

Public Comment to Agenda Item 2. Discuss and Introduce Ordinance Revising Town Code Chapters 5.54 'Just Cause Evictions' and 5.55 'Rent Stabilization Program'

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I am writing to urge the Town Counsel to vote NOT to approve the first reading of the amendments attached to Agenda Item 2. These amendments are not tailored to the substance of the issues at stake and seem to be an attempt at compromise for compromise's sake. They will increase the harm on vulnerable community members, and won't abate the most vocal and aggressive opponents of the Tenant Protections who have made clear they will be satisfied with nothing less than complete repeal of both ordinances. To save space and try to make this easier to read, I've copied below only the excerpts of redline text attached to this agenda item with my specific comments on the proposed changes.

In the interest of getting this in by the 3:00pm time request I am sending this now in the interest of time. I will follow up with another version which is complete and addresses the changes I did not yet get to in this email.

Thank you,
PJ Feffer

"[§ 5.54.030](B) Exemptions. The following Rental Units shall be exempt from this section, except that all exempt units must comply with the requirement of section 5.54.030(D)....

(5) Rental Unit occupied by a Lodger.

(6) Junior Accessory Dwelling Unit (JADU), with or without a separate entrance, as long as the owner of the Dwelling Unit resides in the Dwelling Unit.

(7) Accessory Dwelling Unit (ADU) as long as the ADU is attached to an owner occupied Dwelling Unit."

There was a lot of discussion on the topic, the vast majority centered on the differences between the various types of ADUs/JADUs/Lodging housing/Garage apartments etc., and almost no consideration and discussion about why any of those differences and circumstances justify why someone renting any such unit does not deserve the tenant protections that others have.

It is shocking that the Town Council would consider a blanket exception for added categories 5-7. Ironically, when discussing Owner Move-Ins, the council did specify that the ability to move in caretakers is a specific concern/exception needed for ADUs/JADUs, highlighting that the council is clearly able to consider and make targeted exceptions when motivated. The Town Council should explain why it thinks it is acceptable to allow a Tenant in any such Unit to be evicted without cause. The Council cannot fall back on the extremely brokered and compromised AB1482 here, which also does not protect such units. No one is forcing the owner of such rental unit to exchange the Rental Unit to a person for money, this would permit any such landlord to leverage rapid evictions to take advantage of the tenant or evict and raise the rent above any otherwise applicable limit. What is the policy reason here? It seems the only justification has been the lack of boundary or perceived increased vulnerability of the landlord (ignoring what would be the equally increased vulnerability of the tenant related to such lack of boundary). We heard comment from the council on the list reflecting "close contact", but no explanation for why such "close contact" would be a reason for this exemption. The connection hasn't been made why this distinction justifies the complete lack of regulation or applicability. The people renting these units are people too, and just as deserving of protections as any other. Surprisingly, the councilmember did not like the concept of a two-month (or similar) phase in for applicability, stating their concern that if the owner doesn't think the tenant works out and then two months later, the tenant is out on the street just because the owner didn't like them is

not good for the Tenant. I agree! But then this begs the question of why such councilmember thinks that such protections should be limited not just for the first two months of a tenancy but for the whole term of the tenancy!? So instead of being subject to the kind of eviction on a whim that this councilmember was concerned about for two months, the tenant should be subject to that situation, the whole time they are renting the unit? That is even worse, the very concern that has been raised. The distinction between Rental Units occupied by Lodgers from JADU's or ADUs justifying not requiring the Rental Unit with Lodger be owner occupied for the exemption was mentioned far too briefly. It seems to be just limiting protections for the sake of having more limits, and not any justification for any such limit. Why should a landlord than lives on another property, be able to evict people occupying Rental Units that have Lodgers without cause? And then raise the rent as high as they want? That encourages the exact type of housing and investment that the community purportedly wants to discourage. If I bought 10 single family homes across town and rented out rooms or rooms and board to groups of people, so long as the lease reserves space for me to personally occupy in each home along with the right of access to all areas and overall control, all of those homes and tenant would be exempt from all of these Tenant protections. What could possibly be the justification for that?

Furthermore, the distinction doesn't hold for JADUs or ADUs where there is a locked separate living space from any other multifamily property. No one has even come close to suggesting that, for example, an owner of an 8-Unit single structure multifamily property should be exempt if they occupy one of the 8 Units (or even exempt as to the immediately adjacent units). They could share a front door/entrance to the building, or not, but still would have the same sort of "close contact" as a landlord of a single-family home renting out an ADU or JADU, arguably *more* close contact because there are more tenants for them to come into contact with as they come and go. One councilmember noted that they heard a lot of comment about the "close quarters," and thought it was "well justified with regard to being very restricted on being able to evict somebody just simply because you're not getting along." "Not getting along" should not be a reason for an eviction and it is shocking to hear that suggested. The idea that someone should be forcibly permanently removed from their home simply because their landlord doesn't like them or like living in proximity to them is one that I did not expect to hear from this council. It should be strongly rejected by all reasonable people. This councilmember detailed the circumstance of sharing a wall, but with completely disconnected living spaces, and being able to hear someone else, what they're doing, what they're watching on tv..... all of those apply to every space I've lived in for any period of time, from apartments in large and small apartment buildings, to detached single family homes with fully compliant setbacks from their separate parcels' and their single family homes. Another councilmember expressly echoed agreement for this line of thinking. Why on earth would that justify someone being evicted from their home through no fault of their own? Or the lack of the other protections contain in this Chapter? Notably, those councilmembers also did not support exemptions for duplexes, which meet the same conditions as were listed in their concerns, evidencing that this is not a principled position on when a person should be excessively vulnerable to eviction, but rather an attempt to compromise for compromise's sake. If so the council should be honest and upfront that they are compromising away protections for some people, not because they those people don't deserve the same protections as others, but because the council wants to appease groups who seek additional power and control over such now protected people's ability to stay housed. One councilmember did suggest that their concern was encouragement/discouragement of ADU development from people who rent no units but might rent a single ADU/JADU, based on reports from Oakland and other communities that found that people ARE still doing it, but "that it was daunting to a number of homeowners." I think it is better to look at the actual substance and actions to see the effects, rather than homeowners' statements of how they feel. Why is that reasoning only applied here, to tenant protections, rather than myriad other issues that homeowners and property developers say would or would not encourage building more units? This says noting about the reason, when looking to encourage ADU development, to compromise on this issue, rather than, on one side of the spectrum further drastically reducing the cost of development (from permit fees to tax abatements to fully subsidizing construction) and on the other side of the spectrum (but real life examples from the not too distant past) covenants and restrictions designed (explicitly or by proxy) to exclude certain groups from entering the community that the homeowners considered undesirable? I'm sure this councilmember wouldn't support such discrimination, whether or not it encouraged ADU creation, and so it is not enough to say that you support removing the protections from tenants because of what the

homeowners say feels "daunting" there should be some reasoning or justification specific to these circumstances.

"[§ 5.54.030(C)] (4) Tenant Illegal Activities. Tenant has been convicted for using the Dwelling Unit for an illegal purpose as provided in California Civil Code section 1161, including, but not limited to, the unlawful distribution of a controlled substance as contemplated by California Civil Code section 3486, the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code section 3485, or for a serious crime or violent felony as defined by applicable law, which occurred during the tenancy and within 1,000 feet of the Dwelling Unit. For purposes of this subsection, a Tenant may cure the violation of another Tenant in the Dwelling Unit by removing, and demonstrating such removal, of the offending Tenant."

Given the breadth of problems in these amendments, I'm spending more time addressing greater issues, but don't want to leave the impression that this clause would be fair. This too is unjust, especially in light of the extreme problems in our criminal justice system. Punting determination of a tenancy to that system increases the harm already caused by the criminal justice system's cruel outcomes. Any reasonable concern of illegal activity would be connected in some way to the actual occupancy rather than mere proximity. As-is, this completely removes the requirement that a landlord seeking to evict a tenant demonstrate any actual harm or damage or some problem with the lease arrangement that actually affects the owner or the unit. If the landlord could demonstrate any such actual harm cause by the illegal activity, they'd be able to evict for nuisance or (presumably) breach of lease.

"[§ 5.54.030(C)](5) Threat of a Violent Crime. Any statement made by a Tenant, or at the Tenant's request by the Tenant's agent, to any person located on the premises, including the unit of the Landlord or Landlord's agent, threatening commission of a crime which could result in death or great bodily injury to another person, with the intent that the statement is to be understood as a threat, even if there is no intent of acting on the statement, if that statement causes the person threatened to have a reasonable fear for their safety or the safety of their family or household.

"[§ 5.54.030(C)](6) Damaging or Trespassing on the property of another Tenant or Landlord. Causing damage to or trespass upon the property or possessions of any other Tenant or the Landlord or otherwise committing waste to the Dwelling Unit or premises."

The main problems with these additions are essentially the same. There is no standard of proof or process provided for to ensure Tenants aren't forced out of their homes unjustly. Given the existing provisions covering evictions for breach of material terms of a lease, for nuisance or for illegal activity, this simply lowers the bar for any landlord willing to invent or seriously exaggerate a claim of a threat of violence or damage. There was almost no discussion at the Special Meeting explaining the justification for adding (C)(4)-(6). The Town Council should explain what circumstances would justify eviction under new clauses (5) or (6) that would not otherwise be covered by (2), (3) or (4). It is not enough to just state a situation that would fall into one of these categories, without explaining the gap in the existing ordinance you're looking to fill. Otherwise, it seems the Town Council is interested in just appeasing spurious complaints coming from the loudest voices and those more likely to be privileged to be able to make their opinion heard repeatedly, at the cost of making it much easier for landlords to leverage the potential loss of housing over tenants and lower the bar significantly to unjustified evictions of tenants. You're trading off the increased ability to manipulate this extra category to achieve an unjustified eviction, for no actual added protection for circumstances where eviction would be justified but the landlord wasn't able to evict for cause.

[§ 5.54.030(C)(8) Temporarily Vacate in Order to Undertake Substantial Repairs.] The deletion of clause "(d)" which read: " Where the Landlord recovers possession under this subsection either prior to or after an unlawful detainer judgment, the Tenant must be given the right of first refusal to re-occupy the unit. The Landlord shall notify the Tenant household at least sixty (60) days in advance of the availability of the unit or room. Within thirty (30) days of receipt of the notice of availability, a Tenant household must notify the Landlord if it wishes to reoccupy the unit or room. The Landlord

must hold the unit or room vacant at no cost to the Tenant for sixty (60) days from the date the Tenant household's written notice of its intent to reoccupy the Rental Unit or room is received."

How could this deletion possibly be justified? The circumstance address here is one where a tenant is evicted through no fault of their own, to allow the landlord to make substantial repairs to their rental unit. Why would you be opposed to the tenant having the right to re-occupy the unit? They didn't do anything wrong. If a landlord allows a unit to fall into significant disrepair, such that they need to remedy it, their get to evict their tenant who was living under those conditions that needed repair. This just rewards that subset of landlords who are not taking care of their properties or tenants. They can let bad conditions persist in their units, not keep up with maintenance at all, evict their tenant AND then get the reward of being able raise the rental rate as high as they want. This also flows only in one direction, there is no opposite issue if the repairs are due to the tenant or the tenant is not taking care of the unit/causing the need for such repairs, because then the landlord would be able to evict the tenant for cause for damage to the property/breach of lease/nuisance etc. It's truly alarming, because one of the most common retaliatory tactics/self-help eviction harassment behaviors is for landlords to deliberately let the conditions deteriorate substantially to the point where a tenant just moves out. Tenants can't report/ask for repairs because such repairs would then allow the Landlord to evict them anyway, so the tenant is just stuck trying to live through the situation until they choose to leave. This deletion is directly blesses that far too common circumstance. Even if the landlord is kind and caring and wants to take care of the unit, this still discourages Tenants from reporting conditions that need substantial repairs because it would then permit their no-fault eviction. Less reporting of repairs by tenants actually occupying units is what would lead to the deterioration of the condition of the Town's housing stock.

One councilmember express objection to the inclusion of this protection where an unlawful detainer judgement was granted in favor of the landlord. The councilmember stated: "I just don't understand why if you were able to evict someone legally right why would they then be able to reoccupy the unit I mean you did everything you were supposed to do." The council briefly considered the question, but moved on without substantive discussion or consideration. Given that this is limited to temporary evictions to make substantial repairs, the circumstance addressed is one where the landlord seeks to evict the tenant, claiming that the tenant needs to vacate in order to make repairs, and gives notice to the tenant that includes a description of the repairs to be completed and the approximate expected duration of the repairs. If the Tenant disputes the need, or the need to vacate in order for the repairs to take place, or the timeline then the landlord would go seek an unlawful detainer judgement to evict them. Courts being what they are, typically fall on the side of landlords in landlord/tenant disputes. Even if a Court rightly awards the unlawful detainer judgment and requires the tenant to temporarily vacate, the tenant is now being punished for not thinking they should have to leave for repairs to take place (not unreasonable being the difficulty in securing housing). Why is that justified? If the tenant doesn't think they need to leave for repairs to take place, why is the risk on the tenant to do whatever the landlord asks in order to maintain their right to return? It should more appropriately be on the landlord to establish that the tenant actually does need to vacate. This further makes housing worse, because if the dispute does happen to be in front of a compassionate judge, now the judge is weighing whether or not to order the permanent eviction of a tenant when repairs are needed rather than the temporary eviction. A judge that might otherwise provide for the temporary eviction to make repairs, could now think the repairs needed are not so serious as to merit permanent eviction of the tenant and that the balance of the equities favors letting the tenant stay in the unit that does in fact need repair. As a result, repairs and upkeep of housing stock that might otherwise be done, will go undone. Understanding what we actually see happening in these circumstances in real life, a tenant might be justified in thinking that the hurdle for eviction is getting them out in the first place, and once that is done the landlord can prolong the process of needed repairs until the Tenant needs to find other permanent housing, resulting in a full termination of the tenancy and the ability for the landlord to raise the rent on the unit as high as they want.

[§ 5.54.030(C)(9) Owner Move-In (g) Eviction Protection for Elderly, Disabled, or Terminally Ill Tenants.] The increase in age under subclause (a) from 62-65 seems to be just another misguided attempt to scale back the ordinances wherever possible to appease complaining landlords. This is one there was immediate consensus on from the council. While there are plenty of people from 62-65 who

are capable of dealing with the circumstance as well as people under 50, there surely are those that are not. The age metric is setting some threshold where we think it would be more difficult to find alternate housing. I don't think the council would disagree that there absolutely is age based discrimination (employment and other discrimination) and challenges for adults 62 and over that could hinder their ability to find alternate housing. That 62 is the age a person first is able to take Social Security was mentioned almost in passing, and dismissed by stating that "I think 65 is more generally accepted as older." But the issue is not merely what age is considered "older," it is how age affects the ability to manage being evicted and find alternative housing. This is why the tenant potentially taking Social Security is particularly relevant. If a person has been living in a Rental Unit for 3, and is now on fixed income (Social Security being the most common form of fixed income for adults, and there are those that certainly do take it as soon as they are eligible) they are more likely to be relying on that stabilized rent budgeted against their fixed income. It would be more of a challenge, being on that fixed income, to manage being evicted and to find a new place to live.

[§ 5.54.030(C)(9) Owner Move-In (h).] It is unclear to me why the following requirement was deleted: "The Town Manager shall also send a notice to the Rental Unit that states the maximum Rent for that unit, and shall send an updated notice to the unit 12 months, 24 months, 36 months, 48 months, and 60 months thereafter, or within 30 days of such date." The point was raised as the a potential burden on the Town, but the scale of such circumstances shouldn't be particularly large. This doesn't require that Landlords actually do anything. The council considering shifting the responsibility to the Landlord to send the notices, but ultimately decided not to. While a hopefully remote concern, this protects the person living in the Unit vacated by the Owner Move-In in the circumstance where they are actually being charged rent above that maximum amount. This is more important than it had been, in light of the expansion to the categories of individuals a landlord can move in under this subsection. We all hope that no one would be taken advantage of in this way, but it is fair to assume a landlord is more likely to charge rent to the group expanded from just "spouse, child, parent or grandparent" to include their sibling, the spouse or domestic partner of landlord's child, parent, grandchild, grandparent, brother or sister, and the caregiver of anyone in the household. Unless there is some specific being problem articulated with an annual notice being mailed by the Town Manager for 5 years to Rental Units that have had Owner Move-Ins, we should want to have that extra protection for whoever is occupying the unit. It is unclear why the council thinks that the person living in the Unit would necessarily be aware of the circumstances giving rise to it being available to them or would otherwise know to check the County Recorder for a notice of constraints.

[§ 5.54.030(C)(10) Withdrawal from Rental Market.] Again, the increase in age under from 62-65 and the drastic reduction from 1 year notice to 180 days seem to be more misguided attempt to scale back the ordinances wherever possible to appease complaining landlords. My comment for the age mirrors the comment above. On reducing the time, this is a matter of reliance for what is reasonable. This is a circumstance when there is no other pressing cause or need justifying eviction. Someone in the business of renting out a housing unit, decides they want to get out of the business. The person living in their home is relying on that housing being available. How long should that person be entitled to assume the housing unit is available? A year out matches the term of most initial leases.

[§ 5.54.030(E) Right of Return and First Right of Refusal.] The added two year limit is not only unfair, but creates perverse incentives. This creates a circumstance where landlords are incented to extend repairs for two years, or move a family member in for two years, to terminate a tenancy and then be permitted to raise the rent as high as they want, more than they would have permitted. The deletion of the final sentence exacerbates the concern. This is an unjust enrichment policy point. A landlord who wants to raise the rent more than at the stabilized rate forces through a no-fault eviction (whether or not justified) and then because the tenant dealing with the burden of eviction found alternate housing, the landlord gets the benefit of increasing rents because the tenant is unable to move back in two years later? It's bizarre that the council is making changes to encourage such situations.

[§ 5.54.030(J) Failure to Comply.] Reducing damages for wrongful eviction from treble damages to actual damages is tacit permission for all landlords to do wrongful evictions. THE BENEFIT THEY ARE RECEIVING IS EQUAL TO THE ACTUAL DAMAGES! This makes it merely a financial wash for

landlords. The point of treble damages is to discourage landlords from engaging in wrongful evictions. There was no justification for why except that it harms the landlords, which is the point, they did something wrong. As some sort of justification it was mentioned it applies to any breach, but minor breaches then presumably would have minor damage amounts and the burden wouldn't be high. The council here is deciding that because some landlords say they're scared of costs, landlords should feel free to ignore these protections, because they still won't have to pay more than the actual amount of added cost to the tenant (completely disregarding the landlord getting a corresponding benefit). This is outrageous.