ellis Act Ordinance. In order to more fully protect tenants living in San José, we recommend:

- **That duplexes be included as covered units under the Tenant Protection Ordinance and Ellis Act;**
- **That a provision requiring landlords to post notices summarizing the requirements of the TPO with regards to immigration status be added to the TPO;**
- **Elimination of the criminal activity clause;**
- **Expanding protections for domestic violence survivors in the TPO;**
- **Requiring the inclusion of a statement in termination notices regarding referral information to the Rent Stabilization Program and homeless prevention resources be added.**

¹ The Silicon Valley Renters' Rights Coalition is a coalition of the following organizations: Law Foundation of Silicon Valley, Sacred Heart Community Service, Affordable Housing Network, Working Partnerships USA, People Acting in Community Together (PACT), Latinos United for a New America (LUNA), Silicon Valley De-Bug, and Silicon Valley Rising.

Additionally, we recommend that the TPO be amended to clarify it applies to Section 8 voucher holders renting in units covered by the TPO.

1. Duplexes Must be Included in the Tenant Protection Ordinance

SVRRC supports including duplexes in the Tenant Protection Ordinance. Duplexes comprise over 10,000 housing units in San José. However, unlike most cities in California with just cause ordinances, San José currently excludes duplexes from coverage under the Tenant Protection Ordinance. Including duplexes in the TPO would increase the total number of covered housing units by over 20%, meaning that a significant number of tenant families – a total of almost 24,000 tenants altogether – in addition to those already protected by the Ordinance, would be safeguarded from displacement.

Tenants living in duplexes face the same sets of potential problems as those living in other rental units in larger buildings. Many live in fear that they could be displaced any day, at the will of their landlord, if there are not any protections in place. They fear retaliation should they exercise their rights as tenants to request repairs or challenge discriminatory practices. And they fear that the extremely volatile and expensive housing market in San José will force them and their families to become homeless if they cannot find alternate housing should they be evicted.

The TPO has been the most important policy enacted in San Jose to protect tenants from homelessness and displacement. With the implementation of the Tenant Protection Ordinance to cover units in buildings with three or more units, tenants living in these buildings now feel more empowered to assert their rights, are receiving more meaningful due process as landlords are required to set forth good reason for their desire to evict and are more likely to be protected from discriminatory eviction. The TPO gives tenants in this harsh housing market more peace of mind – and it does so without stripping landlords of their ability to evict those tenants who may be violating their lease or breaking the law.

While landlords might argue that the more close-quarters living situation of duplexes require that they be able to easily evict tenants in those units, the just cause eviction protections of the TPO still do not make it particularly laborious or challenging to do so. In fact, it may be even easier for duplex landlords to gather the evidence necessary to show cause, like nonpayment of rent or disturbances of quiet enjoyment, than it is for owners of larger buildings, as there are fewer units to manage. Should landlords of duplexes show records of missed rental payments or provide testimony regarding nuisance-like behavior, they will, like landlords of larger buildings, plainly have the means necessary to evict tenants who are violating their leases.

2. The Inclusion of Duplexes to the TPO Must Include Owner-Occupied Duplexes

SVRRC supports the inclusion of all duplexes to the TPO, with no exemption for owner-occupied duplexes. As highlighted above, the requirements of the TPO are not so complicated or laborious that only a larger property management company could comply; rather, a duplex owner would just need to either ensure that there exists one of a small (and well-explained, per the City’s website) number of causes that fall within the TPO’s permitted reasons for eviction, or that they are following a clear-cut set of rules

regarding how much notice and relocation assistance they are required to give tenants under the Ellis Act Ordinance.

As mentioned before, duplexes are included under just cause ordinances in most cities around the state of California. This shows that property management companies and mom-and-pop landlords alike have the requisite ability to navigate and apply those laws. Moreover, in some cities, like Oakland, there have been such severe problems surrounding the “duplex loophole” allowing owner occupied duplexes to be exempt from just cause protections that the City has actually voted to end that exemption and provide all of its duplex tenants with just cause protections. With the high risk of abuse of such an exemption, and the costs (both monetary and in terms of requisite resources and skills) to landlords so low, it only follows that all duplexes should be covered by the TPO and Ellis Act Ordinance regardless of whether an owner is occupying one of the units.

3. The Ellis Act Ordinance Should Be Amended to Include Duplexes

Similarly, SVRRC supports the inclusion of duplexes under the Ellis Act Ordinance. Just as tenants in three-unit or larger buildings have benefitted from the protections of the Ellis Act, so should tenants living in duplexes. Aside from providing clarity and consistency to landlords regarding which buildings are covered (should the aforementioned amendments to the TPO be ratified by the City), it provides additional safeguards for tenants who might otherwise be denied sufficient notice and relocation benefits should their landlord decide to demolish or otherwise remove their duplex from the rental market. With respect to this removal of a unit or units from the already tight San José rental market, there is no difference between duplex tenants and tenants of larger buildings; each household will need to find alternate housing just the same if they can no longer continue living in their unit. Thus, **we support making changes to the Ellis Act Ordinance such that duplexes are included under its protections.** Additionally, we support amending the reporting information requirements that simplify processes under the Ellis Act.

4. Landlords Should Be Required to Post the TPO’s Prohibitions Related to Tenants’ Immigration Status

Some of the most vulnerable tenants – and those who are often most afraid of seeking information regarding their rights as tenants – are immigrants, especially those who cannot read or speak English fluently. Thus, it is important that these individuals are affirmatively provided with information about their rights as tenants to be free from harassment, intimidation, threats, or eviction based upon their immigration or citizenship status. **SVRRC therefore supports the staff’s recommendation that landlords in TPO-covered buildings be required to post a notice, in multiple languages, that assists tenants in understanding the TPO’s immigrant status provisions.** This easy, low-cost requirement imposes the most minimal of burdens upon landlords, but it provides a wealth of information and protection to tenants who may otherwise never know of their rights.

5. The Criminal Activity Provision of the TPO Should Be Eliminated

SVRRC supports the elimination of the TPO’s criminal activity provision as the provision is overbroad and provides overly severe consequences to those accused of criminal activity. The criminal activity provision of the TPO unfairly targets tenants accused of a crime for eviction, even though the alleged crime may have nothing to do with the health and safety of the landlord or other tenants. Even without this provision, the TPO allows for evictions for criminal activity that affect the health and safety of other tenants or the landlord. Therefore, we recommend elimination of criminal activity as a just cause.

6. The TPO Should Be Strengthened to Include Additional Protections for Victims of Domestic Violence

Given the direct and substantial impact that domestic violence has upon homelessness, especially the homelessness of women and children, **SVRRC supports strengthening protections against eviction for domestic violence survivors.** Last year in Santa Clara County, nearly a quarter of homeless persons surveyed reported being victims/survivors of domestic violence or partner abuse. Often precipitated by a lack of financial resources or other support, the inability to find housing after an instance or instances of abuse is a tremendous issue among survivors of such violence. However, by adding protections for survivors under the TPO, the City would be taking steps to bring stability to families who have experienced abuse and allowing them to maintain their housing.

We recommend that the TPO be amended in the following ways:

- Include a provision that prohibits a landlord from evicting a tenant for activity related to domestic violence and expand state protections by eliminating documentation requirements;
- Allow a “cure” period for domestic violence survivors who are unable to pay rent because their abuser was arrested or abandoned the family. We see many cases where a domestic violence survivor faces eviction for non-payment of rent, as their abuser, who was the main or sole provider for the family, was arrested or abandoned the family, and they need time to find resources to help with rent payment or time for a move-out. Allowing a “cure” period would give a family time to identify resources to help with rent;
- Prohibit landlords from evicting where an unapproved subtenant is a domestic violence survivor.

7. Notices Regarding Payment of Rent Should Include References to Homelessness Prevention Resources on Termination Notices

SVRRC supports the requirement that landlords include references to the Rent Stabilization Program and other homelessness prevention resources in termination notices given to tenants. It is undeniable that housing affordability has become a major issue in the Bay Area, and especially in San Jose, where a vast majority of

evictions in TPO-covered units are due to the nonpayment of rent. It is not uncommon for long-time residents of the City to be forced to choose between homelessness and moving away from their families, schools, and communities in the Bay Area altogether because they cannot afford to live here anymore, although some may not even have that option. In light of the volatile housing market, there are several City- and organization-funded resources available to those at risk of homelessness. However, many tenants are simply unaware of the resources available to them that may provide them with additional options or assistance in the event they face eviction. Given the relative power imbalance between landlords and tenants, and the low cost and low effort required of landlords to provide tenants with this crucial information, we would support the addition of a requirement mandating that landlords set forth this information in their termination notices so that tenants have some further protection against homelessness. Additionally, in our experience, most landlords are willing to work with tenants seeking rent assistance from outside agencies who may have fallen behind on rent due to unforeseen circumstances.

8. The TPO Should be Amended to Clarify that it Applies to Section 8 Voucher Holders Renting in Otherwise TPO-Covered Units

SVRRC supports amending the TPO to clearly state that it applies to Section 8 voucher holders who rent in units that would otherwise be covered by the TPO. Under current law, Section 8 voucher holders are only protected with good cause protections in their first year. After the first year, a landlord can give a Section 8 voucher holder a no-cause 90-day notice, leading the voucher holder to face eviction in a tight market where discrimination against voucher holders is rampant.

The TPO is unclear as to whether it applies to Section 8 voucher holders. Currently, the TPO exempts “affordable rental unit” from the definition of “rent stabilized unit,” but includes “rent stabilized unit” as covered under the TPO. Since the language is not clear as to whether a Section 8 voucher holder would be exempt from the TPO, many landlords have been arguing that the TPO does not apply to Section 8 voucher holders, which we believe was never the intention of the TPO. We ask that City Council amend the TPO to clarify that Section 8 voucher holders should be included under the TPO.

We thank staff for their consideration of the comments of SVRRC and other community stakeholders. We look forward to discussing the above recommendations with staff and Council.

Sincerely,

Silicon Valley Renter’s Rights Coalition

Affordable Housing Network

Latinos United for a New America (LUNA)

Law Foundation of Silicon Valley

People Acting in Community Together

Sacred Heart Community Services Housing Action Committee

Silicon Valley De-Bug

Silicon Valley Rising

Working Partnerships, USA

From: Steve < >
Sent: Sunday, November 25, 2018 11:44 PM
To: City Clerk
Subject: Thanks a lot for your serve.

Dear City Clerk,

This is Steve. I hope you have enjoyed your Thanksgiving holiday with your dear family.
At this occasion, I would like to thank you for your serve to San Jose for its people and for its businesses.

As everybody knows that we have a good problem to have currently due to job market booming which is housing shortage. We are working together to help people who are in need.

To fundamentally solve this problem is to bring more supply to the renting market instead of implementing more regulations to throttle the supply.

Recently I just learned that San Jose City Council is to discuss to put duplexes under rent control in early December.

I believe every council member is smart enough to understand how rent control will work "negatively" once it is implemented for tenants who will be more difficult to find a place that will rarely become available and to find one they can be qualified if the renting qualification bar has to be raised to hedge the risk that landlords have to take after the rent control.

It also invites other tenants in surrounding cities to come to San Jose to occupy more renting units.

It hurts the very people that we want to protect because of less availability, less supply, higher qualification standards.

It also hurts housing supply as investors will start to withdraw from San Jose and move to other cities.

Due to the rent properties price drop, the property tax income for San Jose city will be dropped too. We will have more run down properties in the city in a long run and San Jose will become rust comparing to the rest cities around.

This has been proven in many strict rent control cities and by economists.

Also the result of Prop-10 clearly tells that Californian doesn't support stronger rent control, and people understand how it will impact very negatively for the people in need, for business and for everybody in a long run.

In the upcoming city council meeting, it will be really appreciate if you can support and encourage housing supply to help the people in need instead of putting more regulations to pop and mom landlords to squeeze them out of business and forcing them to sell duplexes to people who will convert them to their primary residence, in turn, to effectively reduce rent unit supply in San Jose.

Thanks a lot for your time and your consideration. Please feel free to let me know if you have any questions.

And I wish you the best.

Thanks,

Steve

----- Forwarded Message -----

From: David Eisbach <>

To: David Eisbach <>

Sent: Thursday, November 29, 2018, 2:41:19 PM PST

Subject: TPOJustCause Dilemma

Dear Members of the Council:

May I share my concerns about the TPO Just Cause proposals for duplexes. I've been reassured that there is no intent to draw duplexes into the ARO, but merely into the TPO for the purpose of protecting tenants with Just Cause and then as an accommodation to duplex owners the Ellis Act. We've learned that 30% of duplex owners live in their property, and 83% of duplex owners are mostly local, and their duplex is their single income property. Yet after three failed attempts to bring duplexes under City Rent Control, now comes the nose under the tent flap approach calling only for TPO Just Cause, and The Ellis Act for those owners to take their duplexes off the market. Am I to believe that your passage of this TPO/Ellis Act for duplexes will not be followed by ARO for real rent control to combat the Bad Actors?

Today, I am mostly interested in the TPO articles of Just Cause. I have incorporated some of the more onerous of the proposed changes to Just Cause. I hope you you will look them over. I hope that your decision will be to leave duplexes out of ARO/TPO/Ellis Act.

Thank you for your consideration.

David Eisbach

TPO Just Cause Dilemma 11.25.18

Only four of eight Just Causes reasons for legal evictions under TPO are understandable and clear in their application: 1,3,5,6, the rest are a nightmare of conflicting terminology and thinking, brought about by the lack of any income property owners on staff and the failure of stake holder outreach.

1. Nonpayment of Rent...**appears to be understandable.**

Housing wants notice directing tenant under eviction to be referred to Housing and homeless prevention. **I hope this isn't the beginning of fighting Housing in even the clear reasons.**

3. Substantial Damage to the Apartment. **This is clear and understandable**

5. Nuisance Behavior After receiving a written notice to cease, the tenant continues to cause nuisance (including a violation of state or federal law) that destroys the peace or safety of the landlord or other tenants. **This is understandable and clear.**

6. Refusing Access to the Apartment After receiving a written notice to cease and being given a reasonable time to fix the issue identified in the notice to cease, tenant continues to refuse the landlord reasonable access to the apartment, provided the landlord is complying with California Civil Code 1954. **This is understandable and clear**

The remainder of these have contradictions, questionable actions, and in my opinion overly complicated and insure decisions by Housing in favor of tenants:

2. Material or Habitual Violation of the Tenancy After a written notice to a tenant to cure a material violation of the lease...This appears to be clear, i.e. the lease says: no working on cars in the parking area, or bedbugs are tenant's responsibility. etc.

BUT, Certain violations can never be considered a material or habitual violation of the lease:

a. An obligation to surrender possession;

This means both owner and tenant have signed a legal one year lease, and State law says either can choose not to continue at the end of the lease. So San Jose ARO/TPO cancels a legal contract between owner and tenant.

b. An obligation to limit occupancy when the additional tenant is: a) dependent/foster child; b) minor in tenant's care; c) spouse; d) domestic partner; e) parent; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom.

It's understood that the 2 adults per bedroom plus any number of children; also the tenant may at their discretion add any of the above to their extended family without the permission of the owner. But, it is not clear what the *greater* of individuals authorized or the two adults per bedroom means; is there another individual authorized category? I suspect this gives the expanded Housing Employees something to do.

4. Refusal to Agree to a Like or New Rental Agreement The tenant refuses to agree to a new *substantially identical* rental agreement after the expiration of the prior rental agreement.

Here the words *New Rental Agreement...substantially identical* beg the questions: If ARO/TPO do not allow the owner to end any lease without Just Cause and the new lease has to be *substantially identical*, then why would an owner write a new lease. (maybe bedbugs, mold, water usage, have become a problem), better yet why would a tenant sign anything new. The

favorite words of Housing are substantial, reasonable, balanced and fair, all have lost their meaning. One cannot have substantially identical! Housing's people to decide.

7. Unapproved Holdover Subtenant The subtenant who was not approved by the landlord and is holding over at the end of the term of rental agreement.

As this stands it is understandable and clear.

However Housing now wants to make an exception for a victim of domestic violence by the tenant, even if she is an *Unapproved Holdover Subtenant*.

Add a provision to the unapproved holdover subtenant cause of action to exempt victims of domestic violence (HCDC Agenda 11.8.2018.)

An uprising by owners in the Bascom Center's brought Housing's new recommendation:

Return with proposed ordinance after analysis to allow victims of domestic violence who have been residing in a unit with the leaseholder who is the alleged abuser a mechanism to take over the lease;

I tire of Housing's word shuffle to obfuscate meaning. The present recommendation contradicts number 7, muddies the water in an effort to favor tenants or in this case an unapproved holdover subtenant. This subverts the spirit of the law, and certainly any semblance of fairness. Why should the landlord be held responsible for the actions of an abuser and the welfare of the illegal subtenant abused?

8. Criminal Activity (Effective June 15, 2018) Landlord may evict a Tenant Household if, after notice to remove, they fail to remove a Tenant and amend the lease (where necessary) within a reasonable time, by either:
- a) filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant;
 - b) removing the Violating Tenant from the household and providing written notice to the landlord that the Violating Tenant has been removed. A Violating Tenant shall mean an adult Tenant indicted by a grand jury or "held to answer" for a serious or violent felony, as defined under Penal Code Section 1192.7, committed during tenancy and within 1,000 feet of the premises. The past criminal history of a tenant prior to the tenancy is not a basis for eviction.

This during an era when Police are stretched to the thin blue line and the City wants you and him to fight it out. Now it is even more bizarre, with the latest recommendations:

Include an "opportunity to cure" that would require that landlords to provide tenant households a written notice to remove the tenant who was held to answer from the apartment or from the lease agreement;

Return with proposed ordinance after analysis to require landlords to allow a right to repossession of the unit where an acquittal or dismissal of the tenant's felony charges;

I believe the Council really believes this is helpful. This is so filled with such pitfalls as: What time is involved, if the courts were functioning one might have possibility of reasonable time; In an age of plea bargaining, a felony could become a misdemeanor, charges might be dropped, How long does an owner wait, what liability does he have even with support of the family of the accused? If the apartment is rented again, does the owner have to take the accused back in another unit? This is a legal minefield.

David Eisbach

From: John Lau []

Sent: Tuesday, December 04, 2018 4:55 PM

To: The Office of Mayor Sam Liccardo <>; Carrasco, Magdalena <>; Jones, Chappie <>; District2 <>; Perez, Raul <>; District4 <>; ; Nguyen, Tam <>; District8 <>; Rocha, Donald <>; Khamis, Johnny <>

Cc:

Subject: Is the city moving to right direction?

The Honorable Mayor, Vice Mayor and Councilmembers:

The agenda of the City Council meeting on Dec 11 includes:

II. Other Amendments to the Tenant Protection Ordinance:

- Require apartment owners to post a notice that summarizes the requirements of the TPO including prohibited actions such as retaliation, harassment, and intimidation against tenants based on their immigration status;
- Add a tenant's right to return to the household if acquitted, dismissed, or reduced from criminal action which caused termination of tenancy; and
- Add a provision that recognizes the protections afforded to victims of violence consistent with California and Federal law.

First of all, most of rental property owners do not want tenant turnover. Instead, we work hard to keep good tenants. 99% of rental property owners will not evict tenants just for raising the rent. When we want to terminate the tenancy, it is because we want to protect the good tenants. While it might have several landlords evict tenant for raising the rent in some district, it is destructive to pass a bad law to cover entire San Jose. If a particular district has a particular issue, it should not create a law negatively affect other area of San Jose.

The bigger problem is that we have difficult time to supply evidence to remove the criminals, which affect all good tenants in the neighborhood. A tenant at the building next door to our apartment fired gun shot in the 2017 Thanksgiving, then again on 2018 New Years eve. When police came, no one testify. Though the nearby tenants knew who fired gun shots. no one helped the police because they all were afraid of the criminal's retaliation. The gangs ruled over Cadillac Drive area for decades is because good people are afraid of retaliation from bad neighbor. Retaliation from the criminals and bad tenants are the **MUCH BIGGER ISSUE**.

It is a silly thinking that a law can cover all valid reason for terminating tenancy. I terminated tenancy for a 89 years old tenant, who forgot to turn off the stove. The Fireman came, and broke into the unit to stop the crisis. If I find a tenant got Alzheimer or Parkinson's disease, I shall terminate his lease. To provide the evidence, my doctor says that he cannot pass dementia test, and his doctor says that he can. With the TPO, we may end up in court for years. Meanwhile, if he forgot to turn off the stove, entire neighborhood may get burned down. The city should help us to provide and protect a good community for our tenants instead of create more difficulties.

I talked with an economist at Stanford University recently. He was from formerly communist country. He does not think rent control will resolve the housing crisis. Rent control is a planned economy. His home country and other communist countries spent **40 years**, put into the most brilliant people, tried hard to make the planned economy work. With the best intention and best efforts, they failed miserably. The current rent control is worse than the planned economy of the communist countries because we do not create any new unit, and the communist country produced something, though not much.

We should stop the TPO push, which does more harm than good in most of San Jose. Instead, let us direct our resource to build more affordable units.

Sincerely,
John Lau
Property owner at San Jose

Kirk McKenzie

December 6, 2018

Mayor Liccardo and Members of the City Council
City Hall
200 East Santa Clara Street
San Jose, California 95113

*Re: Opposition to Proposal to Extend the
Tenant Protection Ordinance to Duplexes
(December 11 Agenda, Item 4.2)*

Dear Mayor Liccardo and Members of the City Council:

I am a retiree and the owner of two duplexes in west San Jose, which have been owned by my family since they were built in the late 1950s. I am writing to express my opposition to the proposal that appears as one of the options on Agenda Item 4.2 for the City Council's December 11, 2018 meeting, which would extend the provisions of the Tenant Protection Ordinance (TPO) to duplexes. As the Housing Department has pointed out in its November 30 memorandum concerning Item 4.2, "after completing outreach and analysis, staff determined that extending the [TPO] to duplexes will have limited impact and may be ineffective in avoiding displacement of tenants." In addition, the Housing Department's memo observes that if duplexes were made subject to the TPO, such a step would divert important resources from the City's Rent Stabilization Program, which is focused on implementing the rent registry that was recently added to the Apartment Rent Ordinance (ARO), as well as dealing with petitions for exemption from the prohibition on Ratio Utility Billing Systems (RUBS) that is also part of the ARO.

There is no need to extend the provisions of the TPO to duplexes, of which there are approximately 11,000 in San Jose. According to both the analysis of the Housing Department and data from the County Assessor's office, about 30% of the duplexes in San Jose are owner-occupied. Duplex owners have no incentive to evict their tenants

without good cause, because these owners – many of whom are retirees – are dependent on the income from their duplex units to supplement their retirement income. In addition, the rent increases that duplex tenants experience tend to be limited, because these tenants remain in their units longer than most apartment dwellers, and are often neighbors of their landlords. For these and other reasons, the proposed ordinance included with the December 11 agenda that would extend the TPO to duplexes should be rejected.

The Housing Department's Information-Gathering Process Revealed Few Reasons to Support Adding Duplexes to the Coverage of the TPO

The proposal to make duplexes subject to the TPO grows out of direction that the City Council gave to the Housing Department at the April 24, 2018 City Council meeting. The synopsis for that meeting states (at page 8) that the Council approved a memorandum from Councilmember Rocha “directing staff to return with an ordinance that would extend the Tenant Protection Ordinance and the Ellis Act Ordinance to duplexes.” In the one-page, April 23 memorandum that the synopsis refers to, Councilmember Rocha asserted that in recent years, “duplex tenants undergoing eviction have reached out to my office as they’ve struggled to find new housing. Tenants struggling with eviction . . . are among the most difficult and heart-rending cases that I’ve worked on in my time as a Councilmember. The TPO won’t solve every problem, but it does grant some measure of stability to tenants by ensuring that they can only be evicted for good cause.”

Pursuant to the City Council’s April 24 directive, in mid-August of 2018 the Housing Department sent out a notice to duplex owners announcing a series of meetings to be held later in the month. The notice stated that the purpose of the meetings was to gather information that would be helpful in drafting the amendments requested at the April 24 meeting. The notice was accompanied by a one-page survey of duplex owners, a copy of which is attached to this letter. Pursuant to the notice, a fair number of duplex owners attended the meetings held by the Housing Department on August 15, 23 and 30, where most of the owners expressed opposition to extending the TPO and Ellis Act Ordinance to duplexes, arguing that such a step was unnecessary.

In both its November 1, 2018 memorandum to the Housing and Community Development Commission (HCDC) and its November 30 memorandum concerning Agenda Item 4.2, the Housing Department acknowledges that it has received limited responses to the August survey, with only 225 responses received as of November 13, 2018. However, these responses validate one of the arguments that owners made most forcefully at the meetings held in August; *viz.*, that the vast majority of duplex owners

are “moms and pops” who have only one or two duplexes.¹ As these owners pointed out, people who own duplexes have no incentive to evict tenants without good cause, because doing so deprives them of a significant fraction of their income. As one owner whose comments were appended to the November 30 memo put it, “vacancies do not help my bottom line.” The suggestion that significant numbers of duplex tenants are being evicted without good cause is based on anecdotes, not meaningful evidence.²

Other objections were raised by duplex owners at the Housing Department’s August informational meetings. For example, one owner noted that the TPO allows a tenant to be evicted for criminal activity (which is defined as a serious or violent felony) only if the alleged crime takes place within 1000 feet of the rented premises. The owner said that if this arbitrary limitation were applied to duplexes – where it is more difficult to avoid bad neighbors than in an apartment building – it would make the duplexes more difficult to rent. Other owners objected to the requirement under the Ellis Act Ordinance that relocation assistance must be offered to tenants who are asked to move. These owners pointed out that if the requirements of the Ellis Act Ordinance were extended to duplexes, the amounts of required assistance would be very burdensome for duplex owners, and that requiring relocation assistance would penalize owners who wanted to move family members into their duplexes.

On October 29, the Housing Department announced that it would hold a series of “policy development” meetings in early November to discuss the proposed amendments that would add duplexes to the coverage of the TPO and the Ellis Act Ordinance. At the November 5 policy development meeting, duplex owners again objected to several provisions in the proposed amendments, including the requirement under the TPO that a “Violating Tenant” held to answer for a serious or violent felony must be allowed -- if acquitted of the charges or if the charges are dismissed -- to return to the rental unit if the rest of the tenant household still resides in the unit and does not object to the Violating Tenant’s return.

¹ The survey results showed that of the 220 responses received on the ownership question, slightly over 80% of the respondents owned one duplex, about 12% owned two, and 8% or less of the respondents owned three or more duplexes. (Appendix A to November 30 Housing Department Memo, Figure 3.)

² This conclusion is supported by a point made by the Housing Department at the August 30 informational meeting and on page 15 of its November 30 memo: that approximately 96% of the eviction notices the Housing Department receives pursuant to the requirements of the TPO are for nonpayment of rent, one of the “just causes” under the TPO for terminating a tenancy. There is no reason to think the situation would be any different for duplexes.

Discussion at the November 8 Housing and Community Development Meeting

After holding its policy development meetings in the first week of November, the Housing Department presented the proposed amendments to the TPO and the Ellis Act Ordinance, as well as a memorandum explaining them, to the HCDC at that commission's November 8 meeting. The members of the HCDC had several concerns about the proposed TPO amendments, and rejected a motion to recommend them as written to the City Council.

The concern that received the most discussion by the HCDC was the proposal to extend the TPO to duplexes in which one of the two units is occupied by the owner. Agreeing that such ownership should clearly be considered a "mom and pop" situation, HCDC voted 7-to-1 to recommend that the TPO should only apply to non-owner occupied duplexes. HCDC also refused to recommend proposed language in the TPO amendments that would allow a victim of domestic violence to remain in a rental unit despite being an unapproved holdover tenant. Instead of this, HCDC asked the Housing Department to return with other options for protecting victims of domestic violence.

HCDC members also expressed concern about the lack of evidence on whether duplex tenants are being unfairly evicted. When asked by one commissioner about whether duplex tenants have different "eviction experiences" than tenants in other rental housing, the Deputy Director of the Housing Department stated that the only evidence her department had was anecdotal. Another HCDC commissioner said that she wanted to see complaint logs from duplex tenants.³

The Lack of Evidence that Significant Numbers of Duplex Tenants Are Being Evicted Without Good Cause Makes It Inappropriate to Extend the TPO to Duplexes

As the history above demonstrates, the proponents of extending the Tenant Protection Ordinance to duplexes have not been able to offer meaningful evidence to support their position. As the Deputy Director of the Housing Department acknowledged at the November 8 HCDC meeting, the Department has only anecdotal evidence about the eviction experiences of duplex tenants.

³ At the conclusion of its November 8 meeting, HCDC unanimously passed a motion that "all of the units that City Council chooses to apply the Tenant Protection Ordinance to also be subject to the Ellis Act Ordinance." (HCDC November 8 Draft Action Minutes, Item VII.C.) In its November 30 memo, the Housing Department is not recommending that duplexes be made subject to the Ellis Act Ordinance.

As duplex owners like me pointed out at the Housing Department meetings held in August and November, this is not surprising, because duplex owners do not have an economic incentive to evict tenants without good cause. As the Housing Department acknowledges, 30% of the duplex units in San Jose are owner-occupied, and owners living next door to their tenants have ample reason to maintain good relations with their tenants, as well as to keep rent increases reasonable. The same considerations apply where a duplex owner does not live in his or her unit. As one owner noted at the August 23 informational meeting, extending the TPO to duplexes would inevitably make relations between duplex owners and their tenants more adversarial.

In addition to these commonsense considerations, it bears repeated mention that the TPO is a complex statute with which most duplex owners are unfamiliar. In recommending that the TPO should not be extended to duplexes, the Housing Department states on page 11 of its November 30 memo that doing so would “require significant outreach and education to owners and tenants,” and that such outreach “will pull resources from existing program implementation efforts,” including the rent registry recently added to the ARO, as well as dealing with over 135 petitions seeking exemption from the general prohibition on the use of Ratio Utility Billing Systems now set forth in the ARO.

Conclusion

Thank you for the opportunity to comment on the draft ordinance concerning the scope of the TPO. For the reasons set forth above, I believe that duplexes should continue to remain outside the coverage of the Tenant Protection Ordinance, as well as the Ellis Act Ordinance.

Sincerely,

Kirk McKenzie

CC: Rachel VanderVeen, Housing Department

CITY OF SAN JOSE, HOUSING DEPARTMENT

Survey Assessment for Duplex Owners in San José

On Tuesday, April 24, 2018, the City Council directed the Housing Department to consider extending additional rental protections to renters living in duplexes by including duplexes as covered properties under the Ellis Act Ordinance and Tenant Protection Ordinance (TPO). In response to the Council's direction, the Rent Stabilization Program with the Housing Department have met with the community and stakeholders to develop two recommendations to bring before Council:

- Return with proposed ordinance after analysis to consider extending Tenant Protection Ordinance to duplexes, requiring a just cause for termination of tenancy
- Return with proposed ordinance after analysis to consider extending Ellis Act Ordinance to apply to duplexes

The Rent Stabilization Program is requesting your input as a duplex owner in San José. Your input will help us improve the Program for both tenants and owners. Please take a moment to complete this survey. More information on the Tenant Protection Ordinance, Ellis Act Ordinance, and the Rent Stabilization Program can be found at www.sanjoseca.gov/rent.

What council district is your duplex located in?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	
	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> 9	<input type="checkbox"/> 10	<input type="checkbox"/> Not sure
Do you currently reside in or occupy the duplex?	<input type="checkbox"/> Yes	<input type="checkbox"/> No				
How many duplex units do you own?	<input type="checkbox"/> 2 (1 building)	<input type="checkbox"/> 4 (2 buildings)	<input type="checkbox"/> 6 (3 buildings)	<input type="checkbox"/> 8 or more (4 buildings or more)		
How long has your current tenant been renting your duplex?	<input type="checkbox"/> >1 year to 2 years	<input type="checkbox"/> 3 to 5 years	<input type="checkbox"/> 5 years or more			
Please indicate your average rent levels.	<input type="checkbox"/> Less than \$1,000	<input type="checkbox"/> \$1,000 - \$1,500	<input type="checkbox"/> \$1,500 - \$2,000			
	<input type="checkbox"/> More than \$2,000					
What additional methods of public outreach would be useful for the Program to reach out to you or other landlords?	<input type="checkbox"/> Community Meetings	<input type="checkbox"/> Workshops	<input type="checkbox"/> Mailer			
	<input type="checkbox"/> Other: _____					

Please offer your input on the potential effects of your duplex being subject to the Tenant Protection Ordinance and Ellis Act Ordinance.	_____					

Please email us at RSP@sanjoseca.gov or return this completed survey to:

Housing Department - City of San José

Rent Stabilization Program

200 E Santa Clara St, 12th Floor, San José, CA 95113

December 6th, 2018

City Council, the City of San Jose
200 E. Santa Clara St.
San Jose, CA 95113

Re: Tenant Protection Ordinance Amendments and Source of Income Ordinance

Dear Mayor, Vice Mayor and Council Members:

As an organization that represents thousands of small mom-and-pop rental property owners, we are deeply concerned about the proposed amendments to the Tenant Protection Ordinance (TPO) and the potential creation of Source of Income Ordinance (SOI), which will go to the Council meeting of December 11, 2018.

With the reason below, we strongly urge the Council, (1) to vote NO on adding duplex to TPO and (2) to vote NO on the creation of SOI.

A. Duplex

1. The proposed amendments, if passed, will disproportionately hurt small mom-and-pop duplex owners. More than 50% of the duplex owners who are going to be affected are San Jose residents, our community members. About 80% of duplex owners own just one duplex. Their duplex may be their only source of income. The proposed amendments will force them to take the units back for family use, because, for many, it is too much of a burden to handle a whole set of regulations, bureaucracy and fees associated with Just Cause Eviction.
2. These amendments harm, rather than protect, the vulnerable. Many of the duplex owners are seniors, single parents, first generation immigrants, and people of color. Rental income may be their only protection against unforeseeable events. These small property owners are typically part-time workers, not wealthy and non-professional. They need as much protection as their tenants do. They should be encouraged to, rather than discouraged from, providing housing to the people of the City of San Jose.
3. There is no data showing that singling out duplex properties and adding them to the TPO will help tenants. In fact we are seeing just the opposite. It is entirely foreseeable that adding duplex to TPO will scare some small mom-and-pop owners away from renting out their units, which result in further shrinkage of affordable rental inventory. It will force owners to increase the tenant screening standards, which will hurt the exact segment of renters that the City is trying to help. It is irrational to regulate duplex when the harms to duplex owners and the harms to the vast majority of duplex renters are clearly foreseeable.
4. Expanding TPO to include duplex can create enormous fear among San Jose's homeowner who may consider renting out their property in the future and today's single-family rental property owners. It creates an image that the city will never stop expanding rental restrictions. It is also contradictory to the policy of encouraging homeowner to build ADU to ease the housing crisis.

B. Source of Income Ordinance (SOI)

1. We welcome our City to provide education and training to both owners and tenants for each side's rights and responsibilities, and to help owners to understand how voucher programs work. However, adding a new regulation of SOI will not provide real help to voucher holders.
2. We welcome the government agencies to work with property owner community to establish better understanding and trust, to modify and improve the process of the voucher programs.
3. We are especially concerned about temporary voucher programs because temporary voucher programs do not provide a predictable source of income at all. There are huge risks and uncertainties associated with unbearable costs and burdens when a temporary voucher expires. We recommend our City and County governments to modify the programs to address these concerns and to incentivize owners to join the programs.
4. Again we welcome education and training on housing rights and obligations. Meanwhile we strongly oppose spending taxpayers' money to fund tenant legal services to bring lawsuit against rental property owners. This practice encourages unnecessary lawsuits, destroys the harmony and goodwill between housing providers and housing recipients, burdens the legal system, and is blatantly unfair. It deliberately positions a renter against a housing provider, even when the renter is wealthier than the housing provider, and even when the renter and the housing provider are on good terms.

Once again, we urge our leaders to accept staff's recommendation NOT to include duplex properties in the TPO, and to vote NO on the SOI.

The high housing cost is not caused by small mom-and-pop property owners, but by job-housing imbalance. It is profoundly unfair to blame small mom-and-pop property owners for the housing crisis and to put the burden of solving a large social issue on their fragile shoulders. Again, the small mom-and-pop property owners need protection, as renters do. Punishing housing providers will not bring more housing. We welcome our leaders to work with us to find real solutions to our renters.

Sincerely,

Jenny Zhao, Board of Director
On behalf of Bay Area Homeowners Network

CC: Jacky Morales-Ferrand, Director, Housing Department; Rachel VanderVeen, Deputy Director, Housing Department; City Clerk