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DATE: May 16, 2024

TO: Housing, Land Use, Environment, and Transportation Committee

FROM: Tony LoPresti, County Counsel

SUBJECT: Ordinance Code Amendments relating to Residential Tenant Protections and Relocation Assistance

RECOMMENDED ACTION

Receive report from the Office of the County Counsel relating to recommendations to repeal and replace Division C5 of the County of Santa Clara Ordinance Code regarding relocation assistance to tenants for the purpose of reducing housing insecurity, minimizing displacement, and promoting access to stable housing.

FISCAL IMPLICATIONS

There is no direct impact to the County General Fund as a result of receiving this report or adopting its recommendations. Any new costs associated with implementation of the new ordinance, including data collection, tracking compliance, and enforcement, would be covered through existing resources.

REASONS FOR RECOMMENDATION AND BACKGROUND

Executive Summary

County Counsel is proposing to repeal and replace Division C5 of the County of Santa Clara Ordinance Code (“Ordinance Code”) to expand just cause eviction protections and relocation assistance requirements for residential tenants in the unincorporated county.¹ The California Tenant Protection Act, which took effect on January 1, 2020, limits the authority of residential landlords statewide to evict tenants without just cause and requires landlords to provide limited relocation assistance payments for “no-fault” evictions. However, these protections only apply to certain categories of tenancies and have other limitations. Jurisdictions throughout the State—including the Cities of San José, Mountain View, Sunnyvale, Milpitas, and Palo Alto—have adopted more robust local tenant protection

¹ For reference, Attachment A provides estimates of the location, prevalence, and type of renter-occupied units in unincorporated Santa Clara County.

ordinances. In its current form, Ordinance Code Division C5 requires relocation assistance for tenants displaced due to unsafe or hazardous conditions, but Division C5 has not been updated since 1993. It lacks an effective mechanism by which the County can track and ensure that landlords comply with those relocation assistance requirements, and the County's Office of Supportive Housing Crisis Response Team has repeatedly been called on to provide emergency services for displaced tenants who should have received relocation assistance under the existing Division C5. Moreover, the current Ordinance Code does not address gaps in the tenant protections provided by recently adopted State law.

There are four key areas covered by the proposed repeal and replacement of Division C5. First, the proposed ordinance would expand the categories of tenancies protected by just-cause eviction and relocation assistance requirements under State law. Second, the proposed ordinance would limit and clarify the authority for just cause evictions. Third, the proposed ordinance would require landlords to provide relocation assistance for tenants evicted based on no-fault just cause reasons or displaced due to substandard, unsafe, or hazardous conditions. And fourth, the proposed ordinance would provide for robust tracking and enforcement of compliance with the Division. Ultimately, this proposal seeks to reduce housing insecurity, minimize unnecessary displacement of residential tenants, and promote access to stable housing in the unincorporated county, in a manner that is equitable to tenants, landlords, and the community.

Existing County Programs for Homelessness Prevention

Residential tenants who face eviction often experience difficulties in finding new temporary or permanent housing. Displaced tenants may require emergency housing, public health, transportation, storage, and other services on an interim basis due to the unanticipated needs occasioned by eviction. Displaced tenants who fall into a cycle of homelessness may also need shelter, medical, and other supportive services on a more continued basis. The costs of displacement and providing these services are borne by the community, including by taxpayers that fund public services. The County currently funds and operates various programs, described below, aimed at preventing homelessness and mitigating the challenges associated with displacement, but the need for supportive housing services is greater than available placements. The proposed ordinance complements the County's ongoing efforts to promote stable housing.

First, the Office of Supportive Housing (OSH) Crisis Response Team often partners with the Department of Planning and Development to support the relocation needs of households ordered to vacate their homes due to habitability and other issues. Under certain circumstances, the Crisis Response Team may be able to coordinate with OSH's network of service providers to offer temporary shelter (e.g., motel stay) and financial assistance for moving expenses to prevent displaced households from being on the street. Often, these displaced tenants may not be eligible for supportive housing services because of federal grant funding limitations, which require that recipients of such services meet certain definitions of homelessness and be prioritized based on vulnerability and need. Over the past several years, the Crisis Response Time has provided support for a large-scale displacement of an entire apartment building due to a fire, a displacement of forty individuals due to unsafe water

supplies, and various smaller-scale incidents affecting one to three households at a time. The proposed ordinance includes provisions for the County to recover costs that OSH incurs in providing emergency relocation assistance services to certain displaced tenants.

With respect to tenants who are facing homelessness due to the threat of eviction, the County provides funding for the Santa Clara County Homelessness Prevention System, which supports individuals facing housing insecurity by offering financial assistance for rental deposits, arrears or payments, and utility bills. The Homelessness Prevention System is a countywide program operated through public-private partnerships and administered by a network of nineteen non-profit organizations. It provides case management support to help individuals navigate their circumstances and access resources effectively. By intervening with financial or other assistance before eviction becomes necessary, these programs not only help individuals stay housed but also benefit landlords by sparing them the expenses associated with eviction filings and the effort of finding new tenants, including conducting credit checks and other administrative tasks. Ultimately, these homelessness prevention programs serve as a proactive measure to mitigate the social and economic costs of homelessness for both individuals and communities. The proposed ordinance furthers this mission by minimizing the unnecessary displacement of residential tenants and requiring relocation assistance for no-fault evictions.

California Tenant Protection Act of 2019

In 2019, the California Legislature adopted Assembly Bill 1482, the Tenant Protection Act (TPA), which introduced statewide protections for residential tenants. The TPA has two main components. First, it limits the authority of landlords to terminate residential tenancies and evict residential tenants. Landlords can only evict tenants for “just cause” reasons, which are divided into “at-fault” just cause and “no-fault” just cause. At-fault just cause includes non-payment of rent, maintaining a nuisance, lease violations, and unlawful conduct. No-fault just cause includes owner move-in, withdrawing the property from the rental market, and intent to demolish or to substantially remodel the property. Second, the TPA requires landlords to make a relocation assistance payment of one month’s rent or waive one month’s rent for no-fault just cause evictions.

The TPA expressly authorizes cities and counties to adopt ordinances that are more protective for residential tenants. Pursuant to this authority, the proposed repeal and replacement of Division C5 would broaden the categories of tenants eligible for assistance and would make the Ordinance Code more protective than State law in certain areas, including by carrying forward and updating relocation assistance requirements for tenants displaced due to unsafe or hazardous conditions that are included in the existing version of Division C5 and have been in place for decades. However, in other areas, including many of the definitions, the proposed ordinance closely tracks state law. The proposed ordinance also

brings the Ordinance Code more in line with the protections offered by other local governments, as described below and summarized in the table provided in Attachment A.²

Covered Tenancies

With the proposed repeal and replacement of Division C5, the Ordinance Code would protect more tenancies than State law. Specifically, the Ordinance Code would extend beyond State law to protect tenants who have resided in their unit for fewer than 12 months and tenants who reside in single family homes or duplexes—with exceptions for certain owner-occupied residences.³ Tenancies in duplexes where one of the units is owner-occupied, single-family owner-occupied residences in which the owner rents out no more than two rooms/accessory units, and single-family owner-occupied mobile homes would be excluded from the protections of Division C5. Finally, like provisions adopted by San José, Sunnyvale, and Palo Alto, the proposed ordinance would extend beyond the TPA to cover housing that has been issued a certificate of occupancy in the last fifteen years.⁴ The proposed ordinance would also extend beyond the TPA to cover townhomes and condominiums.

Just Cause Termination

The proposed ordinance would clarify and limit the scope of certain categories of at-fault just cause evictions authorized under the TPA. First, the ordinance would clarify that a landlord must provide legally mandated notices and opportunities to cure before evicting tenants for nonpayment or lease violations. Second, the ordinance would protect tenants from eviction for allowing immediate family members to live with them, provided that the number of adult residents does not violate health and safety standards. Similarly, the ordinance would impose modest protections to allow a tenant to replace a departing co-tenant with a new tenant. Finally, while the TPA authorizes evictions for any type of “criminal activity,” the ordinance would limit this to conduct that impacts the peace, quiet, comfort, or safety of other tenants at the property or seriously threatens the safety of the owner. The ordinance would maintain the TPA’s authorization for at-fault just cause evictions based on a tenant’s use of the property for an unlawful purpose within the meaning of Code of Civil Procedure section 1161(4).

² The information provided in the table in Attachment B (“Tenant Protection Ordinances in Santa Clara County as of May 1, 2024”) summarizes complex legal issues and is provided for informational purposes only.

³ As shown in Table 2 of Attachment A, according to 5-year estimates from the 2022 American Community Survey, about half of the renter-occupied housing units in the unincorporated area of the county are single-family residences. If renter-occupied units in the Stanford Census Designated Place are excluded, over 70 percent of the estimated renter-occupied housing units in unincorporated county are single-family residences.

⁴ While the TPA does not cover housing that has been issued a certificate of occupancy in the last fifteen years, the proposed ordinance does not include any exemptions based on the age of a unit, in order to ensure that all owners and tenants of similar units are treated equally under the ordinance. Including an arbitrary cutoff based on the age of a unit could provide an unfair disadvantage to owners of older residential units and would also complicate enforcement and administrability of the ordinance by requiring knowledge of the date a certificate of occupancy was issued for each unit and creating a scenario in which the units subject to the ordinance is ever-changing as units age past the cutoff.

The proposed ordinance would also limit the scope of no-fault just cause evictions authorized under the TPA. First, as authorized by State law, the proposed ordinance would require 120 days' written notice before any eviction that is based on the owner's intention to remove a property from the rental market, often referred to as "Ellis Act evictions." Second, the ordinance would restrict an owner's authority to evict tenants to remodel a property and only authorize evictions for substantial repairs necessary to bring the property into compliance with applicable health and safety regulations. Finally, the proposed ordinance would limit owner move-in evictions to owners that own at least a fifty percent interest in the property in their individual capacity. This provision seeks to balance the interests of landlords who wish to move into, or to move a qualifying relative into, their residential unit and the interests of tenants in avoiding pretextual evictions. It also seeks to create a rule that is easily administrable and enforceable.

Relocation Assistance

The Ordinance Code currently requires landlords to provide a relocation assistance payment of three months of fair market rent to tenants displaced due to unsafe or hazardous conditions. Similar to state law, the proposed ordinance expands the relocation assistance provisions in the current version of Division C5 to also include tenants who are evicted based on no-fault just cause. Bases for no-fault just cause eviction include owner move-in, withdrawal of the unit from the rental market, compliance with a government order requiring vacation of the unit, performance of qualifying substantial repairs to the unit, and demolition of the unit.

As in the current Division C5, the primary form of assistance in the proposed ordinance is direct relocation assistance payments. Similar to the current Division C5, the proposed ordinance provides that direct relocation assistance payments be in the amount of three months of fair market rent for the unit from which the tenant is displaced, according to the Fair Market Rent schedule for the San José-Sunnyvale-Santa Clara, California HUD Metro FMR Area published by the United States Department of Housing and Urban Development. However, as an alternative to providing direct payments in cases of no-fault just-cause eviction, the proposed ordinance would also allow owners to provide relocation assistance by waiving in writing three months of rental payments prior to the payments becoming due. This alternative option has the benefit of giving the tenant at least three months to find replacement housing, while allowing the landlord to simply forgo three months of actual rent rather than having to make a lump sum payment to the tenant in the amount of three months' fair market rent.

Because the amount of direct relocation assistance payments is based on the Fair Market Rent schedule, the dollar amount required will change over time. As of Fiscal Year 2024, the proposed relocation assistance would provide for the following payments to covered tenants in unincorporated county:

	Studio / Efficiency	1 Bedrm.	2 Bedrm.	3 Bedrm.	4+ Bedrm.
FY2024 Fair Market Rent (FMR)	\$2,383	\$2,694	\$3,132	\$4,011	\$4,425
Total payment (three months' FMR)	\$7,149	\$8,082	\$9,396	\$12,033	\$13,275

These proposed relocation assistance payment amounts fall in the middle of the range of the relocation assistance payments offered by local cities and comparable counties, as illustrated by the table below. Note that particularly in the case of long-term tenancies, actual rent may be below fair market rent for an equivalent unit.⁵

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⁵ As a result, relocation assistance payments tied to actual rent disadvantage residents with long-term tenancies who pay rents well below market rate, because if they are displaced, the relocation assistance they receive may not be enough to rent a new unit at current market rates. The proposed ordinance's relocation assistance payments in the amount of three months' fair market rent helps ensure that tenants who are paying below market rents and are evicted for a no-fault just cause receive enough assistance to secure a new unit. In addition, a standard tied to fair market rent is more easily administrable and enforceable because it does not require documentation of agreed upon actual rent amounts and rent increases. At the same time, in order to ensure fair treatment of owners, the proposed ordinance allows owners to provide relocation assistance by waiving in writing three months of *actual* rental payments prior to the payments becoming due as an alternative to making a direct relocation assistance payment based on fair market rent. This option helps ensure that owners charging well below market rents are not treated unfairly, while also helping the tenant avoid a crisis by affording them more time—at least three months—to save up for and find replacement housing that may cost more.

Base Relocation Assistance Amount
(excluding special circumstance additions)

	Studio / 0 Bed	1 Bed	2 Bed	3 Bed	4+ Bed	Description
Proposed	\$ 7,149	\$ 8,082	\$ 9,396	\$ 12,033	\$ 13,275	Three months' FMR
San José	\$ 6,925	\$ 8,400	\$ 10,353	\$ 12,414	\$ 12,414	San José is exploring a Consumer Price Index adjustment to increase assistance beyond these amounts codified in 2017; additional assistance available for special circumstances
Mountain View	\$ 7,149	\$ 8,082	\$ 9,396	\$ 12,033	\$ 13,275	Three months' FMR; limited to households with income ≤ 120% of median income in the county plus \$5,000; additional \$8,000 available for special circumstances.
Sunnyvale	Two months of actual rent in all cases.					
Milpitas	One month of actual rent in all cases.					
Palo Alto (< 10 units)	One month of actual rent in all cases.					
Palo Alto (10+ units)	\$ 7,000	\$ 9,000	\$ 13,000	\$ 17,000	\$ 17,000	Additional assistance available for special circumstances.
County of Los Angeles	\$ 7,654	\$ 8,662	\$ 10,797	\$ 13,115	\$ 14,759	Additional assistance available for special circumstances.

If a tenant is displaced due to a government order to vacate due to a substandard, unsafe, and/or hazardous condition, the proposed ordinance would also allow owners to provide substitute housing instead of relocation assistance payments, if mutually agreed upon between the owner and the tenant. The substitute unit must be safe, convenient to the tenant, suitable for the tenant's household, and available at the same rent amount as the unit from which the tenant is being displaced. A tenant's refusal to accept a substitute unit does not relieve the owner of their obligation to make direct relocation assistance payments. This provision allows for a simpler solution to tenant displacement in cases where an owner has a suitable alternative available, and provides an alternative to a direct relocation assistance payment where waiver of three months' future rent would be infeasible due to the order to vacate.

Enforcement

The proposed repeal and replacement of Division C5 provides several mechanisms to track compliance and enforce against non-compliance.

First, owners are required to submit notices to the County at certain stages of the displacement process. Owners must submit, through a forthcoming portal on the Department of Planning and Development's website, a copy of any notice of termination issued to a covered tenant. Notices of termination must include notice of the tenant's right to relocation assistance payments and the other protections provided by Division C5. As applicable, owners must also submit notice through the Department of Planning and Development website attesting that direct relocation assistance has been paid or that a substitute unit has been provided. Together, these notices will allow the County to track compliance with Division C5, collect valuable data about housing displacement in the unincorporated county, and identify possible non-compliance that may benefit from County intervention.

Second, failure to comply with the Division voids any notice of termination, provides an affirmative defense to an unlawful detainer action by the owner, and is a misdemeanor.

Third, the proposed ordinance addresses instances where an owner fails to provide timely relocation assistance, resulting in intervention from the Office of Supportive Housing (OSH). Currently, when a displaced tenant needs assistance, OSH may provide an array of services, including sometimes covering costs that the current Ordinance Code requires be covered by the displacing owner. The proposed ordinance addresses this issue in two ways. First, it increases the relocation assistance due to the tenant by \$100 for every day that a required relocation assistance payment is late, up to a maximum of double the originally owed relocation assistance payment. Second, it requires that owners reimburse the County for any costs incurred in providing emergency assistance to a covered displaced tenant during the period that any relocation assistance payment owed to the tenant was overdue.

And finally, the proposed ordinance provides for not only a private right of action but also County authority to bring a civil action for money damages or injunctive relief, or both.

Implementation & Education

County Counsel will partner with Administration to develop and implement a robust outreach and education plan to implement the proposed ordinance in the unincorporated areas of the county. County Counsel will support Administration in developing online and print materials, submission platforms, and processes for any Ordinance Code changes.

California Environmental Quality Act (CEQA)

The repeal and replacement of Division C5 of the Ordinance Code to provide for residential tenant protections and relocation assistance is exempt from environmental review pursuant to the common sense exemption in Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that adoption of the proposed ordinance will not have a significant effect on the environment.

CHILD IMPACT

The recommended action will have a positive impact on children living in qualifying rental units in unincorporated county by reducing housing insecurity, minimizing unnecessary displacement, and promoting access to stable housing.

SENIOR IMPACT

The recommended action will have a positive impact on seniors living in qualifying rental units in unincorporated county by reducing housing insecurity, minimizing unnecessary displacement, and promoting access to stable housing.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

STEPS FOLLOWING APPROVAL

Following HLUET's receipt of the report, the proposed ordinance will be presented to the Board of Supervisors for consideration.

ATTACHMENTS:

- Attachment A - 2022 American Community Survey Estimates Regarding Rental Units in Unincorporated Santa Clara County (PDF)
- Attachment B - Tenant Protection Ordinances in Santa Clara County as of May 1, 2024 (PDF)
- Attachment C - Proposed Ordinance NS-1100.137 (redline version) (PDF)