



Memorandum

TO: THE HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Lan Diep
Councilmember Dev Davis
Councilmember Tam Nguyen
Councilmember Johnny Khamis

SUBJECT: TENANT PROTECTION ORDINANCE **DATE:** 12/5/2018

Approved

Date

12/5/18

RECOMMENDATION

Accept staff's recommendations, adopting option a(2) to not extend the Tenant Protection Ordinance to duplexes.

BACKGROUND

The Tenant Protection Ordinance (TPO) – colloquially known as “Just Cause Eviction” – creates a right-to-stay-in-perpetuity for renters leasing a residence in a building with three units or more, so long as they do not violate one of thirteen established “just cause” reasons that would permit a landlord to terminate or not renew a lease.

In April 2018, the City Council directed Staff to come back with proposed amendments to extend the TPO to duplexes as well. Staff has brought back those possible amendments, but has additionally recommended that Council not adopt them.

There are approximately 10,916 duplexes in San José and Staff has determined that about 30% of duplex owners live in their own units. The Council has declined repeatedly to extend San José's Apartment Rent Ordinance to duplexes.

The Housing Department staff is presently preoccupied with other efforts to help with rent stabilization, such as forming a rent registry and responding to Ratio Utility Billing petitions.

ARGUMENT

Extending the Tenant Protection Ordinance (TPO) to duplexes creates more bureaucracy but does not provide any real benefits or protections to renters. As explained in the staff memo, the Apartment Rent Ordinance (ARO) and the TPO are designed to work in tandem

to create housing stability for renters. The ARO limits rent increases while the TPO narrows the opportunity for landlords to retake their unit from tenants. Because ARO does not apply to duplexes, a landlord can increase rents to an amount unaffordable by tenants, thereby defeating the TPO. While some may argue that the ARO should also be extended to duplexes, the Council has repeatedly declined to extend the ARO to duplexes for good reason. Such an imposition would cause a detrimental impact on the small mom-and-pop landlords who help create our housing market but depend greatly on their rental properties as a stream of income. And studies have shown that limiting the financial return on rental units will result in landlords converting rental units into for-sale units, thus decreasing the overall available housing stock.

Further, it is not a regular occurrence that staff comments on Council direction. That the Housing Department staff has made the effort to suggest an alternative and contradicting course of action should carry weight with the Council. While it is ultimately up to the Council to craft the policy direction for our city, our professional staff are subject-matter experts that deserve some consideration. In this particular case, for the reasons presented by the Housing Director, staff also deserves the Council's deference.

In attempting to tackle the housing crisis, the City Council has passed numerous laws and amendments aimed at protecting renters. Housing Department staff is inundated and needs the time and capacity to implement other directions the Council has given. Extending the TPO to duplexes would not only be ineffective, it would distract valuable staff time away from tasks such as creating a rent registry or processing Ratio Utility Billing petitions.

CONCLUSION

The Council should defer to staff and decline to extend the Tenant Protection Ordinance to duplexes.