



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Raul Perez
Councilmember Sylvia Arenas

SUBJECT: EVICTION MORATORIUM

DATE: September 24, 2021

Approved by:

Date: 9/24/2021

RECOMMENDATION

Accept staff report with the following:

1. Direct staff to develop a workplan establishing a Tenant Right to Counsel program for all low income residents and residents experiencing financial hardships facing eviction due to, but not limited to, failure to pay rent because of COVID-19, and return to Council with recommendations for consideration.
 - a. Provide targeted culturally and linguistically competent outreach and counsel (or interpretation services) for the Tenant Right to Counsel program, including but not limited to Spanish and Vietnamese, to communities disproportionately impacted by COVID-19.
2. Provide an update on Councilmember David Cohen's Budget Document #14 accepted in the Mayor's June Budget Message.

BACKGROUND

On September 30th, California's eviction moratorium will end, and without stronger safety nets put in place for San José tenants, we face another crisis: mass evictions, potentially displacing or risking homelessness for thousands of families in our low income community and residents experiencing financial hardships. Unprecedented measures were taken during the pandemic to protect our public health, but the consequences have been dire, pushing many into financial insecurity. We know that the rent debt still looms even as our economy slowly recovers. Given the lack of legal assistance available to tenants in San José and the devastating impact of evictions, exacerbated by COVID-19, all tenants in the city should have access to legal representation when facing eviction proceedings. It is imperative that the City consider

joining eight major cities across the United States and establish a tenant’s right to counsel.

ANALYSIS

Currently an estimated 12,800 households in San José are behind on rent, with an average \$4,600 in rent debt.¹ Racial inequities in pre-pandemic housing and economic security, as well as pandemic-related income losses, have resulted in Black and Latino/x renters being 1.5 times as likely to be behind on rent compared with all renters.² While California has set aside \$5.2 billion dollars in rental assistance, data shows that receiving these funds continues to be a slow process for residents. As of September 21, the state program had provided rental assistance in about 40% of all completed applications (2,988 households out of 7,209 completed applications) and distributed about 40% of funds requested (\$40.5 million out of \$100.2 million requested).³ At this rate, once the state eviction moratorium expires at the end of the month, there will still be many households at risk of eviction simply because they have not yet received their rental assistance checks.

Nationwide, an estimated 90% of landlords have legal representation in housing court, while only 10% of tenants do.⁴ In a process where tenants have the most to lose, the imbalance magnifies the uphill challenges tenants face in an already complex legal system. Before the COVID-19 pandemic, there were about 2,600 residential eviction cases per year in Santa Clara County. The default rate – which indicates the number of tenants who lost their cases simply because they were not able to file a response to their lawsuit in time – was about 40% each year. These defaults often occur because the process for filing a response within 5 days of receiving the eviction lawsuit is extremely difficult for non-lawyers. Tenants who would otherwise have strong defenses against eviction are shut out of the court process simply because they cannot find legal assistance in time.

In 2017, New York City became the first city to pass a “Right to Counsel” law, which guaranteed that any low income tenant facing eviction would have the right to free legal representation in court. Since then, San Francisco, Newark, NJ, Cleveland, Philadelphia, Boulder, CO, Baltimore, and most recently Santa Monica have passed similar ordinances to protect tenants. Even within a few years into policy implementation, providing counsel to tenants has shown to be successful, resulting in more tenants being able to lawfully remain in their homes. NYC saw an 86% success rate for tenants who received representation. In San Francisco, 67% success and the eviction rate also decreased by 10%.⁵ In the six months that Cleveland passed Right to Counsel, 93% of tenants who were given legal aid were prevented from being evicted.⁶

¹ <https://bit.ly/3zFAnsZ>

² <https://bit.ly/39yNl1o>

³ <https://bit.ly/2XSYoA7>

⁴ <https://bit.ly/3ElcWmJ>

⁵ <https://bit.ly/3kAlvb7>

⁶ <https://bit.ly/3zFzUad>

Right to counsel for tenants is also a fiscally responsible policy. By investing in these programs and keeping people housed, cities have saved substantial money that would otherwise be spent on social services. Studies have shown this return can be as high as \$12 for every \$1 invested in the right to counsel program.⁷

Movement is happening Statewide to curtail evictions by supporting local municipalities' decisions to establish a right to counsel. On September 14, 2021, AB 1487 passed in both the State Assembly and Senate and now awaits Governor Newsom's approval. It will create a "Homelessness Prevention Fund" that can be used for various services to prevent evictions, including free limited- and/or full-scope legal representation for tenants facing eviction. In June 2021, Mayor Sam Liccardo accepted Councilmember Cohen's budget document requesting that the City monitor AB 1487. As it is now awaiting the Governor to sign into law, staff should return with an update that includes how this could be a source of funding for implementation.

CONCLUSION

There is ongoing work in the City to address the anti-displacement of our low income residents and residents experiencing financial hardships. Right to Counsel is a powerful tool in supporting our most vulnerable residents and stopping disruption in their lives. When tenants lose their homes, it is more than just losing a home but also their community and stability, threatening the physical and mental wellbeing for themselves and their families. Providing legal representation finally gives tenants a voice in a process that has been stacked against them for far too long.

⁷ <https://bit.ly/3CFuLkr>