



# Memorandum

**TO:** HOUSING & COMMUNITY  
DEVELOPMENT COMMISSION

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** March 15, 2018

---

Approved

Date

---

**SUBJECT: AMENDMENTS TO PROCEDURES FOR REMOVAL OF  
RENTSTABILIZED UNITS FROM THE RENTAL MARKET (ELLIS ACT  
ORDINANCE)**

## **RECOMMENDATION**

Accept staff report and provide recommendations to staff on potential changes to the Ellis Act Ordinance, including:

1. Amending the re-control provisions to:
  - a. Subject the greater of either 50% of new apartments built *or* the number of apartments removed from the market, to the Apartment Rent Ordinance (ARO);
  - b. Allow an exemption from the re-control provisions if at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:
    - i. develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; and
    - ii. develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.
2. Include apartments buildings with three units under the Ellis Act.
3. Require apartments with three units or more built after 1979 to provide 120-day notification to their tenants and the City and to provide relocation consultant services to impacted tenants.

## **BACKGROUND**

On May 10, 2016, the City Council directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market that applied to buildings with four or more apartments. The Council gave this direction as part of the policies adopted to strengthen the ARO.

On April 18, 2017, City Council approved an Ellis Act Ordinance that would provide procedures on the control of rents for apartments constructed or returned to the rental market within five years of withdrawal. The full report to the City Council may be viewed here:

[http://sanjose.granicus.com/Viewer.php?view\\_id=&event\\_id=2680&meta\\_id=628023](http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2680&meta_id=628023). As a part of the City Council action to approve the Ellis Act Ordinance, further direction was provided:

1. Direction to the City Manager to complete additional research regarding the impact of subjecting all replacement units to re-control by the Ellis Act; and
2. Direction to provide the City Council with additional research regarding existing Ellis Act Ordinances throughout California.

### Ellis Act Ordinance

The Ellis Act Ordinance establishes a process by which a property owner can remove their apartments from the rental market. It should be noted that Ellis Act provisions only apply to apartments under rent control. In San José, all apartments of three or more units built and occupied prior to September 7, 1979, are subject to the City's Apartment Rent Ordinance (ARO).

The City's Ellis Act Ordinance also provides benefits to tenants living in rent stabilized apartments that will be withdrawn from the market. A summary of the Ordinance requirements is provided below:

- **Noticing** – All households must be provided with a minimum of 120 days' notice prior to the removal of the property from the rental market. Special populations including residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children must be given up to one-year notice.
- **Relocation Benefits** – All tenants are eligible to receive relocation benefits. Special populations including low-income residents, residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children are eligible for additional relocation benefits.
- **Right to Return** – If the apartments return to the rental market within ten years, tenants have a right to return to their apartments.
- **Re-control** – If a property owner demolishes existing rent-stabilized apartments, all new apartments built at the same location within five years will be subject to the City's Apartment Rent Ordinance.

Property owners that remove rent-stabilized apartments from the market are subject to the re-control provisions above. In addition, all new housing built on the site is subject to the City's Inclusionary Housing Ordinance.

### Inclusionary Housing Ordinance

The Inclusionary Housing Ordinance (IHO), Chapter 5.08 of the San José Municipal Code, was adopted on January 12, 2010. The IHO requires all residential developers who create new, additional, or modified or-Sale or Rental units to provide 15% of housing on-site that is affordable to income qualified buyers/renters. If the residential project is a rental development and the owner chooses to meet this obligation by providing the affordable apartments on-site, 9% of the apartments must be restricted at 80% Area Median Income (AMI) and 6% of the apartments must be restricted at 50% AMI.

The City of San José had previously adopted a program that applied to rental developments called the Affordable Housing Impact Fee (AHIF). On December 19, 2017, the City Council approved a transition from the AHIF to the IHO for projects with 20 units or more. As a result, those rental projects have the time-limited option to remain under the AHIF program if certain criteria are met. More information on the Inclusionary Housing Ordinance Program can be found on the following webpage: [www.sjhousing.org/IHO](http://www.sjhousing.org/IHO).

All new apartment projects with 20 units or more are subject to the Inclusionary Housing Ordinance. If a development removes ARO apartments from the rental market, it would be subject to both the Inclusionary Housing Ordinance and the Ellis Act Ordinance. This memorandum satisfies the City Council's direction to address the re-control issue and provides options regarding the owner's requirement to re-control under the Ellis Act. It also satisfies the re-control provision by providing on-site units under the IHO, plus a voluntary additional 5% of 100% AMI units.

### ANALYSIS

This memo addresses three items:

- Address the re-control issue as currently delineated in the Ellis Act Ordinance and provide options,
- Include apartments with three units under the Ellis Act, and
- Address noticing requirements for apartments being removed from the market that were built after September 7, 1979.

#### **1. Re-Control of Apartments**

As the demand for housing in San José increases, pressure to redevelop rent stabilized apartments continues to rise. There are approximately 40,000 apartments subject to the ARO and the City's Ellis Act Ordinance. Many these apartments are located in areas that are likely to be redeveloped in the coming years. The City's General Plan designates areas of growth by

urban village areas. These areas allow for higher densities where redevelopment of existing ARO apartments may occur. A table indicating the number of ARO apartments located in these areas is provided as Table 1.

**Table 1: Number of ARO Apartments in Urban Village Areas**

Urban Villages	Number of ARO Apartments	Urban Villages	Number of ARO Apartments
Winchester Bl	3,471	Hamilton Av/Meridian Av	112
Southwest Ex	1,952	Camden Av/Branham Ln	108
Saratoga Av	1,145	Little Portugal	98
Rincon South 2	512	The Alameda (East)	86
Stevens Creek Bl (West)	430	Santa Teresa Bl/Cottle Rd	84
S. De Anza Bl	407	Alum Rock	60
Monterey Rd/Chynoweth Av	372	Five Wounds BART	58
S. Bascom Av (North)	341	Kooser Rd/Meridian Av	52
Paseo de Saratoga	340	Diridon Station Area	48
Tully Rd/S. King Rd	332	Santana Row/Valley Fair	47
N. 1st St	243	Roosevelt Park	41
E. Santa Clara St (West of 17th St)	229	W. San Carlos St (East)	36
N. Capitol Av/Berryessa Rd	220	S. 24th St/William Ct	25
Camden Av/Kooser Rd	187	The Alameda (West)	22
S. Bascom Av (South)	181	Race St Light Rail (West of Sunol)	21
Camden Av/Hillsdale Av	170	McKee Rd/White Rd	8
Almaden Ex/Hillsdale Av	120	W. San Carlos St (West)	7
Branham Ln/Meridian Av	120	Alum Rock Av (East of 680)	6
Oakridge Mall and Vicinity (Cambrian/Pioneer)	116	E. Capitol Ex/Foxdale Dr	5
Stevens Creek Bl (East)	115	W. San Carlos St (Mid)	4
<b>Total Number of ARO Apartments in Urban Villages</b>			<b>11,931</b>

As indicated from Table 1, almost 12,000 (30%) of these areas are in urban villages. Staff has experienced an increase in inquiries regarding redevelopment in these areas. This is likely to increase in the future as the urban village plans are adopted. Therefore, the need for re-control of some or all the units built when ARO units are destroyed by this redevelopment is critical to preserving rent-stabilized housing.

Staff has received inquiries from developers, since May 2017, who are interested in demolishing existing ARO apartments to build new housing. The potential projects are in various stages of the planning process and developers have approached the City to discuss future steps in the development process. A list of these inquiries is included as **Attachment A**.

### Existing Re-Control Provisions

The Ellis Act provides requirements for apartments being either rehabilitated or demolished and returned to the market within five years after being withdrawn through the Ellis Act. The Ordinance requires that all new apartments be subject to the City's ARO (re-control). For example, under the current ordinance, if 10 apartments were removed and 20 apartments were constructed on the same property, all 20 new apartments would be subject to the ARO.

The Housing Department looked at two factors when examining the issue of re-control. These include: stakeholder meetings with developers and research on re-control provisions in other cities. A summary of this information and analysis is provided below.

### Developer Stakeholder Meetings

Staff met with developers to discuss the re-control options for the Ellis Act Ordinance. Throughout this discussion, developers spoke of communities in the region that are struggling with the housing crisis and are introducing requirements such as inclusionary and rent stabilization restrictions. Developers indicated deed-restricted affordable housing is predictable and understood by lenders and developers. This is because the deed-restriction ties rents to a predictable scale for an extended time. Rent stabilization, however, is unpredictable because a local governing body could make a decision to change the rent stabilization requirements at any time. According to the developers, this lack of predictability increases risk for the development of new housing subject to rent stabilized requirements.

### Research of Other Cities with Ellis Act Ordinances

The Housing Department researched the different re-control provisions in cities with Ellis Act ordinances. A review of San Francisco, Berkeley, West Hollywood, Los Angeles, and Santa Monica showed that their requirements resemble the City's current requirements in that all new housing developments following an Ellis Act withdrawal is subject to the rent control provisions of that jurisdiction. Los Angeles provides an exemption to developers who replace the new units with 20% restricted affordable units. These developers may apply for an exemption of the newlyconstructed units from rent control provisions. Table 2 summarizes these provisions below.

**Table 2: Summary of Cities with Ellis Act Provisions**

	San Francisco	Berkeley	West Hollywood	Santa Monica	Los Angeles
<b>What is covered by Ellis?</b>	3 units or more	All	2 units or more, includes single family homes when tenant occupied	All	5 units or more
<b>How many replacement units will be subject to re-control?</b>	All	All	All	All	All
<b>Are there exemptions to re-control?</b>	N/A	N/A	N/A	N/A	Yes

The Housing Department also looked at the impact of Ellis Act Ordinance provisions in these jurisdictions. The Department found that, in some jurisdictions which require that all new apartments be covered by rent control provisions, the overall number of rent stabilized apartments erodes over time due to the withdrawal under the Ellis Act, even if the jurisdiction requires re-control of all new units. For example, Santa Monica has the longest standing Ellis Act in the State. According to the 2016 Santa Monica Rent Control Board Consolidated Annual Report, Santa Monica has lost over 2,000 rent controlled apartments through Ellis Act removals. A summary of the apartments withdrawn from the rental market versus those added under the re-control provisions is provided in Table 3.

**Table 3: Santa Monica Apartments and Properties Withdrawn 1986-2016**

	Apartments	Properties
Withdrawn	2,975	609
Returned to the Market	852	163
<b>Net loss of Covered Apartments due to withdraw</b>	<b>2,123</b>	<b>446</b>

*Source: 2016 Santa Monica Rent Control Board Consolidated Annual Report, p. 32*

Although all newly constructed apartments built within five years are required to be covered by Santa Monica's rent control provisions, Santa Monica's staff has observed properties do not always return to the market. One reason for this is because apartments are often replaced with for-sale housing, commercial use, and/or mixed use development. In addition, developers building rental housing sometimes do not bring the apartments into the rental market until the five-year re-control period required under the Ellis Act has lapsed. These factors have led to the net loss of apartments covered by Santa Monica's rent control provisions.

## 1. Re-Control Options

The Housing Department reviewed several options for the number of new apartments that will be re-controlled under the Ellis Act. After reviewing controls in other cities and meeting with stakeholders, the following options received the most consideration:

**Table 3: Alternatives for Re-Control Provisions**

Alternatives	Example	Considerations
<b>All Units</b> – All new apartments are re-controlled.	20 apartments removed 60 apartments built <i>All 60 apartments covered</i>	<ul style="list-style-type: none"> <li>Consistent with all other California jurisdictions</li> </ul>
<b>50% of New Development</b> – The greater of the number of apartments destroyed or 50% of the new apartments constructed	20 apartments removed 60 apartments built <i>30 apartments covered</i>	<ul style="list-style-type: none"> <li>Potential gain of apartments covered by the ARO</li> </ul>
<b>One-for-One</b> – The number of apartments destroyed is re-controlled on a one-for-one basis.	20 apartments removed 60 apartments built <i>20 apartments covered</i>	<ul style="list-style-type: none"> <li>No net loss of apartments covered by the ARO</li> </ul>
<b>20% Restricted Affordable</b> – If inclusionary obligations are met by building 20% restricted affordable apartments on-site, the project may be exempted from re-control requirements.	20 apartments removed 60 apartments built 12 apartments affordable <i>0 apartments covered</i>	<ul style="list-style-type: none"> <li>Incentive to build affordable housing on-site</li> <li>Provides lower rents for 20% of the apartments</li> </ul>

After evaluating these alternatives, the Housing Department recommends that the re-control provision of the Ellis Act be modified to subject the greater of either 50% of new apartments built *or* the number of apartments removed from the market, to the Apartment Rent Ordinance (ARO). The Housing Department further recommends that exemption from the re-control provisions be allowed if 20% of the new apartments are deed-restricted, affordable apartments and built onsite. The development would be required to provide 15% of the newly constructed apartments as on-site affordable rental apartments consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance. Additionally, the developers would provide an additional 5% of the newly constructed apartments as on-site affordable rental apartments restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines. It is the Department's conclusion that this approach helps preserve rent-stabilized apartments and provides developers with viable options to meet the Ellis Act requirements and provide new housing opportunities.

## 2. ARO Apartments with Three Units

After the Ellis Act Ordinance came into effect on May 26, 2017, staff immediately received calls from developers interested in redeveloping triplex apartment buildings covered by the ARO. Aside from being covered by the ARO, triplexes are also covered by the Tenant Protection Ordinance (TPO). The TPO eliminates no-cause evictions and gives specific reasons under

which landlords can evict tenants. However, due to the discrepancy between the units covered by the TPO (three units or more) and the Ellis Act Ordinance (four units or more), developers removing tri-plexes from the market are not able to site an Ellis Act reason to provide tenants with the required notice to vacate. In addition, tenants cannot receive relocation assistance benefits required under the Ellis Act Ordinance.

There are 345 triplexes subject to the ARO with a total of 1,035 apartments. A change to the Ellis Act to include buildings with three apartments or more would increase the number of apartments covered by 1,035 apartments.

The Housing Department recommends an amendment to the Ellis Act Ordinance so that it applies to apartment complexes with three units or more. This would align the Tenant Protection Ordinance and Ellis Act Ordinance. An additional 1,056 apartments will be covered by the local Ellis Act Ordinance. This modification will provide clarity for owners, tenants and staff charged with implementing the ordinance.

### **3. Apartments Built After 1979**

After the Ellis Act Ordinance came into effect on May 26, 2017, staff received an inquiry from a developer who wanted to remove an eight-unit apartment building built in 2005. The purpose of removal was to assemble land for new development. All apartments are subject to the Tenant Protection Ordinance. However, apartments built after September 7, 1979 are not subject to the ARO or the Ellis Act Ordinance. In this case, the property owner did not have a viable reason to evict the tenants living in the eight-unit apartment building.

In order to address this issue, the Housing Department recommends that owners be required to provide a 120-day notification to tenants of apartments being removed from the market that were built after 1979. The Housing Department also recommends that the owner be required to offer relocation consultant services to impacted tenants, given the shortage of housing in the San José area.

If adopted, this would provide owners with a practical alternative to removing tenants for properties they wish to remove from the rental market and redevelop. Without this option, owners would have to negotiate individual voluntary agreements with tenants or find some other means to legally evict them. The requirements for these apartments would be limited to the 120-day noticing requirements and providing access to a relocation specialist.

The proposed revisions to the Ellis Act Ordinance regarding re-control provisions, number of apartments covered and coverage of apartments built after 1979 are included in **Attachment B**.



## **EVALUATION AND FOLLOW-UP**

Staff intends bring the amendments to the Ellis Act to the City Council for consideration in Spring 2018. The City Council will hold a second reading of amendments two weeks following its first reading. The updated Ordinance then would be effective 30 days following the City Council's second reading.

## **PUBLIC OUTREACH**

Staff met with a wide range of stakeholders while developing the proposed Ellis Act Ordinance. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with property owners and managers of both small and large properties, as well as a variety of tenants and tenant advocates on multiple occasions. **Attachment C** summarizes the public and stakeholder meetings related to this issue, and public comments are included as **Attachment D**.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

/s/

Jacky Morales-Ferrand  
Director of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8231.

## **ATTACHMENTS:**

Attachment A – Potential Projects Subject to Removal under Ellis Act Ordinance

Attachment B – Proposed Ellis Act Ordinance Revisions

Attachment C – Ellis Act Ordinance Community and Stakeholder Meetings

Attachment D – Ellis Act Ordinance Public Comments

**Potential Projects Subject to Removal under Ellis Act Ordinance**

#	Property Address	Permit #	Comment
1	4094 Hamilton	CP15-081	Permit approved
2	373 E. San Fernando St.	CP17-013	Inquiry
3	7201 Bark Ln.	PDC17-035 PRE16-153	Inquiry
4	2050 Southwest Expwy.	PDC17-059	Inquiry
5	439 and 451 S. 4th St.	H17-004	Inquiry
6	51 Glen Eyrie Ave	N/A	Inquiry
7	1605 Parkmoor Ave	H17-001	Inquiry

As of 3/15/18

RD:SSG  
3/14/2018

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 11 OF CHAPTER 17.23 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY RE-CONTROL PROVISION, TO ADD THREE UNIT BUILDINGS, TO MODIFY RE-CONTROL PROVISIONS, AND TO PROVIDE THAT OTHER MULTIFAMILY UNITS ARE DEEMED TO HAVE MET OBLIGATIONS UNDER THIS PART AFTER COMPLIANCE WITH NOTICE AND RELOCATION SPECIALIST OBLIGATIONS**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** Section 17.23.1130 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

**“17.23.1130 General**

- A. Fees. The City shall establish fees for City-incurred costs which shall be paid by any Owner who exercises the privilege to withdraw Covered Units from rent or lease. The City shall set the fee so as to recover all costs of administering this Part. The fees shall be paid to the City prior to the service of the Notice of Intent to Withdraw on any Tenant. Failure to pay the fees prior to service of the Notice of Intent to Withdraw shall invalidate such notice.
  
- B. Copies of Forms. Owner shall make copies of notices and forms available if a Tenant indicates the items have been misplaced or lost or are otherwise needed.
  
- C. New Tenants During the Withdrawal Process. If the Owner desires to rent a Covered Unit to a new occupant after delivery of the Notice of Intent to Withdraw, the Owner shall comply with this subsection). Owner shall first comply with all requirements of this Part 11, including but not limited to the delivery of notices to the City and Tenants, and the provision of Relocation Assistance in accordance with Section 17.23.1150 with respect to the unit to be rented. Prior to such rental, Owner shall also provide a Notice of Pending Withdrawal on a City approved form to any new potential occupant of the Covered Unit for acknowledgement. If the Owner complies with this subsection, the new occupant shall not be entitled to Relocation Assistance or other benefits under this Part. If the Owner fails to comply, the new occupant of the Covered Unit shall be entitled to Relocation Assistance under this Part.

D. City Approved Forms. Director may adopt such forms as are necessary or convenient for the administration of this Part 11, subject to review and approval of the City Attorney.

E. Every Owner must provide to each Tenant of a Covered Unit a notice of Tenant rights to extend the tenancy on a form specified by the City, which may include contact information for the City and shall include the following statement:

“In accordance with the State’s Ellis Act, the City of San José requires landlords to allow certain tenants to extend their tenancy beyond the minimum one hundred twenty (120) day notice period when a landlord intends to withdraw the dwelling unit from the residential rental market. The elderly, disabled, and households with a child enrolled in kindergarten through 12th grade may be eligible for extended tenancies if requested.”

F. Withdrawal of less than an entire building is not allowed under this Part.

G. The City Manager may adopt regulations for the administration of this Part.

H. ~~Three Unit Properties. Notwithstanding any other provision of this Part, this Part shall not apply to properties with a total of no more than three (3) Covered Units.~~

Non-Rent Stabilized Properties. Property with three (3) or more units that does not contain any Covered Units may be permanently withdrawn from the residential rental market. Such a permanent withdrawal made in good faith will be consistent with this Part, if the Owner has completed all of the following as described this Part and the Regulations: (i) served Notices of Intent to Withdraw on the Tenants and the City, (ii) complied with the provisions of Section 17.23.1160 requiring 120 day notice for all Tenants and Extended Notice for certain Tenants prior to termination of tenancy, and (iii) paid the filing fee including the fee for Relocation Specialist Services described in Section

17.23.1150.E. Upon completion of these requirements and expiration of the notice periods, the Owner will be considered to have met the relocation obligations of this Part for the purposes of evaluation for demolition permits under Section 20.200.460 and for the purposes of satisfying the requirements for relocation under the Tenant Protection Ordinance, Sections 17.23.1250.A.9 and 17.23.1250.B.2. These properties shall not be subject to the requirement to pay Base or Qualified Assistance, to provide the Tenant Qualification forms, to record a memorandum regarding re-control, or to provide a right of return.

**SECTION 2.** Section 17.23.1180 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

**17.23.1180 Re-Control**

- A. If a building containing a Covered Unit is withdrawn from the residential rental market and is returned by an Owner to the residential rental market within five (5) years, then that unit must be offered and rented or leased at the lawful rent in effect at the time the Notice of Intent to Withdraw was delivered to the City, plus any annual adjustments authorized by Title 17, Chapter 23 of this Code. This Section applies regardless of the occupancy status of each Covered Unit when the building was withdrawn from the residential rental market and regardless of whether a displaced Tenant exercises a Right to Return.
- B. If a building containing a Covered Unit is demolished and new unit(s) are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building containing the Covered Unit, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance, Title 17, Chapter 23 of this Code. ~~The City Council may, by resolution, adopt a rule to~~

~~exempt some or all of the new units in excess of the number of demolished Covered Units from the requirement for re-control.~~

C. Waiver for Projects with On-Site Affordable Units. If at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:

- (i) develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San Jose Municipal Code and its implementing guidelines; and
- (ii) develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.

RD:SSG  
3/14/2018

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI TABER, CMC  
City Clerk



## Ellis Act Ordinance Community and Stakeholder Meetings

### *Community Meetings*

Meeting	Date	Time	Location
Policy Development Community Meeting – Tenant Meeting	February 22, 2018	6:30-8:30 pm	Westminster Presbyterian Church
Policy Development Community Meeting	February 12, 2018	6:30-8:30 pm	Seven Trees Community Center
Housing & Community Development Commission	February 8, 2018	5:45 pm	San José City Hall – Wing Rooms
Policy Development Community Meeting	February 7, 2018	9:00-11:00 am	San José City Hall – Wing Rooms
ARO & TPO Educational Outreach	January 25, 2018	6:30-8:30 pm	Cypress Community Center
ARO & TPO Educational Outreach	January 19, 2018	2:00-4:00 pm	San José City Hall – Wing Rooms
ARO & TPO Educational Outreach	January 10, 2018	9:00-11:00 am	San José City Hall – Wing Rooms

### *Stakeholder Meetings*

Stakeholder Meeting	Date	Location
Stakeholder – Developers	March 16, 2018	Developer Roundtable
Stakeholder – Landlords	March 8, 2018	Bay Area Housing Network
Stakeholder – Developers	March 2, 2018	Greystar
Stakeholder – Developers	February 22, 2018	Silicon Valley Synergy
Stakeholder - Tenants	February 20, 2018	Renters' Coalition
Stakeholder - Landlords	February 15, 2018	California Apartment Association
Stakeholder - Landlords	February 12, 2018	California Apartment Association
Stakeholder - Tenants	February 6, 2018	Renters' Coalition
Stakeholder - Landlords	January 29, 2018	California Apartment Association
Stakeholder - Landlords	January 16, 2018	California Apartment Association
Stakeholder - Tenants	January 10, 2018	Renters' Coalition
Stakeholder - Landlords	December 15, 2017	California Apartment Association
Stakeholder - Tenants	December 13, 2017	Renters' Coalition

# **Ellis Act Ordinance**

City of San José – Department of Housing

Public Comments Received as of February 2, 2018

# Policy Development Meeting Series

## February 7, 2018 to February 22, 2018

### Dot Activity for Public Comments

#### ARO #1: If Ratio Utility Billing is not allowed under the updated Apartment Rent Ordinance: How should ratio utility billing be phased out? Select one.

	Tenant	Landlord
Effective immediately	29	
All RUBS contracts sunset after one year		
All RUBS contracts sunset after two years		3
No new RUBS contracts; existing contracts remain in place		1
Provide a one-time rent increase to combine rent with utility costs		4
Other ideas? Post it!		Have City provide interest-free or grant financing for landlords to meter individually

#### ARO #2: If ratio utility billing is allowed and parameters are developed, which items should be included? Select all that apply.

	Tenant	Landlord
Cap for the maximum charged per month		
Utility costs included are all unmetered utilities including water, garbage and sewer	1	7
Common area costs are not charged to tenants		4
All utility bills are available for review by tenants	1	4
No RUBS allowed	34	
Other ideas? Post it!		

#### TPO #1: Should a new just cause reason be added to the Tenant Protection Ordinance for criminal activity?

	Tenant	Landlord
Yes		6
No	22	

#### TPO #2: Do you think a criminal conviction would be necessary as a basis for an eviction?

	Tenant	Landlord
Yes	3	
No	9	

Other	It has nothing to do with housing. The judicial system can take care of itself. Don't need vigilantes.	
-------	--	--

**TPO #3: If yes, what documentation should be necessary for criminal activity? Please select all that apply.**

	Tenant	Landlord
Property manager testimony		4
Police report		
Conviction of a crime		5
Photo or video evidence		7
Other		

**TPO #4: If yes, what types of crime could result in an eviction? Please select all that apply.**

	Tenant	Landlord
Embezzlement		
Shoplifting		1
Drug crime	3	5
Violent crime	2	6
Traffic Crime	1	
Other	14: This should not be added to ordinance	Any 1

**TPO #5: If yes, a crime committed in which of the following areas could result in an eviction? Please select all that apply.**

	Tenant	Landlord
In the apartment	3	
On the rental property		5
1,000-foot radius around the rental property		
Anywhere	1	5
Other	11: None of the above	

**Ellis #1: How many of the new apartments should be covered by the Apartment Rent Ordinance? Select one.**

	Tenant	Landlord
All new apartments	16	
All new apartments are re-controlled, with some apartments limited to 5% and the other apartments limited to 10% rent increase		1

Two times the number of apartments destroyed are covered		1
The number of apartments destroyed are covered		4
If the new building includes 20% affordable units, the entire building would be exempt from rent control	9	
Other	<ul style="list-style-type: none"> <li>• Define what type of affordable</li> <li>• Why not more than 20%</li> <li>• Affordable should be for low income, very low income</li> <li>• At least 50% should be affordable</li> </ul>	None

**Source of Income #1: Have you or someone you know had trouble finding a landlord who will accept housing vouchers or other forms of housing subsidies such as security deposit assistance?**

	Tenant	Landlord
Yes	23	5
No		

**Source of Income #2: If the City were to create a “source of income” ordinance, what housing units should it apply to? Select all that apply.**

	Tenant	Landlord
Single-family homes		
Duplexes		
Secondary dwelling units		
Bedrooms for rent		
All rental housing	22	3
None – there should not be an SOI ordinance		6
Other ideas? Post it!	All the city geniuses never ask how the unhoused people for any input over the ideas they always try to lend from their cities’ comfortable position. I’m so sick of working within this system and	

---

switching back and forth on policies and being discriminated against. Let's build our own community.

# 2-7-18 Public Meeting Comments Summary

## Criminal Activity

- The Housing Dept. should take more active of a role to regarding neighborhood issues. Recent shooting in the Cadillac neighborhood. How can Housing assist landlords in these type of situations? TPO makes addressing crime more challenging.
- “Responsible Landlord Engagement Initiative (RLEI)” available for landlords that are fearful of retaliation.
- “Crime Free” is an approach used by many other cities. Why not try crime free in San Jose?
- When did the City Council discuss crime free housing?
- What proof is required by landlord for the 12 Just Cause?

## RUBs

- Master metered electricity and gas – all references to RUBs assume landlords are only using RUBs for water, sewer and garbage. Landlords of older buildings also allocate gas and electric.
- Idea: Certified RUBs provider.
- Idea: Create parameters for monthly fluctuations in RUBs charges.
- Cost of submetering for water is prohibitive. Landlords have called contractors and they are either not willing to bid because they often to not get the work because the cost is so high.
- A landlord stated when the tenants have to pay for the water bill, they are more likely to inform the landlord of a leak so they problem gets resolved much faster, he has had tenants use a vice-grip with a leaky faucet and paid additional water and repair costs from the neglect.

## Ellis Act

- One for one seemed common practice – what do other cities do?

## Source of Income

- A landlord mentioned that he is working with a Section 8 tenant and it has taken 2 to 3 weeks for a deposit and rent, if the program was faster with onboarding he would consider more often.
- Another landlord mentioned he does not have the time to accommodate the additional work required for Section 8 tenants and felt that the word “discriminating” should not be used regarding landlords screening process.
- Participant mentioned if more landlords knew that they could get closer to market rate for their ARO rental units, they might be more willing to take on the programs.

# 2-12-18 Public Comments Summary

## **Tenant Protection Ordinance**

- If there is 1 issue, having a gun, would landlord and other tenant want that person with the conviction still living in the unit? Would this be a material lease violation?
- Material violation - what is an example or designate an issue that is material? Example, starting a fire in a backyard. Does lease must specify "criminal activity" or "fire" in the lease?
- If someone is arrested for domestic violence, can a landlord serve a notice?
- What is the City of San Jose's position on criminal activity? Tolerant or zero? 3 day notice? not required and go directly to evict?
- The warning is significant, should a 3 day notice still be allowed or evict right after the 1 instance?
- Someone (for example, son or daughter) can be evicted for a conviction and automatically move in with his mom without approval from the landlord, they/tenant are protected. The roommate clause allows for harboring of criminals.
- Landlord should be able to do a review to be aware of a conviction and maximum number of tenants move in? Landlords need some type of help with this issue/check.

## **Apartment Rent Ordinance**

- Some landlord also do their own RUBs, not only just 3rd parties doing to calculations.
- There should be a RUBS allowed option for consideration by the City Council.
- Will electricity be considered a part of RUBS - all utilities should be considered?
- HUD utility rates, how do they factor or calculate? HUD rates should be removed because nobody can determine their factor.
- What about an alternative for a landlord to charge an additional 1% in rent if their building is master metered, similar to LA?
- Landlord feels is RUBS is not allowed, an angry tenant will leave the water running so landlord must pay bill and lose money, no conservation.
- If you remove storage and lose rent, will the rent ever be increased or will it be lost income going forward?

## **Ellis Act**

- Will there be a separate outreach for Ellis Act with developers? This issue is less significant for ARO property owners.
- How is relocation defined or determined? Chart available for calculation per number of bedrooms, how was the cost determined?
- Regarding which units are covered by the Ellis Act, why 1979 when 1985 is when Ellis went into effect?

## **Source of Income**

- What is the Housing Department's position on Source of Income, is it neutral or direction to create an Ordinance? Housing will be bringing a framework to Council and wait for direction.
- Given a mandate, the Housing Department's position does not appear neutral.
- What is the reason for the source of income policy issue? City Council asked Housing to explore.
- Source of Income issue is not Section 8 voucher holders, instead the deterrence for landlords is the logistics, time, and cost for using Section 8. Housing is painting the wrong picture about landlords.
- A landlord indicated never used Section 8 because the heard the program was a zoo and has created more problems, does not believe in program.



## 2-12-18 Public Comments Summary

- Had a Section 8 tenant, has lost thousands of dollars, many lawsuits, and they know how to gain the system.

### **General questions**

- What is the definition of Affordable Housing? Is there special funding for developers if they build Affordable Housing?
- Is there a special property tax relief for Affordable Housing?
- Public Notice is done through ARO; would landlords be notified for specifically for Ellis Outreach?
- Participant feels their input falls on deaf ears, rules appear to be protecting tenants, not landlords.
- Landlords do not want to file a Capital Improvement petition, does not want to ask Housing an allowance to increase rents.

# 2-22-18 Tenant Input Public Comments Meeting

## ARO - RUBS

- PG&E approx. \$28 per month
- PG&E \$70 per month, lights never turn off in common area
- PG&E approx. \$120 per month due to mold problem and leaving on fans
- PG&E approx. \$70 per month to \$150, summer to winter
- Pays water or garbage, other than electricity
- Pays water, sewer, and trash, rent, and split with all water, sewer, and trash and a service charge
- Rent and split with all water, sewer, and trash
- \$50 for water, \$40 PG&E
- Rent and water, sewer, and trash
- Has sat through several cases and RUBS is illegal and a violation of the ordinance, Council is considering it legal, should put in a complaint right now, will automatically get changed. Problem with RUBS, tenant pays more, landlord can make it more complicated and to track what is being paid for utilities. File a petition if paying RUBS.
- Prefer separate rent from utilities, due to utilities being varied
- Don't want to pay for others' utilities and know what utilities you are using, keep rent separate, landlords make it sound like they are getting a better deal having it combined rent/utilities and misleading.
- What happens when there are fines for excessive usage, landlords will be able to shift the costs to tenants? During last drought, scare notices were sent out for excessive usage, they did not bill.
- If there's broken pipes or irrigation and does not get fixed, they will pass that on to tenants.
- How does the RUBS get calculated with the 5% increase factor?
- Landlord/management prefer not to pay additionally on rent, has been told that they have attorneys and RUBS is legal. 3 day notice to pay rent or quit only includes rent, does not include utilities/RUBS.

## TPO – Criminal Activity - Nuisance

- Neighbor that made noise and she got a lease violation for putting a note on the neighbor's door.
- HUD came out with a ruling in 2006 to circumvent the prior law. Why are they playing around with the wording now?
- Landlord has gardeners showing up at 7am making loud noises and that should be seen as a crime.
- Actual conviction or proof of the crime, otherwise should be considered discrimination.
- How would a landlord or tenant even know if their neighbor committed a crime?
- Crime should not be allowed anywhere for eviction.
- Neighbor had an issue with wildlife and feared retaliation. Finally called the police and not escalating.
- Biggest issue, landlords not evicting tenants that disturb other tenants. City not holding landlord accountable for multiple issues.

# 2-22-18 Tenant Input Public Comments Meeting

## Ellis Act

- Not enough resources available for a tenants to move or relocated while development of property.
- Better option is for lower rents for low income tenants.
- Tenant moved to affordable housing, not able to find affordable housing with good paying job.
- Tenant in affordable housing got an increase of \$250 this year, should not be considered affordable.
- It should be very expensive to evict tenants living in ARO units.

## Source of Income

- Large percentage of attendees have seen ads posting that states no Section 8, had difficulty finding housing.
- Tenant's rent kept increasing until the amount was not covered under Section 8. Once tenant left, the rent had decreased for following tenant.
- Need an ordinance like this to assist and prevent homelessness.
- How long will it take for the Rent Registry to provide analysis for these types of issues?