

## Nguyen, Viviane

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**From:** Cheryl [REDACTED]  
**Sent:** Friday, November 23, 2018 9:19 PM  
**To:** Morales-Ferrand, Jacky; VanderVeen, Rachel; Nguyen, Viviane; Wright, Sara; Clements, Kristen; Liccardo, Sam  
**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 Lubow

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Tuesday, November 20, 2018 12:27 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Duplex TPO and Ellis

Public record

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [mailto: [REDACTED]]  
**Sent:** Monday, November 19, 2018 1:07 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Subject:** Fw: Duplex TPO and Ellis

Rachel, here is a continuation of my efforts against the inclusion of duplexes in the TPO, Ellis and subsequently the ARO. Would you see to it that it gets into the record.  
Dave

The Housing Department has been busy letting us know that 30% of owners of 5,500 duplexes live in their unit. That 83% of duplexes are locally owned and there is little corporate ownership, mostly mom and pop. Housing seems to come up with numbers when pressed, so here's what I think would be useful to the Council on December 4, 2018:

Ask Housing to compile a case for duplex inclusion in the TPO and the Ellis Act. Of the 11,000 units, how many cases of harrassment, no cause eviction, price gouging beyond the 5%. I think it would go a long way for both Council, Owners and Residents toward reconciliation. Housing has been very fond of using words like "numerous, many, large numbers" in its statements. Don't you think a distinction between routine calls for information and actual events with the action taken would be good? Until you receive that information, you should not proceed with duplex inclusion.

David Eisbach

## **ARO, Duplex Inclusion 11.7.18**

I am against the inclusion of duplexes under ARO for the following reasons.

- The owners of duplexes are people, who purchase a duplex as an investment and are relying on it to augment their retirement. They generally only have that rental.
- They are not corporations. A recent California Apartment Association survey noted that 50% of ARO properties are owned by San Jose residents and 80% of the owners are from Santa Clara County and 97% are from California.
- The age of their property requires more maintenance. No new duplexes are being built. A National Association of Realtors developed a survey of over 950,000 properties. The result using a 5 year old and a 20 year old property found a 4.5% differential.
- Many manage the property by themselves.
- Many perform their own maintenance (sweat equity) because they don't have sufficient funds.
- According to city statements some 1,500 out of a total 5,500 live in their duplex.
- These owners tend to be the least able financially to take the expenses of housing.
- Owners of duplexes tend to be closer to their tenants and tend to keep rents reasonable to keep their units full.
- If you destroy their ability to stay solvent, you destroy their ability to trade up into four unit rentals. The slow destruction of the property will erode the value and tax base as well.

David Eisbach 

TPO.11.14.18

## Tenant Protection Ordinance

Landlords/Managers: [Submit a Notice to Terminate Tenancy with Just Cause using our simple online form.](#)

### Ordinance Overview

[The Tenant Protection Ordinance outlines landlord responsibilities and tenant rights regarding notices to terminate.](#) Under the Tenant Protection Ordinance, landlords of multifamily dwellings, guesthouses and unpermitted units will only be authorized to terminate tenancy under one of the 13 listed causes below (also view this [flyer in Spanish](#) and [Vietnamese](#)) Landlords must submit notices to vacate to the Rent Stabilization Program; [submit a Notice to Terminate Tenancy with Just Cause using our simple online form.](#)

#### Just Cause Reasons on Tenant Actions

- 1 Nonpayment of rent
- 2 Material or habitual violation of the lease
- 3 Damage to the apartment
- 4 Refusal to agree to a similar or new rental agreement
- 5 Disorderly behavior/disturbing the peace
- 6 Refuse access to the apartment when requested in accordance with law
- 7 Unapproved holdover subtenant
8. Criminal activity

#### Just Cause Reasons Based on Landlord Decision or Consequence of Action

- 9 Substantial rehabilitation of the apartment
- 10 Removal of apartments from the rental market under the Ellis Act
- 11 Owner move-in
- 12 City code enforcement actions requiring a move out
- 13 Convert an unpermitted apartment for permitted use

Relocation benefits must be paid when a tenant is being removed from an apartment for reasons 9-13. Benefits are paid based on the size of the unit occupied by the tenant who receives a notice of termination:

Studio	1-Bedroom	2-Bedroom	3-Bedroom
\$6,925	\$8,400	\$10,353	\$12,414

The following documents are available for the Tenant Protection Ordinance:

[Tenant Protection Ordinance Fact Sheet](#)

[Tenant Protection Ordinance Frequently Asked Questions](#)

[Watch our PSA for more information about the Tenant Protection Ordinance.](#)



## Notice of Termination Dashboard

The Rent Stabilization Program collaborated with the Center for Social Research at Calvin College to develop a [Notice of Termination Dashboard on the platform Tableau](#) for the public to view. The information on this dashboard is derived from the notices of terminations that the Rent Stabilization Program has received, including 3-30-60 day notices of terminations and summons and complaints. The information displayed includes notices received from May 2017 to May 2018.

## Landlord and Tenant Responsibilities

### Landlord Responsibilities

If giving a notice of termination, serve a written copy to the tenant with the proper amount of notice according to State law. Ensure that the applicable 13 just causes are included on the notice.

Provide a copy to the City within 3 days of service to the tenant. [You can submit a copy of the notice online.](#)

Provide relocation benefits at the time of service to the tenant, if applicable.

### Tenant Responsibilities:

Ensure that if you receive a notice of termination, that it is in writing and with the proper amount of notice according to State law.

Ensure that the notice has at least one of the 13 just causes listed as the reason for the notice being served.

Contact the Rent Stabilization Program to ensure that the landlord submitted the notice to the City correctly. If not, contact the Law Foundation of Silicon Valley's Eviction Assistance Clinic at 408-280-2424.

### Council Actions

On Tuesday, April 24, 2018, the City Council took action to amend the Ellis Act Ordinance, Tenant Protection Ordinance (TPO), and Apartment Rent Ordinance (ARO). Over the past several months, we have worked with community and stakeholders to develop recommendations for these challenging issues. The following list the results from the City Council meeting regarding the Tenant Protection Ordinance:

Prohibit landlords from disclosing or threatening to disclose tenants' immigration or citizenship status to authorities for the intent of retaliation consistent with AB 291;

Include "criminal activity" as a separate just cause basis for eviction when a tenant is "held to answer" for a serious or violent felony committed during tenancy and within a 1,000 ft. of the premises;

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 a proposed ordinance after analysis to require landlords to post in the common areas a notice stating that it is illegal for a landlord to disclose immigration status of a tenant;

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;

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; and

Return with proposed ordinance after analysis to extend TPO to duplexes requiring a just cause for termination of tenancy.

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On Tuesday, November 14, 2017, the City Council took action on the following agenda items summarized below:

Amendment to the Tenant Protection Ordinance (TPO):

Include dependent child; foster child; minor in the tenant's care; spouse or domestic partner; or parent of a tenant under exempted categories of additional family members allowed under TPO's Just Cause reason for material or habitual rental agreement violation; and

Reduce the maximum occupancy limit for adults to the number allowed by the rental agreement or two adults per bedroom, whichever is greater.

The second reading of the Tenant Protection Ordinance and Apartment Rent Ordinance took place Tuesday, November 28, 2017, and Council approved the changes above so the ordinances will go into effect on December 28, 2017. In the weeks following, staff will begin implementing a plan to reach out to constituents with informational materials and opportunities for additional assistance and education.

In 2018, the City Council will consider criminal activity and immigration status as it applies to the Tenant Protection Ordinance in addition to updating the regulations.

## **ARO, Duplex Inclusion 11.7.18**

I am against the inclusion of duplexes under ARO for the following reasons.

- The owners of duplexes are people, who purchase a duplex as an investment and are relying on it to augment their retirement. They generally only have that rental.
- They are not corporations. A recent California Apartment Association survey noted that 50% of ARO properties are owned by San Jose residents and 80% of the owners are from Santa Clara County and 97% are from California.
- The age of their property requires more maintenance. No new duplexes are being built. A National Association of Realtors developed a survey of over 950,000 properties. The result using a 5 year old and a 20 year old property found a 4.5% differential.
- Many manage the property by themselves.
- Many perform their own maintenance (sweat equity) because they don't have sufficient funds.
- According to city statements some 1,500 out of a total 5,500 live in their duplex.
- These owners tend to be the least able financially to take the expenses of housing.
- Owners of duplexes tend to be closer to their tenants and tend to keep rents reasonable to keep their units full.
- If you destroy their ability to stay solvent, you destroy their ability to trade up into four unit rentals. The slow destruction of the property will erode the value and tax base as well.

David Eisbach [REDACTED]



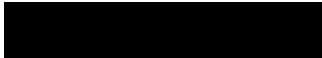
**ARO, Duplex, Ellis Act 11.7.18**

**Ellis Act**

I oppose this inclusion for the following Reasons:

- A. Duplexes are built on standard size lots 60 X 100, 6,000 sq ft or less. Too small for any major reconstruction of more units.
- B. Even modest remodeling requiring residents to vacate for a week becomes prohibitively expensively.
- C. Forcing an owner to pay to remove residents for an expensive remodeling is bad enough, but to have them resettle those same tenants at the same rents deters any thoughts of remodeling or construction.
- D. The original intent of the Ellis Act was to protect tenants from being evicted by owners for the purpose of remodeling an apartment. It was also devised to allow an owner to remove a unit from the rental market. Duplexes are small enough to be treated as a single family residence or converted into a condominium, in either case it will be the only recourse left to a hard-pressed owner.
- E. It is clear to me, when the rent cap is lowered, capital improvement sharing is restricted, occupancy standards are substantially raised, utilities are the owners responsibility, and legal contracts (in the State of California) are overpowered by the San Jose ARO, there is no doubt that existing rental housing stock will erode.

David Eisbac



ARO/TPO criminal eviction 4/23/18

Dear Mayor Liccardo:

April 23, 2018

I am writing in response to your support letter for placing landlord obligations for eviction of persons indicted or held to answer for violent felony...

Whatever happened to *innocent until proven guilty*? You would have me evict someone indicted for a serious crime. You seem top heavy in the sex crimes category, while most evictions deal with rent payments. We owners have been warned that registered sex offenders are a protected class and our arbitrarily evicting that person puts us in legal peril. What bothers me is the lack of structure. Is the DA going to tell me about my tenant? Who is to inform me; Who is to make the request for eviction?, a resident? the City? the Police? the Mayor? I believe it is at cross purposes and ill-advised. Damned if you do and Damned if you don't.

Picture a bread-winner being evicted and forbidden to reenter the property and the wife and children are then without money and subject to eviction (at owner cost) and they are. Then the person is cleared of all charges in court. You think it makes it all better to move that exonerated person and family back into the same unit (at owner cost) that is now rented at the same price (how easily you spend my money). I think in their place I would sue for actual and emotional damages. Now, who are they going to sue? You, the City of San Jose, (who made me do it!) no they will start with me.

I expect that the City will not rest until my business license has quintupled to support the monumental increase of 4 million dollars in the Housing Department 22-24 FTE, The TPO has taken my business decision as to how many residents I can have in an apartment, How much I can raise rents 5%, What capital improvements costs I can pass along to those who benefit, You give residents a voice in repairs and remodels, You are considering giving tenants a pass on water/RUBs, Housing is moving into tri-plexes built between 1979 and 1995 with the eye on supporting the repeal of Costa-Hawkins and lowering the annual rent increase to CPI, And now you want to make me a lawyer and evict indicted tenants before being found guilty.

I am pleading with you. Do not include this in the TPO, it is already toxic enough!

Regards,

David Eisbach

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Sunday, November 25, 2018 6:44 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Duplex Inclusion  
**Attachments:** Duplex Inclusion 11.20.18.docx

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [mailto: ]  
**Sent:** Friday, November 23, 2018 12:49 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Cc:** Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: Duplex Inclusion

Rachel, I must have missed something in your answers, but I think this is correct. Thanks I hope your Thanksgiving was good.  
Dave

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For three and a half years Housing Department Head, Jacky Morales-Ferrand has used rents from outside those ARO, rent stabilized properties. It was easy to ask large professionally run apartment complexes, who keep statistics. The problem is a four unit apartment with a laundry room couldn't get the same rents as a large 50 unit with pool, clubhouse and exercise room. There are only 9% of 50 apartment complexes under the ARO. There was no effort on Housing's part to reach out to owners, although Housing's swelling ranks knew who the owners were, where owners could be found through tax rolls and business taxes. She began with a survey performed by a gun for hire in favor of rent control. Finding "Bad Actors" in the roughly 120,000 rental units under the Apartment Rent Ordinance was always considerably under 1%. The march was aided by public outreach meetings that were inadequate, over-simplified and ill-reported. Using traffic green yellow and red for issues yes, maybe, and no; stickers, post it notes and confused discussion at times, allowed Housing to decipher the meaning. In all outreach meetings even though owners were a super majority, there is no accounting for numbers nor was there ever an open vote on issues. The only voting body was the Housing and Community Development Commission. The HCDC's membership is 13 with 5 seats representing low income interests plus two seats filled by renters from a ARO unit and a Mobil Home Park. With 7 of the 13 seats favorably predisposed toward rent control, it is not surprising that such votes come in with large majorities.

I believe that this is the third time that duplexes have been called to the front. A statement from a colleague on the front line said it best:

*My key message is if they keep the mom and pops out, they have a better chance of achieving their goals of stabilizing rent, creating predictability in rent for the renters, and protecting affordable housing. It's the small mom and pops who have historically kept their rents below market. Their numbers show ARO units were at 50% of market rents. If they add duplexes, these units will likely be taken out of the housing stock.*

You will find attached my reasons for opposing the inclusion of duplexes in TPO and Ellis, Your vote will seal the fate of single duplex owners, who exist under retirement income and rely on their life's work investment. I know, if passed, the logical move will be to place duplexes under ARO to insure that Bad Actors will stay within the 5% cap. The way rent control is structured, anyone who is under the market can never catch up and the major capital improvement pass through is passable for one major problem only. Unfortunately, Housing has wedged itself between tenant and owner creating an adversarial relationship, discouraging interaction. The ARO, TPO and ARO have made clear that tenants are relieved of any responsibility. A prime example is water usage being the sole responsibility of the duplex owner.

David Eisbach

## **Duplex Inclusion 11.20.18**

I think that the Housing Department should release a study on just how many duplex owners are “Bad Actors.” The Council should have facts on bad evictions, harassment, and injurious acts perpetrated by duplex owners. I will not believe that it is required to place this group under the TPO and the Ellis Act to protect tenants, without such a fact gathering. If you pass this, the ARO absorption will soon follow. I believe people will not build granny units for fear that they will be next. I am against the inclusion of duplexes under ARO for the following reasons:

- The owners of duplexes are people, who purchase a duplex as an investment and are relying on it to augment their retirement.
- They are not corporations. A recent California Apartment Association survey noted that 50% of ARO properties are owned by San Jose residents and 80% of the owners are from Santa Clara County and 97% are from California.
- The age of their property requires more maintenance. No new duplexes are being built. A National Association of Realtors developed a survey of over 950,000 properties. The result using a 5 year old and a 20 year old property found a 4.5% differential in maintenance cost.
- Many manage the property by themselves.
- Many perform their own maintenance (sweat equity) because they don't have sufficient funds.
- According to city statements some 1,650 (30%) out of a total 5,500 live in their duplex.
- About 4,565 (83%) of duplex owners, own just that one.
- These owners tend to be the least able financially to take the expenses of housing.
- Owners of duplexes tend to be closer to their tenants and tend to keep rents unreasonably low to keep their units full.
- If you destroy their ability to stay solvent, you destroy their ability to trade up into four unit rentals. The slow destruction of the property will erode the value and tax base as well.
- Pulling duplexes under the TPO and Ellis Act now, will be followed by inclusion under the ARO in the next round. These owners, with limited reserves and diminished income in the face of inevitable major maintenance, will sell their units at discounts matching the unit's income. They will split them; create low cost, zero lot-line units not rental units.

David Eisbach [REDACTED]

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Monday, November 26, 2018 10:11 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: TPO/Duplex Inclusion

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [mailto:deisbach@sbcglobal.net]  
**Sent:** Monday, November 26, 2018 11:39 AM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Cc:** Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: TPO/Duplex Inclusion

Hi Rachel and Fred:

I understand Fred, you are working on the duplexes and as always, I am sending my notes to you Rachel. I hope you both had a good Thanksgiving and are busy gathering information for the Council vote, the topic of this letter. Rachel, thanks for the clarification on the Ellis Costs, we were both a little right.

Regards  
Dave

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

**From:** David Eisbach [REDACTED]

**Subject:** TPO/Duplex Inclusion

City Council Members:

The Housing Department recently disclosed that owners of 30% of the 5,504 duplexes resided in them; also 83% of the duplexes were locally owned. All this information can be gleaned from the tax roll, public ownership records, and the Business Tax. Housing has made rent projections all along when attempting to prove a need to reign Bad Actors from gouging rents and harassment, yet up to the present they make no statement as to rents in the duplex community. The only attempt was the October/November "Duplex Survey," which was so hastily assembled that it made no distinction between studio, one, two and three bedroom rents! Checking the newspaper and the web doesn't give final rents. Why haven't they done this? It is much easier to assign greed and lawless behavior on duplex owners through association and innuendo than to actually offer proof.

I implore the Council to pause in the duplex question, request a report from Housing bringing a true survey of rents; all actual complaints filed against duplex owners, and actions taken; mainly information calls from owners and tenants should be made separately. Act when you have some factual data.

David Eisbach

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 9:26 AM  
**To:** Nguyen, Viviane  
**Subject:** FW: Please exclude duplex from TPO and rent control

Public record

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Sandy W [mailto: [REDACTED]]  
**Sent:** Tuesday, November 27, 2018 10:05 PM  
**To:** Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; Rocha, Donald <Donald.Rocha@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; Henninger, Ragan <ragan.henninger@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>; Garavaglia, Christina <Christina.Garavaglia@sanjoseca.gov>; Nguyen, Tam <Tam.Nguyen@sanjoseca.gov>; Carrigan, Ryan <ryan.carrigan@sanjoseca.gov>; Arenas, Sylvia <sylvia.arenas@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; Castro, Huascar <huascar.castro@sanjoseca.gov>; Khamis, Johnny <johnny.khamis@sanjoseca.gov>; Fedor, Denelle <Denelle.Fedor@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>; Pressman, Christina <Christina.Pressman@sanjoseca.gov>; Diep, Lan <lan.diep@sanjoseca.gov>; Lebron, Charisse <charisse.lebron@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; ARO <ARO@sanjoseca.gov>; Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Lopez, Robert (HSG) <Robert.Lopez@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; Sykes, Dave <Dave.Sykes@sanjoseca.gov>  
**Subject:** Please exclude duplex from TPO and rent control

Dear Council,

I request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. We also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present.

Thank you,  
Sandy Wang, a SJ housing provider

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 8:16 AM  
**To:** Nguyen, Viviane  
**Subject:** Fwd: Please exclude duplex from TPO and rent control

Public record

Sent from my iPhone

Begin forwarded message:

**From:** Sandy W [REDACTED]  
**Date:** November 27, 2018 at 10:05:17 PM PST  
**To:** Sergio <[sergio.jimenez@sanjoseca.gov](mailto:sergio.jimenez@sanjoseca.gov)>, Helen <[helen.chapman@sanjoseca.gov](mailto:helen.chapman@sanjoseca.gov)>, Raul <[raul.peralez@sanjoseca.gov](mailto:raul.peralez@sanjoseca.gov)>, Donald <[donald.rocha@sanjoseca.gov](mailto:donald.rocha@sanjoseca.gov)>, Sam <[sam.liccardo@sanjoseca.gov](mailto:sam.liccardo@sanjoseca.gov)>, Ragan <[ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov)>, Dev <[dev.davis@sanjoseca.gov](mailto:dev.davis@sanjoseca.gov)>, Christina <[christina.garavaglia@sanjoseca.gov](mailto:christina.garavaglia@sanjoseca.gov)>, Tam <[tam.nguyen@sanjoseca.gov](mailto:tam.nguyen@sanjoseca.gov)>, Ryan <[ryan.carrigan@sanjoseca.gov](mailto:ryan.carrigan@sanjoseca.gov)>, Sylvia <[sylvia.arenas@sanjoseca.gov](mailto:sylvia.arenas@sanjoseca.gov)>, Patrick <[patrick.mcgarrrity@sanjoseca.gov](mailto:patrick.mcgarrrity@sanjoseca.gov)>, Magdalena <[magdalena.carrasco@sanjoseca.gov](mailto:magdalena.carrasco@sanjoseca.gov)>, Huascar <[huascar.castro@sanjoseca.gov](mailto:huascar.castro@sanjoseca.gov)>, Johnny <[johnny.khamis@sanjoseca.gov](mailto:johnny.khamis@sanjoseca.gov)>, Denelle <[denelle.fedor@sanjoseca.gov](mailto:denelle.fedor@sanjoseca.gov)>, Charles Chappie Jones <[chappie.jones@sanjoseca.gov](mailto:chappie.jones@sanjoseca.gov)>, Jerad <[jerad.ferguson@sanjoseca.gov](mailto:jerad.ferguson@sanjoseca.gov)>, Christina <[christina.pressman@sanjoseca.gov](mailto:christina.pressman@sanjoseca.gov)>, Lan <[lan.diep@sanjoseca.gov](mailto:lan.diep@sanjoseca.gov)>, Charisse <[charisse.lebron@sanjoseca.gov](mailto:charisse.lebron@sanjoseca.gov)>, District1 <[district1@sanjoseca.gov](mailto:district1@sanjoseca.gov)>, District2 <[district2@sanjoseca.gov](mailto:district2@sanjoseca.gov)>, District3 <[district3@sanjoseca.gov](mailto:district3@sanjoseca.gov)>, District4 <[district4@sanjoseca.gov](mailto:district4@sanjoseca.gov)>, District5 <[district5@sanjoseca.gov](mailto:district5@sanjoseca.gov)>, District 6 <[district6@sanjoseca.gov](mailto:district6@sanjoseca.gov)>, District7 <[district7@sanjoseca.gov](mailto:district7@sanjoseca.gov)>, District8 <[district8@sanjoseca.gov](mailto:district8@sanjoseca.gov)>, District9 <[district9@sanjoseca.gov](mailto:district9@sanjoseca.gov)>, District10 San Jose <[district10@sanjoseca.gov](mailto:district10@sanjoseca.gov)>, ARO <[ARO@sanjoseca.gov](mailto:ARO@sanjoseca.gov)>, "Morales-Ferrand, Jacky" <[jacky.morales-ferrand@sanjoseca.gov](mailto:jacky.morales-ferrand@sanjoseca.gov)>, Rachel <[rachel.vanderveen@sanjoseca.gov](mailto:rachel.vanderveen@sanjoseca.gov)>, "Robert (HSG)" <[Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov)>, "[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)" <[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)>, "Sykes, Dave" <[dave.sykes@sanjoseca.gov](mailto:dave.sykes@sanjoseca.gov)>  
**Subject:** Please exclude duplex from TPO and rent control

Dear Council,

I request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. We also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present.

Thank you,  
Sandy Wang, a SJ housing provider



## Nguyen, Viviane

---

**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 10:26 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department  
408.535.8231

---

**From:** Homa Adnan [REDACTED]  
**Sent:** Wednesday, N  
**To:** Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; Rocha, Donald <Donald.Rocha@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; Henninger, Ragan <ragan.henninger@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>; Garavaglia, Christina <Christina.Garavaglia@sanjoseca.gov>; Nguyen, Tam <Tam.Nguyen@sanjoseca.gov>; Carrigan, Ryan <ryan.carrigan@sanjoseca.gov>; Arenas, Sylvia <sylvia.arenas@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Castro, Huascar <huascar.castro@sanjoseca.gov>; Khamis, Johnny <johnny.khamis@sanjoseca.gov>; Fedor, Denelle <Denelle.Fedor@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>; Pressman, Christina <Christina.Pressman@sanjoseca.gov>; Diep, Lan <lan.diep@sanjoseca.gov>; Lebron, Charisse <charisse.lebron@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; ARO <ARO@sanjoseca.gov>; Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Lopez, Robert (HSG) <Robert.Lopez@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; Sykes, Dave <Dave.Sykes@sanjoseca.gov>  
**Subject:** Re: Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Dear Council,

We request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. We also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present. [REDACTED]

Thank you,

Homa Adnani

## Nguyen, Viviane

---

**From:** Susana Krulevitch [REDACTED]  
**Sent:** Saturday, November 24, 2018 12:57 PM  
**To:** RSP  
**Subject:** Duple Owner Survey

Hi,

I bought a duplex, 1091-1095 Myrtle St., two years ago. The building had some serious maintenance deferrals. I had it tented and made repairs.

During the purchase transaction I found out that the previous owner had signed 5 year leases.

One at \$1600 per month and the other at \$2500 per month. At that time I could not withdraw from the transaction because it was a 1031 exchange and my time was running out.

I also pay for water and got a \$15,000 tax bill this year.

As you can see, this is not a profitable situation.

I am 89 years old and even though I don't get a decent cash flow from this unit, eventually my sons will inherit the duplex and hopefully realize some gains.

If you implement duplex rent control we are going to be in really bad shape.

Yours sincerely,

Susana Krulevitch

## Nguyen, Viviane

---

**From:** Tom Krulevitch [REDACTED]  
**Sent:** Tuesday, November 20, 2018 8:54 AM  
**To:** RSP  
**Subject:** Duplex Owner Survey

Hi,

Thank you for the opportunity to respond to the *Survey Assessment for Duplex Owners in San Jose*

My response is captured below

Regards,  
Tom Krulevitch

Council District 6  
Do not reside in my duplexes (live nearby)  
4 units (2 buildings - [REDACTED])  
Current tenants 3 – 5 years  
Avg rent per unit \$2,500 - \$2,999  
Outreach: Mailers  
My input.

I took significant risk purchasing and building these duplexes in '09 and '11 (bulldozed and rebuilt), before the current housing crisis / pricing increases. I spent most of my savings at the time and now rely on the rental income. The old units were uninhabitable and the new units provided increased housing and improved the neighborhood (as noted by the neighborhood association). These are nice units which rent below market and always have significant interest when a unit becomes available (which does not occur very often). I am against adding rent control to duplexes as I have had an occasional problem tenant and feel the playing field is already even. In other words, it's already difficult to move a problem tenant out.

I also help my 89 year old mother manage a duplex where she inherited long term leases (5yr) from the previous owner ([REDACTED]). These units rent at about half of market rate and I hope she can increase rent closer to market after the leases expire in a few years.

[REDACTED] – old / new



## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 1:59 PM  
**To:** Nguyen, Viviane  
**Subject:** Fwd: Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Public comment

Sent from my iPhone

Begin forwarded message:

**From:** David Dolmatch <[REDACTED]>  
**Date:** November 28, 2018 at 1:14:58 PM PST  
**To:** Sergio <[sergio.jimenez@sanjoseca.gov](mailto:sergio.jimenez@sanjoseca.gov)>, Helen <[helen.chapman@sanjoseca.gov](mailto:helen.chapman@sanjoseca.gov)>, Raul <[raul.peralez@sanjoseca.gov](mailto:raul.peralez@sanjoseca.gov)>, Donald <[donald.rocha@sanjoseca.gov](mailto:donald.rocha@sanjoseca.gov)>, Sam <[sam.liccardo@sanjoseca.gov](mailto:sam.liccardo@sanjoseca.gov)>, Ragan <[ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov)>, Dev <[dev.davis@sanjoseca.gov](mailto:dev.davis@sanjoseca.gov)>, Christina <[christina.garavaglia@sanjoseca.gov](mailto:christina.garavaglia@sanjoseca.gov)>, Tam <[tam.nguyen@sanjoseca.gov](mailto:tam.nguyen@sanjoseca.gov)>, Ryan <[ryan.carrigan@sanjoseca.gov](mailto:ryan.carrigan@sanjoseca.gov)>, Sylvia <[sylvia.arenas@sanjoseca.gov](mailto:sylvia.arenas@sanjoseca.gov)>, Patrick <[patrick.mcgarritty@sanjoseca.gov](mailto:patrick.mcgarritty@sanjoseca.gov)>, Magdalena <[magdalena.carrasco@sanjoseca.gov](mailto:magdalena.carrasco@sanjoseca.gov)>, Huascar <[huascar.castro@sanjoseca.gov](mailto:huascar.castro@sanjoseca.gov)>, Johnny <[johnny.khamis@sanjoseca.gov](mailto:johnny.khamis@sanjoseca.gov)>, Denelle <[denelle.fedor@sanjoseca.gov](mailto:denelle.fedor@sanjoseca.gov)>, Charles Chappie Jones <[chappie.jones@sanjoseca.gov](mailto:chappie.jones@sanjoseca.gov)>, Jerad <[jerad.ferguson@sanjoseca.gov](mailto:jerad.ferguson@sanjoseca.gov)>, Christina <[christina.pressman@sanjoseca.gov](mailto:christina.pressman@sanjoseca.gov)>, Lan <[lan.diep@sanjoseca.gov](mailto:lan.diep@sanjoseca.gov)>, Charisse <[charisse.lebron@sanjoseca.gov](mailto:charisse.lebron@sanjoseca.gov)>, District1 <[district1@sanjoseca.gov](mailto:district1@sanjoseca.gov)>, District2 <[district2@sanjoseca.gov](mailto:district2@sanjoseca.gov)>, District3 <[district3@sanjoseca.gov](mailto:district3@sanjoseca.gov)>, District4 <[district4@sanjoseca.gov](mailto:district4@sanjoseca.gov)>, District5 <[district5@sanjoseca.gov](mailto:district5@sanjoseca.gov)>, District 6 <[district6@sanjoseca.gov](mailto:district6@sanjoseca.gov)>, District7 <[district7@sanjoseca.gov](mailto:district7@sanjoseca.gov)>, District8 <[district8@sanjoseca.gov](mailto:district8@sanjoseca.gov)>, District9 <[district9@sanjoseca.gov](mailto:district9@sanjoseca.gov)>, District10 San Jose <[district10@sanjoseca.gov](mailto:district10@sanjoseca.gov)>, ARO <[ARO@sanjoseca.gov](mailto:ARO@sanjoseca.gov)>, Jacky <[jacky.morales-ferrand@sanjoseca.gov](mailto:jacky.morales-ferrand@sanjoseca.gov)>, Rachel <[rachel.vanderveen@sanjoseca.gov](mailto:rachel.vanderveen@sanjoseca.gov)>, "Robert (HSG)" <[Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov)>, "[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)" <[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)>, Dave <[dave.sykes@sanjoseca.gov](mailto:dave.sykes@sanjoseca.gov)>  
**Subject:** Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Dear Council,

I request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. I also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present.

Thank you,  
David Dolmatch  
BAHN-SJ Housing Provider



## Nguyen, Viviane

---

**From:** VanderVeen, Rachel  
**Sent:** Monday, December 3, 2018 7:16 AM  
**To:** Nguyen, Viviane  
**Subject:** Fwd: Thanks a lot for your serve.

Public record

Sent from my iPhone

Begin forwarded message:

**From:** Steve [REDACTED]  
**Date:** December 2, 2018 at 11:40:34 PM PST  
**To:** [Frank.Ponciano@sanjoseca.gov](mailto:Frank.Ponciano@sanjoseca.gov)  
**Cc:** [sergio.jimenez@sanjoseca.gov](mailto:sergio.jimenez@sanjoseca.gov),  
[helen.chapman@sanjoseca.gov](mailto:helen.chapman@sanjoseca.gov), [raul.peralez@sanjoseca.gov](mailto:raul.peralez@sanjoseca.gov),  
[donald.rocha@sanjoseca.gov](mailto:donald.rocha@sanjoseca.gov), [sam.liccardo@sanjoseca.gov](mailto:sam.liccardo@sanjoseca.gov),  
[ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov), [dev.davis@sanjoseca.gov](mailto:dev.davis@sanjoseca.gov),  
[christina.garavaglia@sanjoseca.gov](mailto:christina.garavaglia@sanjoseca.gov), [tam.nguyen@sanjoseca.gov](mailto:tam.nguyen@sanjoseca.gov),  
[ryan.carrigan@sanjoseca.gov](mailto:ryan.carrigan@sanjoseca.gov), [sylvia.arenas@sanjoseca.gov](mailto:sylvia.arenas@sanjoseca.gov),  
[patrick.mcgarritty@sanjoseca.gov](mailto:patrick.mcgarritty@sanjoseca.gov), [magdalena.carrasco@sanjoseca.gov](mailto:magdalena.carrasco@sanjoseca.gov),  
[huascar.castro@sanjoseca.gov](mailto:huascar.castro@sanjoseca.gov), [johnny.khamis@sanjoseca.gov](mailto:johnny.khamis@sanjoseca.gov),  
[denelle.fedor@sanjoseca.gov](mailto:denelle.fedor@sanjoseca.gov), Charles Chappie Jones <[chappie.jones@sanjoseca.gov](mailto:chappie.jones@sanjoseca.gov)>,  
[jerad.ferguson@sanjoseca.gov](mailto:jerad.ferguson@sanjoseca.gov), [christina.pressman@sanjoseca.gov](mailto:christina.pressman@sanjoseca.gov),  
[lan.diep@sanjoseca.gov](mailto:lan.diep@sanjoseca.gov), [charisse.lebron@sanjoseca.gov](mailto:charisse.lebron@sanjoseca.gov),  
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[district10@sanjoseca.gov](mailto:district10@sanjoseca.gov), [ARO@sanjoseca.gov](mailto:ARO@sanjoseca.gov), [jacky.morales-ferrand@sanjoseca.gov](mailto:jacky.morales-ferrand@sanjoseca.gov),  
[rachel.vanderveen@sanjoseca.gov](mailto:rachel.vanderveen@sanjoseca.gov),  
[Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov), [mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov), [dave.sykes@sanjoseca.gov](mailto:dave.sykes@sanjoseca.gov)  
**Subject: Re: Thanks a lot for your serve.**

Hi Frank and Mr Rocha,  
cc: Other council members and related officers,

Thanks a lot for your response. I really appreciate it as most email to council members will never get a response.

But sorry, TPO and Ellis Act IS "rent control". It is not controlling the rent price, but still controlling renting business.

I am sure rent price control will be the next step after TPO and Ellis Act's success because taking over other people's hard earned property right is so tasty.

I am a little angry but I appreciate if you can read through to see how we as mom and pop landlords feel.



TPO and Ellis Act is apparently violating home owner's property constitutional right even though you have no right to do so. It is trying to kill minority under the name of democracy because you know mom and pop landlords are weakest group and has minimum population with minimum voting power so you don't have to care. It is a tyranny of the majority

You know all the landlords' obligations to lenders for mortgage payment, to county for property tax payment, to insurance company for insurance payment, to repair and maintain whenever being called out by tenants, to find new tenants whenever tenant decides to leave and so on and so on.

They really want to have a smooth renting business with peaceful mind from their bottom of the heart. Who wants to do displacement for fun! Who has the time to do so, who wants to take rent loss and do necessary renew to attract new tenants if they don't have to terminate a lease.

If landlords want to terminate a lease, there must be a reason. It must have exceeded the limit of tolerance!

Guys, think about mom and pop landlords' pain. We are human, we are hardworking human. We came here for America dream and we have experienced a lot, a lot of hard work, sacrifices before we can become a home owner. We are the first generation immigrates as well. It is insane to take over other people's hard working results, it is not American.

California's laws are already very lean to tenants. We have very good tenant protection laws for renting business already. TPO and Ellis Act is giving more work to mom and pop landlords to prove their cause by themselves because tenant can always challenge it no matter it is true or false. They want to stick with the house as long as possible without paying. Even if you won the case at the end, you cannot recover any rent loss from them. You have to continue to pay the mortgage and fulfill all other obligations based on California laws even though you don't get any penny from the tenant for multiple months.

Myself had a bad tenant in the past will full mouth of false excuses, false promises (I don't want to use word "lie"). Did you have seen such case???? One upon another. What can we do? Without TPO and Ellis Act, we can just terminate the lease because we cannot tolerate any more. We want to quit with this tenant, can we? God, please! We want to do "at will" business which is fair for both sides at the first place when we signed the lease and both parties have agreed. But TPO and Ellis Act enforcement is giving "at will" to tenants, but not "at will" to landlords. Is it fair???

One day, you might become a home owner too. Think about it, think about the pain that we are facing!!

When it comes to duplex, a lot of duplexes are shared with the home owner's primary residence. If they have a bad tenant living next to them and cannot terminate the lease easily, it will be a nightmare to the home owner's daily life. Can you imagine it? They may get threaten by the bad tenant everyday, and then you are asking a cause, evidence. How difficult to collect the evidence for the pop and mom landlords in such case, do you know?? How long the court case may take? What's the home owner's life during the time? How much damage you want to give to the pop and mom landlords is enough???

Think about it, guys!!! Like a human, with mercy!!!

I appreciate you have read through and thanks for hearing our real pain and our hopeless with San Jose.



Again, I appreciate your response.

Steve

On Wed, Nov 28, 2018 at 12:37 PM Ponciano, Frank <[Frank.Ponciano@sanjoseca.gov](mailto:Frank.Ponciano@sanjoseca.gov)> wrote:  
Hello Steve,

Hope all is well with you.

I assume you have received a mailer which falsely claims Councilmember Rocha will be bringing rent control to duplexes in an upcoming vote. Again, this mailer is false and the CAA knows this. Council will be discussing duplexes but only as it relates to TPO and Ellis Act. Neither of these policies would place your unit under the 5% rent increase cap referred to in your email. These policies are only and expressly about protections to tenants in the City and NOT about rent control.

Decisions on the inclusion of duplex units under the Tenant Protection Ordinance and Ellis Act were made by Council on May 8th and corresponding ordinances are to be considered in December. Councilmember Rocha is appreciative of your concerns and thankful that you have treated your tenants with honor and respect for many years. He knows there are many good landlords in San Jose but is also all too aware of tenants whose experience has been anything but positive. When it comes to families not having protections and being displaced for no valid reason and without recourse, most would agree one case is too many. The function of the Tenant Protection Ordinance and Ellis Act, which would cover duplexes under the ordinance to be considered this fall, would be to prevent precisely that kind of unjust circumstance from taking place. The thought is that bad landlords would have a check on their methods and good landlords such as yourself will continue to successfully build community with your tenants the way you have for years. As I am sure you are aware, there are 13 'just cause' reasons for eviction you can call on if need be. I have included the reasons below for your convenience:

#### Just Cause Reasons on Tenant Actions

1. Nonpayment of rent
2. Material or habitual violation of the lease
3. Damage to the apartment
4. Refusal to agree to a similar or new rental agreement
5. Disorderly behavior/disturbing the peace
6. Refuse access to the apartment when requested in accordance with law
7. Unapproved holdover subtenant
8. Criminal activity

#### Just Cause Reasons Based on Landlord Decision or Consequence of Action

9. Substantial rehabilitation of the apartment
10. Removal of apartments from the rental market under the Ellis Act
11. Owner move-in
12. City code enforcement actions requiring a moveout
13. Convert an unpermitted apartment for permitted use

Additionally, the Ellis Act Ordinance allows a property owner seeking in good faith to recover possession of a rental unit and remove units from rental housing use if the property owner plans

on demolishing or permanently withdrawing the units from the rental housing market. It includes parameters on noticing, relocation benefits for tenants, and rules on residential redevelopment. It is important to note again that neither of these policies would place your unit under the 5% rent increase cap referred to in your email. These policies are only and expressly about protections to tenants in the City and NOT about rent control.

Please let me know if any questions, ideas or concerns come up.

Best,  
Frank

Frank Ponciano  
Policy Aide  
Office of Councilmember Don Rocha, District 9  
San José City Hall | 200 E. Santa Clara St., 18th Floor | San José, CA 95113  
408-535-4974 | [frank.ponciano@sanjoseca.gov](mailto:frank.ponciano@sanjoseca.gov)  
<http://www.sanjoseca.gov/district9/>

> On Nov 25, 2018, at 8:02 PM, Steve < > wrote:

>

>

> Dear Council-member Rocha,

>

> 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.

> At the same time, I am sorry to see you have lost the race for the County's supervisor. But I hope you don't get discouraged to continue to serve to Santa Clara and San Jose in a different way.

>

> Recently I have learned that you are the very person who proposed to put San Jose duplexes into the rent control. It was a surprise to me as you said you don't support to put all the properties under rent control.

>

> I don't think you don't understand how rent control will work negatively for tenants who will be more difficult to find a place that will 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 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.

>

> I believe you understands all of these and this has been proven in many strict rent control cities and by economists. Your motivation should be a political one and for short term needs that you need votes for election. I fully understand this sometimes is needed.

>

> Now, the election is over. And the result of Prop-10 clearly tells that Californian doesn't support stronger rent control, and people understand how it will impact very negatively to

housing market and for the very people that we want to protect.

>

> So, I would really hope you can consider from a long time point of view instead of a short sighted view for San Jose and for its people to withdraw your propose of putting duplexes into Rent Control.

> I know City Council will start to discuss about this in early December, we still have some time if you are willing to withdraw. You can tell this is aligned with Prop-10's result. And let's work toward to increase housing supply instead of throttling it.

>

> If you really think about the people, think about business to help people who are in need, think about San Jose in a long term, I think you should be able to make right decision to win all people's trust and support in your future no matter what way you want to choose to serve to the Santa Clara County or San Jose City.

>

> I am also always open to talk to you, meet with you if you need more opinion on housing issues 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

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Thanks,  
Steve

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Thursday, November 29, 2018 3:54 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: TPOJustCause Dilemma  
**Attachments:** TPO Just Cause Dilemma 11.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [REDACTED]  
**Sent:** Thursday, November 29, 2018 2:48 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: TPOJustCause Dilemma

Hello Rachel and Fred:

I've found a few more things you might want to consider. I hope all is well.  
Regards  
Dave

**To:** David Eisbach <[REDACTED]>  
**Sent:** Thursday, Nov [REDACTED] M 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



## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Thursday, November 29, 2018 1:51 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: SVRRC letters regarding the upcoming 12/11 meeting  
**Attachments:** SVRRC Position on TPO & Ellis Amendments (12.11 meeting) 11.29.18.pdf; SVRRC Position on Source of Income Discrimination Ordinance (12.11 meeting) 11.29.18.pdf

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Erika Fairfield [mailto: [REDACTED]]  
**Sent:** Thursday, November 29, 2018 1:47 PM  
**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>  
**Cc:** Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Gomez, David <David.Gomez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Nguyen, Mindy <Mindy.Nguyen@sanjoseca.gov>; Torres, Omar <Omar.Torres@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Ponciano, Frank <Frank.Ponciano@sanjoseca.gov>; Kazantzis, Kyra <Kyra.Kazantzis@sanjoseca.gov>; nadia.aziz@lawfoundation.org  
**Subject:** SVRRC letters regarding the upcoming 12/11 meeting

Dear Mayor, Vice Mayor, and Council Members:

Please see the attached letters from the Silicon Valley Renters' Rights Coalition regarding the items coming before you on December 11, 2018.

We thank you for your consideration of these matters.

Sincerely,  
Erika Fairfield

**Erika Fairfield | Staff Attorney**  
**Fair Housing Law Project**

  
**Law Foundation** OF SILICON VALLEY  
Advancing Justice in Silicon Valley





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## Nguyen, Viviane

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**From:** Nguyen, Viviane  
**Sent:** Wednesday, December 5, 2018 9:13 AM  
**To:** Nguyen, Viviane  
**Subject:** FW: Tenant Protection Ordinance and Source of Income Going to City Council on December 11, 2018

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**From:** John Worthing  
**Sent:** Tuesday, December 4, 2018 2:23 PM  
**To:** Malloy, Maria <[maria.malloy@sanjoseca.gov](mailto:maria.malloy@sanjoseca.gov)>; Morales-Ferrand, Jacky <[Jacky.Morales-Ferrand@sanjoseca.gov](mailto:Jacky.Morales-Ferrand@sanjoseca.gov)>; VanderVeen, Rachel <[Rachel.VanderVeen@sanjoseca.gov](mailto:Rachel.VanderVeen@sanjoseca.gov)>  
**Subject:** RE: Tenant Protection Ordinance and Source of Income Going to City Council on December 11, 2018

Ladies: I hope in the criminal area you are providing for cases wherein the tenant is arrested and never tells the landlord and never pays any rent. We then have to do an eviction, store their stuff, etc. You can't expect us to hold an apartment empty for them to return if they might be acquitted after trial. Please explain the situation you are addressing here. Many thanks. John Worthing

John L Worthing  
Worthing Capital

## Nguyen, Viviane

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**From:** Nguyen, Viviane  
**Sent:** Wednesday, December 5, 2018 3:42 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Is the city moving to right direction?

From: John Lau  
To: Mayoremail <[Mayoremail@sanjoseca.gov](mailto:Mayoremail@sanjoseca.gov)>; magdalena.carrasco <[magdalena.carrasco@sanjoseca.gov](mailto:magdalena.carrasco@sanjoseca.gov)>; chappie.jones <[chappie.jones@sanjoseca.gov](mailto:chappie.jones@sanjoseca.gov)>; District2 <[District2@sanjoseca.gov](mailto:District2@sanjoseca.gov)>; raul.peralez <[raul.peralez@sanjoseca.gov](mailto:raul.peralez@sanjoseca.gov)>; District4 <[District4@sanjoseca.gov](mailto:District4@sanjoseca.gov)>; District6 <[District6@sanjoseca.gov](mailto:District6@sanjoseca.gov)>; tam.nguyen <[tam.nguyen@sanjoseca.gov](mailto:tam.nguyen@sanjoseca.gov)>; District8 <[District8@sanjoseca.gov](mailto:District8@sanjoseca.gov)>; donald.rocha <[donald.rocha@sanjoseca.gov](mailto:donald.rocha@sanjoseca.gov)>; johnny.khamis <[johnny.khamis@sanjoseca.gov](mailto:johnny.khamis@sanjoseca.gov)>  
Cc: johntlau [REDACTED]  
Sent: Tue, Dec 4, 2018 4:55 pm  
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

## Nguyen, Viviane

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**Sent:** Thursday, November 29, 2018 1:51 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: SVRRC letters regarding the upcoming 12/11 meeting  
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### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Erika Fairfield [mailto: [REDACTED]]  
**Sent:** Thursday, November 29, 2018 1:47 PM  
**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>  
**Cc:** Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Gomez, David <David.Gomez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Nguyen, Mindy <Mindy.Nguyen@sanjoseca.gov>; Torres, Omar <Omar.Torres@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Ponciano, Frank <Frank.Ponciano@sanjoseca.gov>; Kazantzis, Kyra <Kyra.Kazantzis@sanjoseca.gov>; nadia.aziz@lawfoundation.org  
**Subject:** SVRRC letters regarding the upcoming 12/11 meeting

Dear Mayor, Vice Mayor, and Council Members:

Please see the attached letters from the Silicon Valley Renters' Rights Coalition regarding the items coming before you on December 11, 2018.

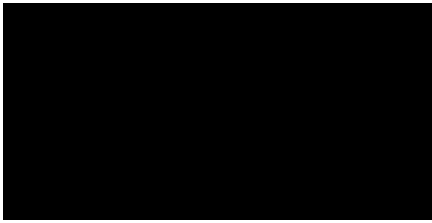
We thank you for your consideration of these matters.

Sincerely,  
Erika Fairfield

**Erika Fairfield | Staff Attorney**

**Fair Housing Law Project**  
[REDACTED]

  
**Law Foundation** OF SILICON VALLEY  
Advancing Justice in Silicon Valley



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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,<sup>1</sup> 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.**

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<sup>1</sup> 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

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: Source of Income Anti-Discrimination Ordinance  
San José City Council Meeting, December 11, 2018**

Dear Mayor, Vice Mayor, and Council Members:

Every family in San Jose should have the right to be housed without fear of unfair discrimination, especially low-income families who rely on vouchers such as those through the Section 8 program or formerly homeless individuals who get housing assistance through one of our agencies. Silicon Valley Renters' Rights Coalition thanks the City Council and housing staff for your efforts in helping to address displacement by enhancing tenant protections.<sup>1</sup> **SVRRC strongly urges the City Council to take the strongest actions to protect tenants from displacement by enacting a Source of Income Discrimination ordinance that would fully protect those with Section 8 vouchers from discrimination.**

Source of Income Discrimination Ordinances are becoming the norm. Over 42 jurisdictions including Santa Clara County and Oklahoma, have such protections.<sup>2</sup> In fact, on November 13, 2018, Senators Orrin Hatch and Tim Kaine introduced bi-partisan legislation that would amend the federal Fair Housing Act to include source of income discrimination protection for Section 8 voucher holders.<sup>3</sup>

As San Jose relies more and more on voucher-based assistance to assist low-income and formerly homeless individuals and families facing displacement, it behooves the City to ensure that there are protections for those using those vouchers in San Jose. A

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<sup>1</sup> 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.

<sup>2</sup> Memorandum from Housing Department to City Council regarding "Source of Income Discrimination" dated April 26, 2018.

<sup>3</sup> S. 3612 Fair Housing Improvement Act of 2018, 115th Cong., (2017-2018)

housing provider's refusal to take Section 8 vouchers or another form of rental subsidy contributes to housing segregation and limits opportunities for low income tenants who receive a Section 8 voucher or another rental subsidy. Access to housing opportunity is a civil right and passing a Source of Income Anti-Discrimination Ordinance would ensure that the City is complying with its obligation to affirmatively further fair housing, as the proposed measure was recommended by the City's own Analysis of Impediments to Fair Housing Choice and Housing Element.

### **1. Source of Income Anti-Discrimination Ordinances Have Been Critical in Keeping Low-Income Families and Families of Color Housed**

Source of Income Anti-Discrimination Ordinances give voucher holders a fair shake at rental options, allowing for more geographic choices, better access to decent, safe housing, and further stability once they are housed. Studies have shown that voucher holders are better able to use their vouchers in communities with source of income discrimination protections compared to those without such protections.<sup>4</sup>

Such laws make it easier for low income tenants to move into neighborhoods with access to greater opportunities. Where a family lives determines the quality of neighborhood schools, the ability to access better jobs, transportation costs of getting to work, access to nutritious food, and their connections to the community.<sup>5</sup> When renters are turned away because of their Section 8 subsidy, they are often forced to move into neighborhoods away from family, schools, or social services and can lose their subsidy altogether if they are unable to find a landlord to accept it.

The Department of Housing and Urban Development recently published a study finding that discrimination against Section 8 voucher participants is more prevalent in areas where there are not source of income discrimination protections for voucher holders.<sup>6</sup> This conclusion was reached after HUD conducted thousands of tests which found that landlords routinely deny voucher holders housing, making it difficult for them to use their vouchers to secure housing—especially in low-poverty neighborhoods.<sup>7</sup> Based on the information obtained through this and other studies, legal protections for voucher holders would likely improve Housing Choice Voucher program outcomes and allow voucher participants to successfully find housing and move into higher opportunity areas.<sup>8</sup>

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<sup>4</sup> Lance Freeman, "Impact of Source of Income Laws on Voucher Utilization and Local Outcomes." Assisted Housing Research Cadre Report. Columbia University (February 2011) [https://www.huduser.gov/publications/pdf/freeman\\_impactlaws\\_assistedhousingrcr06.pdf](https://www.huduser.gov/publications/pdf/freeman_impactlaws_assistedhousingrcr06.pdf)

<sup>5</sup> Barbara Sard and Douglas Rice, "Realizing Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods", Center on Budget Policy and Priority (January 2016) <https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to>

<sup>6</sup> "A Pilot Study of Landlord Acceptance of Housing Choice Vouchers." HUD Office of Policy Development and Research. (September 2018). <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-housing-choice-vouchers>.

<sup>7</sup> Id.

<sup>8</sup> Id; *see also* Alison Bell, Barbara Sard, and Becky Koepnick, "Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results," Center on Budget and Policy Priorities. (October 10, 2018)

Discrimination against voucher holders is commonplace in San Jose. The Housing Department's April Memo on Source of Income Discrimination estimated 66% of rental listings would not accept voucher holders.<sup>9</sup> Our organizations serve San José residents on a daily basis who have vouchers, but cannot find housing. As a result of landlord discrimination, the residents live in substandard or overcrowded conditions, and/or are forced to move away San Jose because they cannot find a place to rent where their voucher will be accepted.

## **2. Section 8 Discrimination has a Disproportionate Impact on Communities of Color, Families with Children, the Elderly, and the Disabled, and it is Often a Proxy for Racial Discrimination**

One of the stated goals of the Section 8 program is to promote racial integration and to provide voucher holders with the opportunity to live in the communities of their choice.<sup>10</sup> Voucher holders are disproportionately people of color. In San Jose, 43% of voucher holders are Asian, 27% Hispanic, and 14% African American.<sup>11</sup> Compared to the general population in San Jose, voucher holders are more likely to have special needs, live with disabilities, or are formerly homeless.<sup>12</sup> Of voucher holders in San Jose, 50% are disabled, 24% female heads of households, 13% families with minor children, and 8% are formerly homeless.

Discrimination against voucher holders is often a proxy for racial discrimination. In the Housing Department's stakeholder meetings on this topic, some landlords stated a reluctance to rent to people of certain races.<sup>13</sup> Even where racial discrimination is not intentional, the practice of not accepting Section 8 vouchers can disproportionately limit the housing opportunities of members of protected groups. Section 8 voucher holders are comprised of a disproportionate number of African-Americans, Latinos, families with children, and people with disabilities, all protected classes under federal and state fair housing law.<sup>14</sup> By refusing to rent to voucher holders, landlords disproportionately limit the housing options of these racial minorities. Such disparate impact on housing choice

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<https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>.

<sup>9</sup>

<sup>10</sup> Paula Beck. "Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier" 31 Harv. C.R.-C.L. L. Rev. 155 (1996).

<sup>11</sup> Memorandum from Housing Department to City Council regarding "Source of Income Discrimination" dated April 26, 2018.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> J. Rosie Tighe, Megan E. Hatch, Joseph W. Mead. "How Fair Housing Programs Can be Bolstered by Laws Prohibiting Source of Income Discrimination." Cleveland State University, Journal of Planning Literature (April 2017).

<http://www.scholarsstrategynetwork.org/brief/how-fair-housing-programs-can-be-bolstered-laws-prohibiting-source-income-discrimination>

is a violation of the federal Fair Housing Act and the California Fair Employment and Housing Act.<sup>15</sup>

### **3. Myths about Section 8 Voucher Holders and the Section 8 Program Perpetuate Negative Stereotypes**

Negative stereotypes about Section 8 voucher holders still exist. Housing providers falsely assume that Section 8 voucher tenants will be disruptive, will destroy property, or will attract crime. These assumptions about voucher-holders are often the result of stereotypes about poverty and race, rather than actual evidence that voucher-holders bring crime with them or cause property deterioration.<sup>16</sup> In fact, studies show that Section 8 tenants are no more likely to be disruptive or cause an increase in crime than tenants without housing subsidies.<sup>17</sup>

### **4. Administration of the Section 8 Voucher Program has been Streamlined to Reduce the Burden on Landlords**

Housing providers often cite concerns about the bureaucracy involved with renting to tenants with Section 8 vouchers, including having to meet HUD's Housing Quality Standards. However, a housing provider's obligation under the Section 8 program mirror the obligations housing providers already have under California law to maintain habitable premises—program requirements are therefore no more burdensome than renting to tenants without Section 8 vouchers.<sup>18</sup> Landlord complaints of administrative burden are misplaced given that these inspections are usually scheduled within weeks and Housing Assistance Payments, once initiated, are guaranteed for the duration of the tenancy.

### **5. Conclusion**

By enacting an Ordinance aimed at prohibiting housing providers from refusing to rent to Section 8 voucher holders, the City of San Jose would help align the goals of both the Fair Housing Act and the Section 8 Voucher Program. These are to end segregation on the bases of race and income level and to help address issues of displacement and homelessness that arise from voucher holders' inability to find rental housing. Given that this particular form of discrimination has been recognized to be widespread throughout

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<sup>15</sup> See generally, *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*, 576 U.S. \_\_\_\_ (2015).

<sup>16</sup> Rebecca Tracy Rotem, "Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program," 78 Fordham L. Rev. 1971, 1981 (2010).

<sup>17</sup> Ingrid Gould and Katherine O'Regan, "Investigating the Relationship Between Housing Voucher Use and Crime." NYU Furman Center Policy Brief (March 2013)  
<http://furmancenter.org/research/publication/investigating-the-relationship-between-housing-voucher-use-and-crime>

<sup>18</sup> For example, landlord responsibilities required by the Housing Authority of Santa Clara County include: Screen prospective assisted tenants using the same selection criteria used for non-assisted tenants. Collect security deposit. Collect tenant's portion of the rent; do not ask for or accept side-payments or allow sub-letting. Ensure assisted units are maintained in a safe, decent, and sanitary condition. Incorporate the U.S. Department of Housing and Urban Development's (HUD's) Tenancy Addendum into the lease agreement. Enforce the lease agreement. See <https://www.scchousingauthority.org/ownerlandlord-resources/owner-responsibilities/>



the country by both HUD and bipartisan members of the United States Senate, the City of San Jose must take action and join in the effort to protect Section 8 voucher holders from being denied access to housing solely because they receive a Section 8 voucher.

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

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Thursday, November 29, 2018 3:54 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: TPOJustCause Dilemma  
**Attachments:** TPO Just Cause Dilemma 11.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [mailto: [REDACTED]]  
**Sent:** Thursday, November 29, 2018 2:48 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: TPOJustCause Dilemma

Hello Rachel and Fred:

I've found a few more things you might want to consider. I hope all is well.  
Regards  
Dave

**To:** David Eisbach [REDACTED]  
**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



## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Thursday, December 6, 2018 6:03 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Letter to Mayor and City Council concerning proposed extension of Tenant Protection Ordinance to duplexes  
**Attachments:** San Jose rent control- Letter to City Council opposing TPO & Ellis Act for duplexes 12\_06\_18.docx; San Jose rent control- Duplex Survey August 2018.pdf

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Kirk Mckenzie  
**Sent:** Thursday, December 6, 2018 3:59 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Subject:** Letter to Mayor and City Council concerning proposed extension of Tenant Protection Ordinance to duplexes

Attached to this email are the letter (and attachment) that I sent to the Mayor and City Council members today about Item 4.2 on the December 11 agenda. Kirk McKenzie.

Kirk McKenzie

E-m

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.<sup>1</sup> 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.<sup>2</sup>

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.

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<sup>1</sup> 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.)

<sup>2</sup> 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.<sup>3</sup>

### **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.

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<sup>3</sup> 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

December 6<sup>th</sup>, 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

Kirk McKenzie

E-mail

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.<sup>1</sup> 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.<sup>2</sup>

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.

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<sup>1</sup> 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.)

<sup>2</sup> 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.<sup>3</sup>

### **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.

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<sup>3</sup> 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

## 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



## Nguyen, Viviane

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**From:** Cheryl [REDACTED]  
**Sent:** Friday, November 23, 2018 9:19 PM  
**To:** Morales-Ferrand, Jacky; VanderVeen, Rachel; Nguyen, Viviane; Wright, Sara; Clements, Kristen; Liccardo, Sam  
**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 Lubow

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Tuesday, November 20, 2018 12:27 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Duplex TPO and Ellis

Public record

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [mailto: [REDACTED]]  
**Sent:** Monday, November 19, 2018 1:07 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Subject:** Fw: Duplex TPO and Ellis

Rachel, here is a continuation of my efforts against the inclusion of duplexes in the TPO, Ellis and subsequently the ARO. Would you see to it that it gets into the record.  
Dave

The Housing Department has been busy letting us know that 30% of owners of 5,500 duplexes live in their unit. That 83% of duplexes are locally owned and there is little corporate ownership, mostly mom and pop. Housing seems to come up with numbers when pressed, so here's what I think would be useful to the Council on December 4, 2018:

Ask Housing to compile a case for duplex inclusion in the TPO and the Ellis Act. Of the 11,000 units, how many cases of harrassment, no cause eviction, price gouging beyond the 5%. I think it would go a long way for both Council, Owners and Residents toward reconciliation. Housing has been very fond of using words like "numerous, many, large numbers" in its statements. Don't you think a distinction between routine calls for information and actual events with the action taken would be good? Until you receive that information, you should not proceed with duplex inclusion.

David Eisbach



## **ARO, Duplex Inclusion 11.7.18**

I am against the inclusion of duplexes under ARO for the following reasons.

- The owners of duplexes are people, who purchase a duplex as an investment and are relying on it to augment their retirement. They generally only have that rental.
- They are not corporations. A recent California Apartment Association survey noted that 50% of ARO properties are owned by San Jose residents and 80% of the owners are from Santa Clara County and 97% are from California.
- The age of their property requires more maintenance. No new duplexes are being built. A National Association of Realtors developed a survey of over 950,000 properties. The result using a 5 year old and a 20 year old property found a 4.5% differential.
- Many manage the property by themselves.
- Many perform their own maintenance (sweat equity) because they don't have sufficient funds.
- According to city statements some 1,500 out of a total 5,500 live in their duplex.
- These owners tend to be the least able financially to take the expenses of housing.
- Owners of duplexes tend to be closer to their tenants and tend to keep rents reasonable to keep their units full.
- If you destroy their ability to stay solvent, you destroy their ability to trade up into four unit rentals. The slow destruction of the property will erode the value and tax base as well.

David Eisbach 

TPO.11.14.18

## Tenant Protection Ordinance

Landlords/Managers: [Submit a Notice to Terminate Tenancy with Just Cause using our simple online form.](#)

### Ordinance Overview

[The Tenant Protection Ordinance outlines landlord responsibilities and tenant rights regarding notices to terminate.](#) Under the Tenant Protection Ordinance, landlords of multifamily dwellings, guesthouses and unpermitted units will only be authorized to terminate tenancy under one of the 13 listed causes below (also view this [flyer in Spanish](#) and [Vietnamese](#)) Landlords must submit notices to vacate to the Rent Stabilization Program; [submit a Notice to Terminate Tenancy with Just Cause using our simple online form.](#)

#### Just Cause Reasons on Tenant Actions

- 1 Nonpayment of rent
- 2 Material or habitual violation of the lease
- 3 Damage to the apartment
- 4 Refusal to agree to a similar or new rental agreement
- 5 Disorderly behavior/disturbing the peace
- 6 Refuse access to the apartment when requested in accordance with law
- 7 Unapproved holdover subtenant
8. Criminal activity

#### Just Cause Reasons Based on Landlord Decision or Consequence of Action

- 9 Substantial rehabilitation of the apartment
- 10 Removal of apartments from the rental market under the Ellis Act
- 11 Owner move-in
- 12 City code enforcement actions requiring a move out
- 13 Convert an unpermitted apartment for permitted use

Relocation benefits must be paid when a tenant is being removed from an apartment for reasons 9-13. Benefits are paid based on the size of the unit occupied by the tenant who receives a notice of termination:

Studio	1-Bedroom	2-Bedroom	3-Bedroom
\$6,925	\$8,400	\$10,353	\$12,414

The following documents are available for the Tenant Protection Ordinance:

[Tenant Protection Ordinance Fact Sheet](#)

[Tenant Protection Ordinance Frequently Asked Questions](#)

[Watch our PSA for more information about the Tenant Protection Ordinance.](#)



## Notice of Termination Dashboard

The Rent Stabilization Program collaborated with the Center for Social Research at Calvin College to develop a [Notice of Termination Dashboard on the platform Tableau](#) for the public to view. The information on this dashboard is derived from the notices of terminations that the Rent Stabilization Program has received, including 3-30-60 day notices of terminations and summons and complaints. The information displayed includes notices received from May 2017 to May 2018.

## Landlord and Tenant Responsibilities

### Landlord Responsibilities

If giving a notice of termination, serve a written copy to the tenant with the proper amount of notice according to State law. Ensure that the applicable 13 just causes are included on the notice.

Provide a copy to the City within 3 days of service to the tenant. [You can submit a copy of the notice online.](#)

Provide relocation benefits at the time of service to the tenant, if applicable.

### Tenant Responsibilities:

Ensure that if you receive a notice of termination, that it is in writing and with the proper amount of notice according to State law.

Ensure that the notice has at least one of the 13 just causes listed as the reason for the notice being served.

Contact the Rent Stabilization Program to ensure that the landlord submitted the notice to the City correctly. If not, contact the Law Foundation of Silicon Valley's Eviction Assistance Clinic at

### Council Actions

On Tuesday, April 24, 2018, the City Council took action to amend the Ellis Act Ordinance, Tenant Protection Ordinance (TPO), and Apartment Rent Ordinance (ARO). Over the past several months, we have worked with community and stakeholders to develop recommendations for these challenging issues. The following list the results from the City Council meeting regarding the Tenant Protection Ordinance:

Prohibit landlords from disclosing or threatening to disclose tenants' immigration or citizenship status to authorities for the intent of retaliation consistent with AB 291;

Include "criminal activity" as a separate just cause basis for eviction when a tenant is "held to answer" for a serious or violent felony committed during tenancy and within a 1,000 ft. of the premises;

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 a proposed ordinance after analysis to require landlords to post in the common areas a notice stating that it is illegal for a landlord to disclose immigration status of a tenant;

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;

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; and

Return with proposed ordinance after analysis to extend TPO to duplexes requiring a just cause for termination of tenancy.

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On Tuesday, November 14, 2017, the City Council took action on the following agenda items summarized below:

Amendment to the Tenant Protection Ordinance (TPO):

Include dependent child; foster child; minor in the tenant's care; spouse or domestic partner; or parent of a tenant under exempted categories of additional family members allowed under TPO's Just Cause reason for material or habitual rental agreement violation; and

Reduce the maximum occupancy limit for adults to the number allowed by the rental agreement or two adults per bedroom, whichever is greater.

The second reading of the Tenant Protection Ordinance and Apartment Rent Ordinance took place Tuesday, November 28, 2017, and Council approved the changes above so the ordinances will go into effect on December 28, 2017. In the weeks following, staff will begin implementing a plan to reach out to constituents with informational materials and opportunities for additional assistance and education.

In 2018, the City Council will consider criminal activity and immigration status as it applies to the Tenant Protection Ordinance in addition to updating the regulations.

## **ARO, Duplex Inclusion 11.7.18**

I am against the inclusion of duplexes under ARO for the following reasons.

- The owners of duplexes are people, who purchase a duplex as an investment and are relying on it to augment their retirement. They generally only have that rental.
- They are not corporations. A recent California Apartment Association survey noted that 50% of ARO properties are owned by San Jose residents and 80% of the owners are from Santa Clara County and 97% are from California.
- The age of their property requires more maintenance. No new duplexes are being built. A National Association of Realtors developed a survey of over 950,000 properties. The result using a 5 year old and a 20 year old property found a 4.5% differential.
- Many manage the property by themselves.
- Many perform their own maintenance (sweat equity) because they don't have sufficient funds.
- According to city statements some 1,500 out of a total 5,500 live in their duplex.
- These owners tend to be the least able financially to take the expenses of housing.
- Owners of duplexes tend to be closer to their tenants and tend to keep rents reasonable to keep their units full.
- If you destroy their ability to stay solvent, you destroy their ability to trade up into four unit rentals. The slow destruction of the property will erode the value and tax base as well.

David Eisbach [REDACTED]

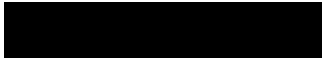
**ARO, Duplex, Ellis Act 11.7.18**

**Ellis Act**

I oppose this inclusion for the following Reasons:

- A. Duplexes are built on standard size lots 60 X 100, 6,000 sq ft or less. Too small for any major reconstruction of more units.
- B. Even modest remodeling requiring residents to vacate for a week becomes prohibitively expensively.
- C. Forcing an owner to pay to remove residents for an expensive remodeling is bad enough, but to have them resettle those same tenants at the same rents deters any thoughts of remodeling or construction.
- D. The original intent of the Ellis Act was to protect tenants from being evicted by owners for the purpose of remodeling an apartment. It was also devised to allow an owner to remove a unit from the rental market. Duplexes are small enough to be treated as a single family residence or converted into a condominium, in either case it will be the only recourse left to a hard-pressed owner.
- E. It is clear to me, when the rent cap is lowered, capital improvement sharing is restricted, occupancy standards are substantially raised, utilities are the owners responsibility, and legal contracts (in the State of California) are overpowered by the San Jose ARO, there is no doubt that existing rental housing stock will erode.

David Eisbac



ARO/TPO criminal eviction 4/23/18

Dear Mayor Liccardo:

April 23, 2018

I am writing in response to your support letter for placing landlord obligations for eviction of persons indicted or held to answer for violent felony...

Whatever happened to *innocent until proven guilty*? You would have me evict someone indicted for a serious crime. You seem top heavy in the sex crimes category, while most evictions deal with rent payments. We owners have been warned that registered sex offenders are a protected class and our arbitrarily evicting that person puts us in legal peril. What bothers me is the lack of structure. Is the DA going to tell me about my tenant? Who is to inform me; Who is to make the request for eviction?, a resident? the City? the Police? the Mayor? I believe it is at cross purposes and ill-advised. Damned if you do and Damned if you don't.

Picture a bread-winner being evicted and forbidden to reenter the property and the wife and children are then without money and subject to eviction (at owner cost) and they are. Then the person is cleared of all charges in court. You think it makes it all better to move that exonerated person and family back into the same unit (at owner cost) that is now rented at the same price (how easily you spend my money). I think in their place I would sue for actual and emotional damages. Now, who are they going to sue? You, the City of San Jose, (who made me do it!) no they will start with me.

I expect that the City will not rest until my business license has quintupled to support the monumental increase of 4 million dollars in the Housing Department 22-24 FTE, The TPO has taken my business decision as to how many residents I can have in an apartment, How much I can raise rents 5%, What capital improvements costs I can pass along to those who benefit, You give residents a voice in repairs and remodels, You are considering giving tenants a pass on water/RUBs, Housing is moving into tri-plexes built between 1979 and 1995 with the eye on supporting the repeal of Costa-Hawkins and lowering the annual rent increase to CPI, And now you want to make me a lawyer and evict indicted tenants before being found guilty.

I am pleading with you. Do not include this in the TPO, it is already toxic enough!

Regards,

David Eisbach

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Sunday, November 25, 2018 6:44 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Duplex Inclusion  
**Attachments:** Duplex Inclusion 11.20.18.docx

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

---

**From:** David Eisbach [mailto: ]  
**Sent:** Friday, November 23, 2018 12:49 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Cc:** Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: Duplex Inclusion

Rachel, I must have missed something in your answers, but I think this is correct. Thanks I hope your Thanksgiving was good.  
Dave

-

For three and a half years Housing Department Head, Jacky Morales-Ferrand has used rents from outside those ARO, rent stabilized properties. It was easy to ask large professionally run apartment complexes, who keep statistics. The problem is a four unit apartment with a laundry room couldn't get the same rents as a large 50 unit with pool, clubhouse and exercise room. There are only 9% of 50 apartment complexes under the ARO. There was no effort on Housing's part to reach out to owners, although Housing's swelling ranks knew who the owners were, where owners could be found through tax rolls and business taxes. She began with a survey performed by a gun for hire in favor of rent control. Finding "Bad Actors" in the roughly 120,000 rental units under the Apartment Rent Ordinance was always considerably under 1%. The march was aided by public outreach meetings that were inadequate, over-simplified and ill-reported. Using traffic green yellow and red for issues yes, maybe, and no; stickers, post it notes and confused discussion at times, allowed Housing to decipher the meaning. In all outreach meetings even though owners were a super majority, there is no accounting for numbers nor was there ever an open vote on issues. The only voting body was the Housing and Community Development Commission. The HCDC's membership is 13 with 5 seats representing low income interests plus two seats filled by renters from a ARO unit and a Mobil Home Park. With 7 of the 13 seats favorably predisposed toward rent control, it is not surprising that such votes come in with large majorities.

I believe that this is the third time that duplexes have been called to the front. A statement from a colleague on the front line said it best:

*My key message is if they keep the mom and pops out, they have a better chance of achieving their goals of stabilizing rent, creating predictability in rent for the renters, and protecting affordable housing. It's the small mom and pops who have historically kept their rents below market. Their numbers show ARO units were at 50% of market rents. If they add duplexes, these units will likely be taken out of the housing stock.*



You will find attached my reasons for opposing the inclusion of duplexes in TPO and Ellis, Your vote will seal the fate of single duplex owners, who exist under retirement income and rely on their life's work investment. I know, if passed, the logical move will be to place duplexes under ARO to insure that Bad Actors will stay within the 5% cap. The way rent control is structured, anyone who is under the market can never catch up and the major capital improvement pass through is passable for one major problem only. Unfortunately, Housing has wedged itself between tenant and owner creating an adversarial relationship, discouraging interaction. The ARO, TPO and ARO have made clear that tenants are relieved of any responsibility. A prime example is water usage being the sole responsibility of the duplex owner.

David Eisbach

## **Duplex Inclusion 11.20.18**

I think that the Housing Department should release a study on just how many duplex owners are “Bad Actors.” The Council should have facts on bad evictions, harassment, and injurious acts perpetrated by duplex owners. I will not believe that it is required to place this group under the TPO and the Ellis Act to protect tenants, without such a fact gathering. If you pass this, the ARO absorption will soon follow. I believe people will not build granny units for fear that they will be next. I am against the inclusion of duplexes under ARO for the following reasons:

- The owners of duplexes are people, who purchase a duplex as an investment and are relying on it to augment their retirement.
- They are not corporations. A recent California Apartment Association survey noted that 50% of ARO properties are owned by San Jose residents and 80% of the owners are from Santa Clara County and 97% are from California.
- The age of their property requires more maintenance. No new duplexes are being built. A National Association of Realtors developed a survey of over 950,000 properties. The result using a 5 year old and a 20 year old property found a 4.5% differential in maintenance cost.
- Many manage the property by themselves.
- Many perform their own maintenance (sweat equity) because they don't have sufficient funds.
- According to city statements some 1,650 (30%) out of a total 5,500 live in their duplex.
- About 4,565 (83%) of duplex owners, own just that one.
- These owners tend to be the least able financially to take the expenses of housing.
- Owners of duplexes tend to be closer to their tenants and tend to keep rents unreasonably low to keep their units full.
- If you destroy their ability to stay solvent, you destroy their ability to trade up into four unit rentals. The slow destruction of the property will erode the value and tax base as well.
- Pulling duplexes under the TPO and Ellis Act now, will be followed by inclusion under the ARO in the next round. These owners, with limited reserves and diminished income in the face of inevitable major maintenance, will sell their units at discounts matching the unit's income. They will split them; create low cost, zero lot-line units not rental units.

David Eisbach [REDACTED]

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Monday, November 26, 2018 10:11 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: TPO/Duplex Inclusion

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

---

**From:** David Eisbach [mailto:deisbach@sbcglobal.net]  
**Sent:** Monday, November 26, 2018 11:39 AM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Cc:** Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: TPO/Duplex Inclusion

Hi Rachel and Fred:

I understand Fred, you are working on the duplexes and as always, I am sending my notes to you Rachel. I hope you both had a good Thanksgiving and are busy gathering information for the Council vote, the topic of this letter. Rachel, thanks for the clarification on the Ellis Costs, we were both a little right.

Regards  
Dave

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

**From:** David Eisbach [REDACTED]

**Subject:** TPO/Duplex Inclusion

City Council Members:

The Housing Department recently disclosed that owners of 30% of the 5,504 duplexes resided in them; also 83% of the duplexes were locally owned. All this information can be gleaned from the tax roll, public ownership records, and the Business Tax. Housing has made rent projections all along when attempting to prove a need to reign Bad Actors from gouging rents and harassment, yet up to the present they make no statement as to rents in the duplex community. The only attempt was the October/November "Duplex Survey," which was so hastily assembled that it made no distinction between studio, one, two and three bedroom rents! Checking the newspaper and the web doesn't give final rents. Why haven't they done this? It is much easier to assign greed and lawless behavior on duplex owners through association and innuendo than to actually offer proof.

I implore the Council to pause in the duplex question, request a report from Housing bringing a true survey of rents; all actual complaints filed against duplex owners, and actions taken; mainly information calls from owners and tenants should be made separately. Act when you have some factual data.

David Eisbach

## Nguyen, Viviane

---

**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 9:26 AM  
**To:** Nguyen, Viviane  
**Subject:** FW: Please exclude duplex from TPO and rent control

Public record

### Rachel VanderVeen

Deputy Director  
Housing Department  
408.535.8231

---

**From:** Sandy W [mailto: [REDACTED]]  
**Sent:** Tuesday, November 27, 2018 10:05 PM  
**To:** Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; Rocha, Donald <Donald.Rocha@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; Henninger, Ragan <ragan.henninger@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>; Garavaglia, Christina <Christina.Garavaglia@sanjoseca.gov>; Nguyen, Tam <Tam.Nguyen@sanjoseca.gov>; Carrigan, Ryan <ryan.carrigan@sanjoseca.gov>; Arenas, Sylvia <sylvia.arenas@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; Castro, Huascar <huascar.castro@sanjoseca.gov>; Khamis, Johnny <johnny.khamis@sanjoseca.gov>; Fedor, Denelle <Denelle.Fedor@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>; Pressman, Christina <Christina.Pressman@sanjoseca.gov>; Diep, Lan <lan.diep@sanjoseca.gov>; Lebron, Charisse <charisse.lebron@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; ARO <ARO@sanjoseca.gov>; Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Lopez, Robert (HSG) <Robert.Lopez@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; Sykes, Dave <Dave.Sykes@sanjoseca.gov>  
**Subject:** Please exclude duplex from TPO and rent control

Dear Council,

I request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. We also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present.

Thank you,  
Sandy Wang, a SJ housing provider

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 8:16 AM  
**To:** Nguyen, Viviane  
**Subject:** Fwd: Please exclude duplex from TPO and rent control

Public record

Sent from my iPhone

Begin forwarded message:

**From:** Sandy W [REDACTED]  
**Date:** November 27, 2018 at 10:05:17 PM PST  
**To:** Sergio <[sergio.jimenez@sanjoseca.gov](mailto:sergio.jimenez@sanjoseca.gov)>, Helen <[helen.chapman@sanjoseca.gov](mailto:helen.chapman@sanjoseca.gov)>, Raul <[raul.peralez@sanjoseca.gov](mailto:raul.peralez@sanjoseca.gov)>, Donald <[donald.rocha@sanjoseca.gov](mailto:donald.rocha@sanjoseca.gov)>, Sam <[sam.liccardo@sanjoseca.gov](mailto:sam.liccardo@sanjoseca.gov)>, Ragan <[ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov)>, Dev <[dev.davis@sanjoseca.gov](mailto:dev.davis@sanjoseca.gov)>, Christina <[christina.garavaglia@sanjoseca.gov](mailto:christina.garavaglia@sanjoseca.gov)>, Tam <[tam.nguyen@sanjoseca.gov](mailto:tam.nguyen@sanjoseca.gov)>, Ryan <[ryan.carrigan@sanjoseca.gov](mailto:ryan.carrigan@sanjoseca.gov)>, Sylvia <[sylvia.arenas@sanjoseca.gov](mailto:sylvia.arenas@sanjoseca.gov)>, Patrick <[patrick.mcgarrrity@sanjoseca.gov](mailto:patrick.mcgarrrity@sanjoseca.gov)>, Magdalena <[magdalena.carrasco@sanjoseca.gov](mailto:magdalena.carrasco@sanjoseca.gov)>, Huascar <[huascar.castro@sanjoseca.gov](mailto:huascar.castro@sanjoseca.gov)>, Johnny <[johnny.khamis@sanjoseca.gov](mailto:johnny.khamis@sanjoseca.gov)>, Denelle <[denelle.fedor@sanjoseca.gov](mailto:denelle.fedor@sanjoseca.gov)>, Charles Chappie Jones <[chappie.jones@sanjoseca.gov](mailto:chappie.jones@sanjoseca.gov)>, Jerad <[jerad.ferguson@sanjoseca.gov](mailto:jerad.ferguson@sanjoseca.gov)>, Christina <[christina.pressman@sanjoseca.gov](mailto:christina.pressman@sanjoseca.gov)>, Lan <[lan.diep@sanjoseca.gov](mailto:lan.diep@sanjoseca.gov)>, Charisse <[charisse.lebron@sanjoseca.gov](mailto:charisse.lebron@sanjoseca.gov)>, District1 <[district1@sanjoseca.gov](mailto:district1@sanjoseca.gov)>, District2 <[district2@sanjoseca.gov](mailto:district2@sanjoseca.gov)>, District3 <[district3@sanjoseca.gov](mailto:district3@sanjoseca.gov)>, District4 <[district4@sanjoseca.gov](mailto:district4@sanjoseca.gov)>, District5 <[district5@sanjoseca.gov](mailto:district5@sanjoseca.gov)>, District 6 <[district6@sanjoseca.gov](mailto:district6@sanjoseca.gov)>, District7 <[district7@sanjoseca.gov](mailto:district7@sanjoseca.gov)>, District8 <[district8@sanjoseca.gov](mailto:district8@sanjoseca.gov)>, District9 <[district9@sanjoseca.gov](mailto:district9@sanjoseca.gov)>, District10 San Jose <[district10@sanjoseca.gov](mailto:district10@sanjoseca.gov)>, ARO <[ARO@sanjoseca.gov](mailto:ARO@sanjoseca.gov)>, "Morales-Ferrand, Jacky" <[jacky.morales-ferrand@sanjoseca.gov](mailto:jacky.morales-ferrand@sanjoseca.gov)>, Rachel <[rachel.vanderveen@sanjoseca.gov](mailto:rachel.vanderveen@sanjoseca.gov)>, "Robert (HSG)" <[Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov)>, "[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)" <[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)>, "Sykes, Dave" <[dave.sykes@sanjoseca.gov](mailto:dave.sykes@sanjoseca.gov)>  
**Subject:** Please exclude duplex from TPO and rent control

Dear Council,

I request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. We also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present.

Thank you,  
Sandy Wang, a SJ housing provider

## Nguyen, Viviane

---

**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 10:26 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Homa Adnan [REDACTED]  
**Sent:** Wednesday, N  
**To:** Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; Rocha, Donald <Donald.Rocha@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; Henninger, Ragan <ragan.henninger@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>; Garavaglia, Christina <Christina.Garavaglia@sanjoseca.gov>; Nguyen, Tam <Tam.Nguyen@sanjoseca.gov>; Carrigan, Ryan <ryan.carrigan@sanjoseca.gov>; Arenas, Sylvia <sylvia.arenas@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Castro, Huascar <huascar.castro@sanjoseca.gov>; Khamis, Johnny <johnny.khamis@sanjoseca.gov>; Fedor, Denelle <Denelle.Fedor@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>; Pressman, Christina <Christina.Pressman@sanjoseca.gov>; Diep, Lan <lan.diep@sanjoseca.gov>; Lebron, Charisse <charisse.lebron@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; ARO <ARO@sanjoseca.gov>; Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Lopez, Robert (HSG) <Robert.Lopez@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; Sykes, Dave <Dave.Sykes@sanjoseca.gov>  
**Subject:** Re: Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Dear Council,

We request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. We also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present. [REDACTED]

Thank you,

Homa Adnani

## Nguyen, Viviane

---

**From:** Susana Krulevitch [REDACTED]  
**Sent:** Saturday, November 24, 2018 12:57 PM  
**To:** RSP  
**Subject:** Duple Owner Survey

Hi,

I bought a duplex, 1091-1095 Myrtle St., two years ago. The building had some serious maintenance deferrals. I had it tented and made repairs.

During the purchase transaction I found out that the previous owner had signed 5 year leases.

One at \$1600 per month and the other at \$2500 per month. At that time I could not withdraw from the transaction because it was a 1031 exchange and my time was running out.

I also pay for water and got a \$15,000 tax bill this year.

As you can see, this is not a profitable situation.

I am 89 years old and even though I don't get a decent cash flow from this unit, eventually my sons will inherit the duplex and hopefully realize some gains.

If you implement duplex rent control we are going to be in really bad shape.

Yours sincerely,

Susana Krulevitch

**Nguyen, Viviane**

---

**From:** Tom Krulevitch [REDACTED]  
**Sent:** Tuesday, November 20, 2018 8:54 AM  
**To:** RSP  
**Subject:** Duplex Owner Survey

Hi,

Thank you for the opportunity to respond to the *Survey Assessment for Duplex Owners in San Jose*

My response is captured below

Regards,  
Tom Krulevitch

Council District 6  
Do not reside in my duplexes (live nearby)  
4 units (2 buildings - [REDACTED])  
Current tenants 3 – 5 years  
Avg rent per unit \$2,500 - \$2,999  
Outreach: Mailers  
My input.

I took significant risk purchasing and building these duplexes in '09 and '11 (bulldozed and rebuilt), before the current housing crisis / pricing increases. I spent most of my savings at the time and now rely on the rental income. The old units were uninhabitable and the new units provided increased housing and improved the neighborhood (as noted by the neighborhood association). These are nice units which rent below market and always have significant interest when a unit becomes available (which does not occur very often). I am against adding rent control to duplexes as I have had an occasional problem tenant and feel the playing field is already even. In other words, it's already difficult to move a problem tenant out.

I also help my 89 year old mother manage a duplex where she inherited long term leases (5yr) from the previous owner (1091 Myrtle). These units rent at about half of market rate and I hope she can increase rent closer to market after the leases expire in a few years.

[REDACTED] – old / new





## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Wednesday, November 28, 2018 1:59 PM  
**To:** Nguyen, Viviane  
**Subject:** Fwd: Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Public comment

Sent from my iPhone

Begin forwarded message:

**From:** David Dolmatch <[REDACTED]>  
**Date:** November 28, 2018 at 1:14:58 PM PST  
**To:** Sergio <[sergio.jimenez@sanjoseca.gov](mailto:sergio.jimenez@sanjoseca.gov)>, Helen <[helen.chapman@sanjoseca.gov](mailto:helen.chapman@sanjoseca.gov)>, Raul <[raul.peralez@sanjoseca.gov](mailto:raul.peralez@sanjoseca.gov)>, Donald <[donald.rocha@sanjoseca.gov](mailto:donald.rocha@sanjoseca.gov)>, Sam <[sam.liccardo@sanjoseca.gov](mailto:sam.liccardo@sanjoseca.gov)>, Ragan <[ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov)>, Dev <[dev.davis@sanjoseca.gov](mailto:dev.davis@sanjoseca.gov)>, Christina <[christina.garavaglia@sanjoseca.gov](mailto:christina.garavaglia@sanjoseca.gov)>, Tam <[tam.nguyen@sanjoseca.gov](mailto:tam.nguyen@sanjoseca.gov)>, Ryan <[ryan.carrigan@sanjoseca.gov](mailto:ryan.carrigan@sanjoseca.gov)>, Sylvia <[sylvia.arenas@sanjoseca.gov](mailto:sylvia.arenas@sanjoseca.gov)>, Patrick <[patrick.mcgarritty@sanjoseca.gov](mailto:patrick.mcgarritty@sanjoseca.gov)>, Magdalena <[magdalena.carrasco@sanjoseca.gov](mailto:magdalena.carrasco@sanjoseca.gov)>, Huascar <[huascar.castro@sanjoseca.gov](mailto:huascar.castro@sanjoseca.gov)>, Johnny <[johnny.khamis@sanjoseca.gov](mailto:johnny.khamis@sanjoseca.gov)>, Denelle <[denelle.fedor@sanjoseca.gov](mailto:denelle.fedor@sanjoseca.gov)>, Charles Chappie Jones <[chappie.jones@sanjoseca.gov](mailto:chappie.jones@sanjoseca.gov)>, Jerad <[jerad.ferguson@sanjoseca.gov](mailto:jerad.ferguson@sanjoseca.gov)>, Christina <[christina.pressman@sanjoseca.gov](mailto:christina.pressman@sanjoseca.gov)>, Lan <[lan.diep@sanjoseca.gov](mailto:lan.diep@sanjoseca.gov)>, Charisse <[charisse.lebron@sanjoseca.gov](mailto:charisse.lebron@sanjoseca.gov)>, District1 <[district1@sanjoseca.gov](mailto:district1@sanjoseca.gov)>, District2 <[district2@sanjoseca.gov](mailto:district2@sanjoseca.gov)>, District3 <[district3@sanjoseca.gov](mailto:district3@sanjoseca.gov)>, District4 <[district4@sanjoseca.gov](mailto:district4@sanjoseca.gov)>, District5 <[district5@sanjoseca.gov](mailto:district5@sanjoseca.gov)>, District 6 <[district6@sanjoseca.gov](mailto:district6@sanjoseca.gov)>, District7 <[district7@sanjoseca.gov](mailto:district7@sanjoseca.gov)>, District8 <[district8@sanjoseca.gov](mailto:district8@sanjoseca.gov)>, District9 <[district9@sanjoseca.gov](mailto:district9@sanjoseca.gov)>, District10 San Jose <[district10@sanjoseca.gov](mailto:district10@sanjoseca.gov)>, ARO <[ARO@sanjoseca.gov](mailto:ARO@sanjoseca.gov)>, Jacky <[jacky.morales-ferrand@sanjoseca.gov](mailto:jacky.morales-ferrand@sanjoseca.gov)>, Rachel <[rachel.vanderveen@sanjoseca.gov](mailto:rachel.vanderveen@sanjoseca.gov)>, "Robert (HSG)" <[Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov)>, "[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)" <[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)>, Dave <[dave.sykes@sanjoseca.gov](mailto:dave.sykes@sanjoseca.gov)>  
**Subject:** Duplexes in TPO, & Source of Income Going to City Council on December 11, 2018

Dear Council,

I request that duplexes be excluded from TPO and rent control and that sources of income tenants not be forced upon mom and pop housing providers. I also protest a tenants right to return pending a criminal action.

At the very least please delay the vote until the start of the New Year when all new council are present.

Thank you,  
David Dolmatch  
BAHN-SJ Housing Provider



## Nguyen, Viviane

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**From:** [REDACTED]  
**Sent:** Monday, December 10, 2018 6:24 PM  
**To:** Nguyen, Viviane  
**Subject:** Re: Public Comment

I do not Agree  
To include Duplexes.  
To include Duplexes, would be a bad  
Law. For San Jose,  
Please oppose  
This additional  
Inclusion .  
I appreciate ,  
Jack Licursi Sr.

Sent from my iPhone

On Dec 4, 2018, at 3:14 PM, Nguyen, Viviane <[viviane.nguyen@sanjoseca.gov](mailto:viviane.nguyen@sanjoseca.gov)> wrote:

Hi Jack,

Please send me your public comment.

### VIVIANE NGUYEN

Analyst • Rent Stabilization Program  
Housing Department, City of San José  
200 E Santa Clara St, 12th Fl, San Jose, CA 95113

• [viviane.nguyen@sanjoseca.gov](mailto:viviane.nguyen@sanjoseca.gov) • [www.sanjoseca.gov/rent](http://www.sanjoseca.gov/rent)

*The Rent Stabilization Program's mission is to enforce its ordinances through education, engagement, and collaboration to build and maintain safe, healthy and sustainable communities. **Contact the RSP at (408) 975-4480.** RSP staff can provide information on the program's ordinances and petition process. We are not attorneys and do not provide legal advice, but can make referrals as needed.*

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Monday, December 10, 2018 2:09 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: LFSV letter regarding the 12/11 meeting - Source of Income Anti-Discrimination Ordinances  
**Attachments:** LFSV Position on Enforcement and Legality of Source of Income Anti-Discrimination Ordinances.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Erika Fairfield [mailto: [REDACTED]]  
**Sent:** Monday, December 10, 2018 10:15 AM  
**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>  
**Cc:** Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Gomez, David <David.Gomez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Nguyen, Mindy <Mindy.Nguyen@sanjoseca.gov>; Torres, Omar <Omar.Torres@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Ponciano, Frank <Frank.Ponciano@sanjoseca.gov>; Kazantzis, Kyra <Kyra.Kazantzis@sanjoseca.gov>; nadia.aziz@lawfoundation.org  
**Subject:** LFSV letter regarding the 12/11 meeting - Source of Income Anti-Discrimination Ordinances

Dear Mayor, Vice Mayor, and Council Members:

Please see the attached letter from the Law Foundation of Silicon Valley regarding the Source of Income Anti-Discrimination Ordinance coming before you tomorrow.

We appreciate your continued consideration of these matters.

Sincerely,  
Erika Fairfield

**Erika Fairfield | Staff Attorney**  
**Fair Housing Law Project**  
[REDACTED]

  
**Law Foundation** OF SILICON VALLEY  
Advancing Justice in Silicon Valley



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# LAW FOUNDATION of Silicon Valley



December 10, 2018

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

*Via Electronic Mail Only*

Re: Source of Income Anti-Discrimination Ordinance

Dear Mayor Liccardo, Vice-Mayor, and Council Members:

I write on behalf of the Law Foundation of Silicon Valley to again urge that Council enact a Source of Income Anti-Discrimination Ordinance prohibiting housing providers from refusing to rent to tenants with a Section 8 voucher or other rental subsidy on the basis of that voucher or subsidy. This letter addresses the legality of such ordinances, as well as why a robust enforcement mechanism is important.

**A. Source of Income Anti-Discrimination Ordinances Have Been Upheld in California and Around the Country**

The Bay Area, including the city of San José, is undoubtedly in the midst of an affordable housing crisis, with low-income people and families taking an especially brutal hit. Like the Federal law surrounding the Section 8 program, San José's proposed Source of Income Anti-Discrimination Ordinance aims to assist the expansion of safe and affordable housing for low-income families.<sup>1</sup> Through such an ordinance, the City will help ensure that these especially vulnerable San José residents can use their vouchers in places where they have better access to work, schools, public transit, medical care, and other essential services that may not be as available to them in areas where Section 8 vouchers are otherwise more commonly accepted at the present time.

A vast number of other cities and states – including several cities and counties within the State of California, such as Marin and Santa Clara Counties and the cities of San Francisco, Santa Monica, Corte Madera, East Palo Alto, and Woodland – have enacted ordinances preventing landlords from turning away tenants who have Section 8 vouchers. Although both San Francisco and Santa Monica's Section 8 anti-discrimination

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<sup>1</sup> See, e.g. *Montgomery County v. Glenmont Hills Assocs.* (2007) 402 Md. 250, 272.

ordinances faced legal challenges by landlords, they were each upheld by California courts.

In upholding San Francisco's ordinance, the California Court of Appeals highlighted the "well-established" principle under the our State Constitution that gives a municipality the broad authority to regulate the use of real property located within its jurisdiction in order to promote the public welfare, which includes "[e]xercising [its] [] police powers... [to] interfere in the private housing market."<sup>2</sup> It also emphasized that California law "tasks local governments with adopting plans of action to assist in meeting the housing needs of their low-income households" and that an ordinance prohibiting discrimination against voucher holders fits squarely within that goal.<sup>3</sup>

So, too, did the Superior Court in Los Angeles recognize that local Section 8 Ordinances are not preempted because they "involve[] the regulation of the development and use of real property, which is a matter traditionally within the broad powers of the municipal governments"<sup>4</sup> when it upheld Santa Monica's Section 8 anti-discrimination ordinance. Pointing to the U.S. Supreme Court case *West Coast Hotel Co. v. Parrish*,<sup>5</sup> the court also underscored that a local ordinance premised on making affordable housing available to all "was not an arbitrary restraint on [landlords'] right to contract but a reasonable regulation imposed in the interests of the community." Further, when an ordinance does not apply retroactively and does not aim to impact already-existing contractual relationships, it does not run afoul of either the Federal or State Constitutions' Contract Clauses.<sup>6</sup>

Likewise, courts around the country have upheld similar Section 8 Anti-Discrimination laws. Courts in Maryland,<sup>7</sup> New Jersey,<sup>8</sup> Massachusetts,<sup>9</sup> Texas,<sup>10</sup> and Washington D.C.,<sup>11</sup> for example, have all recognized the role (and legality) of Section 8 anti-discrimination statutes in ensuring the availability of safe and decent affordable housing, and moreover how local or state ordinances advance this Federally-recognized goal and the Federal laws that implement it. They have also addressed concerns regarding

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<sup>2</sup> *City & County of San Francisco v. Post* (2018) 22 Cal.App.5th 121.

<sup>3</sup> *Id.*

<sup>4</sup> *Apt. Ass'n of Los Angeles County Inc. et al. v. City of Santa Monica*.

<sup>5</sup> In *Parrish*, the Supreme Court stated that "[l]iberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." It further found that "freedom of contract is a qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." *West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379, 391-392.

<sup>6</sup> *Apt. Ass'n v. City of Santa Monica*, *supra*.

<sup>7</sup> *Montgomery County*, *supra*.

<sup>8</sup> *Franklin Tower One v. N.M.* (1999) 157 N.J. 602.

<sup>9</sup> *Attorney General v. Brown*, 400 Mass. 826.

<sup>10</sup> *Austin Apt. Ass'n v. City of Austin* (W.D.Tex. 2015) 89 F. Supp. 3d 886.

<sup>11</sup> *Bourbeau v. Jonathan Woodner Co.* (D.D.C. 2008) 549 F.Supp.2d 78.



ordinances that mandate that landlords participate in the Section 8 program, holding that it does not mean that “merely because Congress provided for voluntary participation, the States are precluded from mandating participation absent some valid nondiscriminatory reason for not participating.”<sup>12</sup> Because the goal at the heart of the federal law is assisting low-income people in accessing affordable housing, and there is nothing prohibiting jurisdictions below from mandating landlords’ participation in the Section 8 program, it is within the purview of state and local governments to do so.<sup>13</sup>

In enacting a Source of Income Anti-Discrimination Ordinance, therefore, San José would be not only acting properly, but acting proactively, in furthering the objectives at the very core of Federal Section 8 laws. Landlords are not being compelled to rent to non-paying tenants; they are not being required to lower the rent that they charge; and they are not required to meet any additional burdens with the upkeep of the rental premises that are not already required by law. This ordinance would ensure that affordable housing is available to all, an undoubtedly reasonable goal, and is a small ask of landlords in promoting that broader purpose.

## **B. An Enforcement Mechanism Within the Ordinance is Necessary to Promote its Objectives**

Given the importance of the aforementioned goals, it is equally as important to ensure that landlords are taking this ordinance seriously and complying with its requirements. Fair housing laws are designed to rely on private enforcement. The language of both the federal Fair Housing Act and the California Fair Employment and Housing Act contemplate that private enforcement will be used to redress discrimination complaints.<sup>14</sup> In fact, the United States Supreme Court has found that “complaints by private persons are the primary method of obtaining compliance with the Act.”<sup>15</sup> Without providing for enforcement, fair housing laws would be rendered meaningless.

Should a prospective tenant with a voucher or subsidy be turned away when applying for a new apartment because of their voucher/subsidy status, without an enforcement mechanism, it is likely that this protection will not be realized. While the City is currently proposing an initial warning for landlords who are found to be non-compliant with the ordinance, we would seek implementation of an actual penalty at the first instance. If a landlord is reported to have turned away one tenant because they have a voucher, it is likely that they have already turned away others; thus, a warning at the first *reported* instance may not actually be the first instance where the landlord has violated this rule, and would likely not deter a landlord who has already gotten away with denying housing to many others without being detected. The basic tenet of the Ordinance is simple: do not turn away a family because they have a voucher or subsidy. There should be no issue with a landlord understanding this rule such that a warning would be necessary.

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<sup>12</sup> *Montgomery County*, *supra* citing *Attorney General*, *supra*.

<sup>13</sup> *Franklin Tower One*, *supra*.

<sup>14</sup> 42 USC §3613, Cal. Gov’t Code § 12989.1.

<sup>15</sup> *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972).

The risk of abuse of a private enforcement mechanism is incredibly low. First of all, the fair housing bar is limited already to just a small number of organizations providing tenant assistance, and there is little incentive for unnecessary litigation given the lack of statutory penalties and the fact that we rely on enforcement funding from the city. Further, as compared to enforcement of, for instance, the Americans with Disabilities Act, a tenant claiming that his or her voucher was denied by a landlord would need to provide evidence to the court, which would act as a check on their claim. The ADA, on the other hand, has very specific rules which lend themselves to an increased risk for litigation that is just not present here with the proposed Section 8 ordinance.

### **C. Conclusion**

The passage of an Ordinance that prohibits housing providers from refusing to rent to those with Section 8 vouchers will undoubtedly make affordable housing more accessible to residents of San José, and precedent in many other states and cities has shown ordinances like the one proposed to be legal and appropriate ways to advance these aims. Further, by ensuring that this ordinance has the teeth necessary to ensure compliance, the City will be better able to effectuate its purpose, decrease displacement and discrimination, and protect the rights of low-income tenants.

Thank you for your time and consideration of this issue. If you have any questions about Source of Income Anti-Discrimination laws please do not hesitate to contact me by phone at [REDACTED]

Sincerely,

Erika Fairfield  
Staff Attorney

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Monday, December 10, 2018 2:05 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: For meeting on 12/11 city council

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** Anna Liang [mailto: [REDACTED]]  
**Sent:** Monday, December 10, 2018  
**To:** Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Chapman, Helen <helen.chapman@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; Rocha, Donald <Donald.Rocha@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; Henninger, Ragan <ragan.henninger@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>; Nguyen, Tam <Tam.Nguyen@sanjoseca.gov>; Arenas, Sylvia <sylvia.arenas@sanjoseca.gov>; McGarrity, Patrick <Patrick.McGarrity@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; Khamis, Johnny <johnny.khamis@sanjoseca.gov>; Fedor, Denelle <Denelle.Fedor@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>; Diep, Lan <lan.diep@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; ARO <ARO@sanjoseca.gov>; Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Lopez, Robert (HSG) <Robert.Lopez@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; Sykes, Dave <Dave.Sykes@sanjoseca.gov>; Ponciano, Frank <Frank.Ponciano@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** For meeting on 12/11 city council

Dear Sir/ Madam

I am 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.

1. The proposed amendments, if passed, will disproportionately hurt small momandpop 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.

I am strong urge you to think over

Thanks  
发自我的 iPhone

## Nguyen, Viviane

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**From:** VanderVeen, Rachel  
**Sent:** Sunday, December 9, 2018 10:16 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: TPO Revisions 12.11.18  
**Attachments:** TPO Amendment 11.8.18.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department

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**From:** David Eisbach [REDACTED]  
**Sent:** Friday, December 7, 2018 2:25 PM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Tran, Fred <Fred.Tran@sanjoseca.gov>  
**Subject:** Fw: TPO Revisions 12.11.18

Hi there:

I think this will be my last. That makes it about five maybe six, yet I don't see them in the loyal opposition filings. I hope you are just a little behind, or I am not reading the right files. Help me to understand, you do have two old letters but none of the six.

Thanks,  
See you next Tuesday  
Dave

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

**From:** David Eisbach [REDACTED]  
**To:** Chappie Jones <[district1@sanjoseca.gov](mailto:district1@sanjoseca.gov)>; Sam Liccardo <[mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)>; Devora "Dev" Davis <[district6@sanjoseca.gov](mailto:district6@sanjoseca.gov)>; Tam Nguyen <[district7@sanjoseca.gov](mailto:district7@sanjoseca.gov)>; Johnny Khamis <[district10@sanjoseca.gov](mailto:district10@sanjoseca.gov)>; Sylvia Arenas <[sylvia.arenas@sanjoseca.gov](mailto:sylvia.arenas@sanjoseca.gov)>; Magdalena Carrasco <[district5@sanjoseca.gov](mailto:district5@sanjoseca.gov)>; Lan Diep <[lan.diep@sanjoseca.gov](mailto:lan.diep@sanjoseca.gov)>; Raul Peralez <[district3@sanjoseca.gov](mailto:district3@sanjoseca.gov)>; Lan Diep <[district4@sanjoseca.gov](mailto:district4@sanjoseca.gov)>; Sergio Jimenez <[sergio.jimenez@sanjoseca.gov](mailto:sergio.jimenez@sanjoseca.gov)>; Donald Rocha <[district9@sanjoseca.gov](mailto:district9@sanjoseca.gov)>  
**Sent:** Friday, December 7, 2018, 2:21:12 PM PST  
**Subject:** TPO Revisions 12.11.18

Members of San Jose City Council:

After three and a half years of watching the ARO grow, it is now time for you to decide whether to include duplexes. I know you say that the TPO protects tenants with Just Cause and the the Ellis Act is a gift to the owner, who wants to take his rental property off the market, but I see it a bit differently. The attached TPO/Ellis revisions called for will burden the least affluent of income property owners. With 30% living in their own property, do not saddle the 83% who own only that one property, augmenting their pension check. It is more than being unfair it is unjust! I have seen the appetite of Housing grow and the punitive measures given to all owners under its yoke. It is neither fair nor balanced in its hunt for the Bad Actor, no matter how few.

After three attempts to include duplexes into rent control, I hope that you will now decide to leave duplexes out, especially when there are so few real statistics on owner harassment, gouging, and evictions against tenants. We do not

even have a clear picture of what duplexes are renting for. I know they are nowhere near the proclaimed \$3,500 for a two bedroom apartment.

Sincerely,  
David Eisbach

### **TPO Amendment 1:11.8.18**

#### **Duplexes – see survey**

Perhaps this survey was put together too hastily. It makes no distinction between studio, 1, 2, 3 or four bedrooms and the rents were in \$500 increments. It did ask if an owner resided in his/her duplex, but many owners used the response section to voice almost unanimously their disdain for the TPO and Ellis imposition. This whole program rests on the assumption that duplex owners were gouging like all Bad Actors, yet there is still no word on rent levels in ARO properties, especially duplexes.

**TPO Amendment 2:** Require posting a notice prohibiting retaliation, harassment, and intimidation against tenants based upon their immigration status.

Maybe whoever wrote this hasn't seen a duplex. There is no common area; they are individual self contained units. Just put the desired wording in the signed contract.

**TPO Amendment 3:** Add a tenant's right to return to the tenant household if acquitted/dismissed from criminal action which caused termination.

The problem lies with time. The courts are backed up; there is no reliable time cap. The real question is Why does the City encourage an action (eviction of a tenant arrested for a felony) and then wash its hands of it? Make life unmanageable for the owner! Part of the court procedure is making deals like reducing a felony charge to a misdemeanor! This is so toxic, it should be removed.

#### **TPO Amendment 4:**

Why is an owner responsible for an *illegal tenant* because he/she is a victim of violence? Why does the city think that this burden should be on the shoulders of the owner? Moreover why does the City believe that an illegal tenant is anything but illegal?

#### **TPO Amendment 5:**

Nonpayment of rent notices – Add provision to require reference to Rent Stabilization Program for information in connection to nonpayment of rent notices of termination.

The main reason for eviction is non-payment of rents. If Housing is notified by the owner as obligated, of the Unlawful Detainer, isn't that enough? Will Housing need to hire another FTE? Another task loaded onto the housing provider.

**Ellis Act Amendment 6:** Amend the Ellis Act Ordinance to apply to duplexes similar to how it applies to non-rent stabilized units.

I oppose this inclusion for the following Reasons:

- Duplexes are built on standard size lots 60 X 100, 6,000 sq ft or less. Too small for any major reconstruction of more units.
- Even modest remodeling requiring residents to vacate for a week becomes prohibitively expensively.
- Forcing an owner to pay to remove residents for an expensive remodeling is bad enough, but to have them resettle those same tenants at the same rents deters any thoughts of remodeling or construction. The original intent of the Ellis Act was to allow an owner to remove a unit from the rental market and to protect tenants from being permanently evicted by owners for the purpose of remodeling an apartment. Here San Jose charges owners to remove a tenant, the owner spends a fortune on the property, then moves the tenant back in.
- Duplexes are small enough to be treated as a single family residence or converted into a condominium, in either case it will be the only recourse left to a hard-pressed owner.
- Consider the cost to a retired owner, who wants to move into his duplex to make ends meet; the chances that that owner will have one of the Qualified Assistance tenants is great.

	Studio	1-Bedroom	2-Bedroom	3-Bedroom
Base Assistance	\$6,925	\$8,400	\$10,353	\$12,414
Qualified Assistance	\$2,770	\$3,360	\$4,141	\$4,966
Total Base + Qualified	\$9,695	\$11,760	\$14,494	\$17,380

- It is clear to me, when the rent cap is lowered; capital improvement sharing is restricted; occupancy standards are substantially raised; utilities are the owners responsibility; and legal contracts (in the State of California) are overpowered by the San Jose ARO, there is no doubt that existing rental housing stock will erode.
- I sense hope in the thought that a live-in owner of a duplex be exempt from the TPO/Ellis inclusion, but to me that is the only difference between that owner and the others. If you move on this proposal, have you considered the live-in owners in triplex and four-unit properties? I think that all duplexes should be excluded from the ARO/TPO/and Ellis Act.





