

District 1 — Justin Lardinois
District 3 — Barry Del Buono
District 5 — Ruben Navarro
District 7 — Vacant
District 9 — Julie Quinn
Mayor — Nhi Duong

(VC) Alex Shoor — District 2
Huy Tran — District 4
(C) Andrea Wheeler — District 6
Vacant — District 8
Vacant — District 10
Martha O’Connell — CAAC MR
Ryan Jasinsky — CAAC ML

*Commissioners are appointed by corresponding Council Members, but do not represent the Council District.

MEETING AGENDA

5:45 PM

AUGUST 8, 2019

CITY HALL WING ROOMS 118-119

I. Call to Order & Orders of the Day

II. Introductions

III. Consent Calendar

- A. Approve the Minutes for the Meeting of June 13, 2019
ACTION: Approve the June 13, 2019 action minutes

IV. Reports and Information Only

- A. Chair
B. Director
C. Council Liaison

V. Open Forum

Members of the Public are invited to speak on any item that does not appear on today’s Agenda and that is within the subject matter jurisdiction of the Commission. Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Commission.

VI. Old Business

VII. New Business

A. Ellis Act Ordinance Re-control Provisions
(F. Tran, Housing Department)

It is recommended that the Commission

1. Review the staff report on:
 - a. Research on Ellis Act Ordinance’s existing re-control provisions including conversations with developers and lenders,
 - b. Updated research from other communities regarding the re-control provisions in other Ellis Act ordinances in order to assess the extent they

may make new residential projects more difficult to build, as requested from the February 5, 2019 City Council meeting, and

2. Make recommendations to the City Council on potential changes to the Ellis Act Ordinance including:
 - a. Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished, and
 - b. Consideration of new options to meet requirements for re-control:
 - i. Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
 - ii. Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

B. 2018-2019 Rent Stabilization Program Fourth Quarterly Report for the Apartment Rent Ordinance, Tenant Protection Ordinance, and Ellis Act Ordinance (F. Tran, Housing Department)

ACTION: Review the report and provide possible recommendations.

C. 2018-2019 Rent Stabilization Program Fourth Quarterly Report for the Mobilehome Rent Ordinance (F. Tran, Housing Department)

ACTION: Review the report and provide possible recommendations.

VII. Open Forum

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VIII. Meeting Schedule

The annual Commission retreat will be held on Saturday, August 24, 2019, at 9 a.m. at Donner Lofts, 158 E. St. John St., between N. 4th and 5th Streets in Downtown San José.

The next regular Commission meeting is scheduled to be held on Thursday, September 12, 2019, at 5:45 p.m. in Wing Rooms 118-120 at San José City Hall, 200 E. Santa Clara St., San José, CA 95113.

IX. Adjournment

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

You may speak to the Commission about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the Commission. Please be advised that, by law, the Commission is unable to discuss or take action on issues presented during Open Forum. Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the Commission unless listed on the agenda, which has been posted not less than 72 hours prior to meeting.

Agendas, Staff Reports and some associated documents for the Commission items may be viewed on the Internet at <http://www.sanjoseca.gov/hcdc>.

Correspondence to the Housing & Community Development Commission is public record and will become part of the City's electronic records, which are accessible through the City's website. Before posting online, the following may be redacted: addresses, email addresses, social security numbers, phone numbers, and signatures. However, please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the Housing & Community Development Commission, will become part of the public record. If you do not want your contact information included in the public record, please do not include that information in your communication.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk, 200 East Santa Clara Street, 14th Floor, San José, California 95113, at the same time that the public records are distributed or made available to the legislative body. Any draft resolutions or other items posted on the Internet site or distributed in advance of the commission meeting may not be the final documents approved by the commission. Contact the Office of the City Clerk for the final document.

On occasion, the Commission may consider agenda items out of order.

The Housing & Community Development Commission meets every Second Thursday of each month (except for July and December) at 5:45pm, with special meetings as necessary. If you have any questions, please direct them to the Commission staff. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events, or printed materials, please call (408) 535-1260 as soon as possible, but at least three business days before the meeting.

Please direct correspondence and questions to:

City of San José
Attn: Viviane Nguyen
200 East Santa Clara Street, 12th Floor
San José, California 95113
Tel: (408) 975-4462
Email: viviane.nguyen@sanjoseca.gov

Para residentes que hablan español: Si desea mas información, favor de llamar a Theresa Ramos al 408-975-4475.

Riêng đối với quý vị nói tiếng Việt : Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Viviane Nguyen, Đ.T. 408-975-4462.

對於說華語的居民: 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

Para sa mga residente na ang wika ay tagalog: Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Shirlee Victorio sa 408-975-2649. Salamat Po.

HOUSING & COMMUNITY DEVELOPMENT COMMISSION
MEETING ACTION MINUTES
JUNE 13, 2019

MEMBERS PRESENT: Andrea Wheeler Chair
Alex Shoor Vice Chair (Arrived 5:53 PM)
Martha O’Connell Commissioner
Michael Fitzgerald Commissioner
Huy Tran Commissioner
Ruben Navarro Commissioner (Arrived 5:58 PM)
Barry Del Buono Commissioner
Ryan Jasinsky Commissioner (Exited 8:45 PM)
Julie Quinn Commissioner

MEMBERS ABSENT: Nhi Duong Commissioner
Justin Lardinois Commissioner
District 7 Vacant
District 8 Vacant

STAFF: Helen Chapman Council Liaison
Kristen Clements Housing Department
Selena Copeland Housing Department
Viviane Nguyen Housing Department
Adam Marcus Housing Department
Fred Tran Housing Department

(I) Call to Order & Orders of the Day

Chair Wheeler called the meeting to order at 5:48 PM.

(II) Introductions – Commissioners and staff introduced themselves.

(III) Consent Calendar

A. Approve the minutes for the meeting of May 9, 2019

ACTION: Approve the May 9, 2019 action minutes

Commissioner O’Connell made a motion to approve the minutes, with the amendment on Item VII on Mobilehome Evictions with a vote correction that Commissioner Jasinsky voted “no,” with a second by Commissioner Jasinsky.

Yes: Wheeler, Shoor, O’Connell, Fitzgerald, Tran, Navarro, Del Buono, Jasinsky, Quinn

(IV) Reports and Information Only

A. Chair: Chair Wheeler expressed appreciation for Commissioner Fitzgerald for his service on the Commission.

B. Director: Ms. Kristen Clements provided an update on the HCDC letter on mobilehome eviction monitoring and Commissioner Jasinsky’s dissenting letter speaking on his own behalf was submitted to Rules Committee and will be included for the June 19, 2019 meeting. Ms.

DRAFT

Clements also provided an update on June 11, 2019 City Council meeting regarding the items of the budget and equity discussion, Annual Action Plan was approved and submitted to HUD, Safe Parking was approved. At the June 25, 2019 City Council meeting, the items agendaized include: Moderate-Income Housing Strategy, Workforce standards, and downtown high-rise exemption. For the Commission vacancies, the applications are being evaluated. There are three pending appointments that are in the process of having a conflicts of interest analysis. Commissioner Fitzgerald has decided to not re-apply for a second term and will vacate the Apartment Rent Ordinance Landlord Representative seat. If he can attend the August Commission meeting, a celebration will be organized.

C. Council Liaison: Ms. Helen Chapman expressed appreciation for Commissioner Fitzgerald's service on the Commission. Ms. Chapman also provided an overview of the Equity Fund discussed at the City Council meeting on June 11, 2019 and how City Council will allocate funds from the budget. There will be a study session for additional discussion.

(V) Open Forum

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Commissioner O'Connell shared the following in the provided statement:

"Ms. O'Connell advised the Commission that until the last few days, she was unaware that if homeless started to build an encampment on private property, the City did not perform a sweep. Since Monday 6-10-19, there has been the beginning of a makeshift camp in front of the Senior Mobilehome Park in which she lives. The police were called several times but as recently as today, 6-13-19, the belongings of the homeless, including numerous hypodermic needles, are still in place. The needles are in plain site as young adults walk by to the Occupational Center and two blocks from a Child Care Center. Ms. O'Connell stated she is a "NIMFY" – not in my front yard."

(VI) Old Business

A. Policy 0-4 regarding Commissioners' Use of their Titles and Process for Possible Future Edits (K. Clements, Housing Department and Chair A. Wheeler)

Staff to present prior guidance regarding Commissioners' use of their titles

ACTION:

- 1) Review and edit a draft letter prepared by Chair Wheeler to the City Council regarding the City Council's prioritization of staff work on potential edits to Policy 0-4; and,
- 2) Make possible motion for staff to submit the letter on behalf of the Commission.

Commissioner O'Connell made the motion to consider and edit the letter drafted by Chair Wheeler and approve with amendments, with a second by Commissioner Tran. The motion passed 8-0-1.

DRAFT

Yes: Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Fitzgerald, Navarro

No: None

Abstain: Del Buono

Notes: Commissioner O'Connell requested the correction to the staff summary provided to Commissioners on June 13, 2019 on Item 4 identified as the letter submitted by Commissioner O'Connell, to reflect the authors as both Commissioner O'Connell and Commissioner Jasinsky.

(VII) New Business

A. Voting for Chair and Vice Chair for FY 2019-20 (Chair A. Wheeler) ACTION: Vote for positions of Chair and Vice Chair, nominees being Andrea Wheeler for Chair and Alex Shoor for Vice Chair, and any other Commissioners nominated at the June Commission meeting, to serve in Fiscal Year 2019-20 commencing with the August 2019 Commission meeting. (No memo.)

The Commission voted for Andrea Wheeler for the Chair position. The motion passed unanimously (9-0).

Yes: Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Fitzgerald, Navarro, Del Buono

The Commission voted for Alex Shoor for the Vice Chair Position. The motion passed unanimously (9-0).

Yes: Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Fitzgerald, Navarro, Del Buono

B. Housing Payment Equality Ordinance (formerly known as the Source of Income Discrimination Ordinance) and Update on Santa Clara County Housing Authority Rental Subsidy Program Improvements (R. VanderVeen, Housing Department)

ACTION:

- 1) Review the staff report and provide feedback on the draft housing payment equality ordinance including, but not limited to, staff's recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement; and
- 2) Accept staff recommendation of a limited position to research subsidy program incentives for participation and program improvements.

Vice Chair Shoor made the motion to approve staff report and recommendation of a limited position to research subsidy program incentives for participation and program improvements, with second by Commissioner Navarro. The motion passed (8-1).

Yes: Tran, Quinn, O'Connell, Wheeler, Shoor, Fitzgerald, Navarro, Del Buono

No: Jasinsky

Note: Commissioner Jasinsky requested Item VII-E to be moved up for discussion after VII-B. However, Chair Wheeler explained Commission initiated items are taken last and VII-E will be heard after VII-D as agendized.

C. Tenant Preference to Prevent Displacement (A. Marcus, Housing Department)

ACTION: Review the staff report, provide input to staff, and make possible recommendation to the City Council to approve an ordinance based on this framework for a preference for applicants to affordable apartments in order to help prevent displacement.

DRAFT

Commissioner Tran made the motion to accept the staff report, with a second by Commissioner Quinn. The motion passed unanimously (9-0).

Yes: Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Fitzgerald, Navarro, Del Buono

D. Update on Status of Work on a Citywide Anti-Displacement Strategy (K. Clements and J. Joanino, Housing Department)

ACTION: Consider staff update on Anti-displacement work and make possible recommendation to staff on outreach and/or priorities to examine. (No memo.)

No action taken.

E. Ad hoc Committee Report-back on Potential Vacant Residential and Commercial Properties (Vice Chair A. Shoor and Commissioner H. Tran)

ACTION:

- 1) Review, edit and approve the draft letter to the City Council prepared by the ad hoc committee regarding vacant residential properties;
- 2) Make a possible motion for staff to submit the letter on behalf of the Commission;
- 3) Discuss the report back of the ad hoc committee regarding vacant commercial land and buildings; and,
- 4) Authorize the ad hoc committee to return to the Commission at a future meeting with a draft letter to the City Council regarding potential strategies for vacant commercial properties, or otherwise amend the draft letter on residential properties to include the Commission's comments on commercial properties.

Commissioner Tran made the motion to accept the draft letter as amended, with a second by Commissioner Navarro. The motion passed (6-1-1).

Yes: Tran, Quinn, Wheeler, Shoor, Navarro, Del Buono

No: Fitzgerald

Abstain: O'Connell

Notes:

Commissioner Jasinsky exited at 8:45 PM.

Commissioner O'Connell submitted a public comment regarding Commissioner Jasinsky's request to move this Item VII-E earlier but was not approved. The public comment is included and attached.

F. Potential Policy/Program for Affordable Housing that Encourages Transportation Mobility – Commissioner-initiated Item (Vice Chair Shoor)

ACTION:

- 1) Consider information presented by Commissioner Shoor and discuss potential policy recommendations regarding affordable housing policies or programs that encourage transportation mobility;
- 2) Possibly authorize the creation of an ad hoc subcommittee to do further research and/or to draft a letter for staff to submit to the City Council, and return with information and any letter for consideration by the Commission at a future meeting.

DRAFT

Chair Wheeler made the motion to form an ad hoc committee and return to the Commission within six months with further recommendation either at the retreat or next Commission meeting, with a second by Vice Chair Shoor. The motion passed (5-3).

Yes: Tran, Wheeler, Shoor, Del Buono, Fitzgerald

No: Quinn, Navarro, O'Connell

Note: Commissioner O'Connell volunteered to be on the ad hoc committee.

(VIII) Open Forum

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Commissioner Quinn expressed concerns about the exchanges between Commissioners during discussions on agenda items.

(IX) Meeting Schedule

The annual Commission retreat will be held during summer 2019 at a time and place TBD. The next regular Commission meeting is scheduled to be held on Thursday, August 8, 2019 at 5:45 p.m. in Wing Rooms 118-120 at San José City Hall, 200 E. Santa Clara St, San José, CA 95113.

(X) Adjournment

Chair Wheeler adjourned the meeting at 10:28 PM.

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Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: August 1, 2019

Approved

Date

SUBJECT: ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS

RECOMMENDATION

It is recommended that the Commission

1. Review the staff report on:
 - a. Research on Ellis Act Ordinance's existing re-control provisions including conversations with developers and lenders,
 - b. Updated research from other communities regarding the re-control provisions in other Ellis Act ordinances in order to assess the extent they may make new residential projects more difficult to build, as requested from the February 5, 2019 City Council meeting, and
2. Make recommendations to the City Council on potential changes to the Ellis Act Ordinance including:
 - a. Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished, and
 - b. Consideration of new options to meet requirements for re-control:
 - i. Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
 - ii. Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

EXECUTIVE SUMMARY

For the requested analysis of the impact of the current Ellis Act Ordinance re-control provisions, staff reviewed six areas of research: 1) interviews with developers and lenders, 2) interviews with tenants living at properties that received Ellis Act Ordinance and profile summary of ARO tenants, 3) review of current Ellis Act Ordinance re-control provisions, 4) additional research on other cities' experience with the Ellis Act ordinance re-control provisions, 5) analysis on density

and market rents, and 6) proposal of modifications to the re-control provision of the Ellis Act Ordinance.

Staff is recommending potential changes to the Ellis Act Ordinance including modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished. In addition, other modifications proposed are consideration of new options to meet requirements for re-control:

- Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
- Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

BACKGROUND

On February 5, 2019, the City Council directed staff to return with additional research regarding the impact of the Ellis Act Ordinance re-control provisions on new developments. The areas of research directed include:

- Information from interviews with developers and lenders regarding the impact of Ellis Act Ordinance re-control provisions on new developments,
- Additional research on other cities' experience with the Ellis Act Ordinance re-control provisions,
- An analysis determining the threshold of new apartments that result in net positive affordable housing following demolition of existing rent stabilized apartments, and
- Other formulations, that would still maintain a minimum 1-for-1 replacement of rent controlled or rent-restricted units, that can improve feasibility of housing development.

A summary of past City Actions is in **Table 1**.

Table 1: Previous City Actions Pertaining to Ellis Act Ordinance

Date	Source	Actions
May 10, 2016	City Council	Directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market. The City Council gave this direction as part of the policies adopted to strengthen the Apartment Rent Ordinance (ARO).
April 18, 2017	City Council	Approved the Ellis Act Ordinance on April 18, 2017, and included re-control provisions on all new apartments.
April 24, 2018	City Council	Amended the Ellis Act Ordinance to reduce the number of replacement apartments subject to re-control to the greater of: (a) the number of demolished rent stabilized units, or (b) half of newly constructed

		replacement apartments (rather than all the replacement units). In addition, non-ARO apartments with three or more units became subject to the Ellis Act Ordinance’s notice requirements and relocation specialist fee. The City Council also approved an exemption from the re-control provisions if 20% of the new replacement apartments are deed-restricted affordable apartments (i.e. Inclusionary Housing Ordinance built on-site plus 5% of units at 100% of area median income).
March 7, 2019	Housing and Community Development Commission	Recommended against any amendments to the Ellis Act Ordinance and approved an Ad Hoc Subcommittee to draft a letter to the City Council (Attachment A).

Current Ellis Act Ordinance Requirements and Provisions

The Ellis Act Ordinance establishes a process by which an owner can permanently remove their apartment buildings from the rental market. A summary of the Ellis Act Ordinance requirements is provided below:

For tenants of both ARO and non-ARO apartments:

- **Noticing** – All households must be provided with a minimum of 120 days’ notice prior to the removal of the property from the rental market. Upon request, 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 to vacate.
- **Relocation Specialist Services** – All tenant households are entitled to relocation services through a specialist who assists tenants in the procedures, obtaining assistance, and developing a relocation plan.

For tenants of ARO apartments:

- **Relocation Benefits** – All tenant households are eligible to receive relocation benefits. Qualifying households include 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.
- **Relocation Specialist Services** – All tenant households are entitled to relocation services through a specialist who assists tenants in the procedures, obtaining assistance, and developing a relocation plan.
- **Right to Return** – If the removed apartments return to the rental market within ten years, tenants have a right to return to their apartments.
- **Re-control** – If an owner demolishes existing rent stabilized apartments and rebuilds apartments at the same location within five years, the greater of 50% of all new

apartments or the number demolished will be subject to the City's Apartment Rent Ordinance. The owner sets the initial rent for these re-controlled replacement apartments.

ANALYSIS

For this analysis, staff examined six areas of research:

- **Interviews with developers and lenders** – Examines staff insights from developers and lenders.
- **Interviews with tenants who lived at properties that received Ellis Act Ordinance notices** – Examines the tenant interviews, analysis of demographics and displacement impacts, and demographics of tenants and owners subject to ARO.
- **Review of current Ellis Act Ordinance re-control provisions** – Summary of the rent control options and exemptions for on-site affordable housing.
- **Additional research on other cities' experience with the Ellis Act Ordinance Re-control Provisions** – Examines that a majority of cities' Ellis Act Ordinance requires 100% re-control, review of development activity of other cities.
- **Density and market rents analysis** – Analyzes the ratio needed to replace lost units with low income restricted affordable housing, impacts of re-control with new development has a higher density than existing apartments, and compares rent levels across different types of apartments.
- **Other policy modifications for re-control** – Proposal of modifications to the re-control provision of the Ellis Act Ordinance.

After conducting density and market rents analysis, staff recommends the following proposed modifications to the re-control provisions:

- Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished, and
- Consideration of new options to meet requirements for re-control:
 - Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
 - Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

I. RESULTS OF THE INTERVIEWS WITH DEVELOPERS AND LENDERS

Interviews were conducted with developers and lenders to better understand if the current Ellis Act provisions are preventing market rate housing from being constructed in San José. Staff from the Housing Department and the Office of Economic Development interviewed developers who submitted preliminary planning applications on sites with rent stabilized apartments located on the proposed development site. A total of 12 proposed developments were identified as affected by the Ellis Act re-control provisions. Developers moving forward with projects not subject to

re-control provisions, such as an affordable housing development and a development built on a property with a demolished building built after 1979, were not included in the interviews. Of the 12 proposed projects, 10 developers represented the projects (two developers had more than one project). Three of the 10 developers did not respond to our request. Seven interviews were conducted with developers and consultants who are working on residential projects affected by the Ellis Ordinance re-control provision. The interviews covered a range of topics, including:

- Review of the proposed projects,
- Reasons developers gave as to why a development was or was not moving forward,
- Developer's statements regarding the potential impact of the Ellis Act re-control provisions on proposed developments,
- Developer familiarity with the Ellis Act re-control provisions, including the Affordable Housing Waiver, and
- Impact of potential affordability requirements on proposed developments.

Attachment B provides a summary of the comments made by developers and lenders.

A. Developer Feedback

Developers reported multiple factors that have influenced them to reconsider or not move forward with their development proposals both in and outside of San José. Of the seven developers contacted, three indicated that they would not move forward with their proposed developments for reasons unrelated to the Ellis re-control provisions. Additional feedback include:

- Developers cited a range of issues that make moving forward with their projects challenging, including dealing with historic buildings, high land costs, the time it takes to get through the development process, softening rents and City fees including housing and parks. None of the three developers stated they were not proceeding with their development due to the re-control provision.
- The remaining developers expressed some concerns regarding the Ellis Act Ordinance re-control provision. Some developers indicated that their business model is to offer rent concessions in the first year in order to have a successful lease-up period and then increase rents in year two by as much as 10-20%. Therefore, they believed that restricting annual rent increases to 5% for potentially half of the apartments, as required under the current Ellis Act Ordinance, will make their project not viable.
- Developers also expressed concern that they would be unable to benefit when future market rent increases could exceed 5%, but they will be exposed to the risks when rents are flat or may need to be decreased. While developers expressed concerns about the Ellis re-control provisions, no one has been rejected for financing because of the Ellis re-control provision.
- When talking with developers, it became clear some developers are making long-term investments while others intend to sell their buildings one or two years after lease-up. The short-term investors are highly concerned with capturing the maximum rent potential from the building within the first two years to maximize the value of the building. The value of the building is a function of the rents--therefore the higher the rents, the higher the value of the building when it is sold to a long-term investor. According to developers

interviewed, the 5% limitation on half of the new units from the Ellis Act provisions may reduce the anticipated profit for short-term investors.

B. Lender Feedback

The Housing Department had limited success in interviewing lenders and investors, given the lack of referrals from developers and lenders' restrictive policies on disclosing lending practices. Staff interviewed three lenders and investors who work in the San José market and found the following:

- None of the lenders understood San José's specific requirements before talking to staff.
- Based on the three interviews, staff learned that a typical financing structure for a development's construction is up to 30-40% equity, both from the developers and from third-party equity investors, and 60-70% from commercial bank loans. Investors try to limit their risks and increase their financial returns. Commercial bank loans are secured by the value of the property and are typically senior over the equity debt. Therefore, they would be the first to be repaid in the event of liquidation. Equity debt is usually last in the capital stack and faces the highest risk. Lenders indicated that loans are generally underwritten assuming growth rates tracking the Consumer Price Index. As noted in the [David Rosen's report](#), "typical underwriting standards use a 2% escalation on revenues and 3% on costs for the purpose of refinancing." The annual rent increase of 5% therefore should be adequate to meet their proforma projections.
- Short-term equity providers and lenders generally participate in the development for only five years, so they are most concerned about risks regarding construction timeline, short-term market conditions such as market rents, and how quickly the apartments lease-up. These equity investment transactions are designed to maximize the rents in order to sell the building quickly at the highest sale price. Long-term lenders generally split 30-40% equity and 60-70% commercial bank loans and typically purchase the building at year five or six for a longer term investment. While some lenders expressed a negative perception of the Ellis re-control provision, it is unclear if they would actually refuse to loan on a development or offer less competitive rates because of the re-control provision.

C. Staff Insight from Developers and Lenders

This section summarizes the staff insights gathered from talking with developers and lenders.

- **Lack of knowledge and understanding of San José's Ellis Act provisions** – Both developers and lenders had misconceptions regarding the Ellis Act and the Apartment Rent Ordinance provisions. All of the lenders interviewed assumed that the allowable rent increases in San José were a factor of the Consumer Price Index, consistent with most rent stabilization programs throughout the State. More education is necessary to inform developers and lenders regarding local rent control and Ellis Act provisions. Rents set following demolition of rent stabilized apartments may initially be set at market rates and rents are limited to 5% annual rent increases thereafter. Rents are set again at market when a tenant voluntarily leaves the apartment. Given the high turnover of Class A apartments (according to RealPage, the average annual turnover for Class A apartments is 44.6%), it is anticipated that ARO rents will be reset frequently. Additionally, developers

and lenders must be educated regarding the option under the Ellis Act Ordinance to provide on-site affordable housing as an alternative to implementing re-control provisions.

- **Limitations on rent increases during the lease-up period** – Developers expressed a concern that they would not be able to provide rent concessions during the initial lease up period. The Apartment Rent Ordinance states the annual rent increase of 5% is based on the rent paid in the prior year. The initial rent is defined as the actual rent paid by the tenant at commencement of the tenancy. As noted above, one developer stated they depress the initial rents in order to lease-up the building and a concern is that the 5% cap would not allow them to catch up after the first year. An alternative to the developer’s practice of initially depressing the rents at lease-up (as is common in many business models) is to offer a rent reduction, such as one-month free rent, in the second month following payment of the first months’ rent. Both the monthly discount method and this method can result in the same discount but the latter option resolves the developer’s concerns about a 5% cap on a discounted rent. Therefore, the developer can rent the apartment at the rate they desire and generate interest with the free rent concession. Allowing increases greater than 5% after the end of the lease would be inconsistent with the policy goal of the Apartment Rent Ordinance which is to prohibit rent spikes.
- **Limitations on rent increases following a recession and/or during a strong market** – Developers are concerned about the amount of time it takes to “catch up” on rents after a recession and/or the inability to increase rents rapidly when the market is hot. As stated in the David Rosen study, average rent increases in San José have rarely approached the 5% limitation. During the last recession, average rents declined by 8.7% and were followed by two years of growth at 4.4% and 3.3%. The 5% rent limitation will allow for the growth in rents following a recession. However, it should be noted, that while the average rent increases have not typically exceeded 5%, some developments may be able to achieve higher rent increases. To the extent that residential development in San José is predominately being built on the higher end of the market, it may be the least resilient during a recession. The purpose of the 5% rent limitation is to provide stability for renters during periods of spiking rents. Allowing increases in order to “catch up” with the market is inconsistent with the Rent Stabilization program and the policy goal of providing stability to renters.
- **Loans to developments with rent stabilized apartments** – Developers were concerned that they would not be able to finance their developments with Ellis re-controls. Both debt and equity lenders underwrite loans using industry-standard growth rates of 2-3% on future rents. Interviews with both debt and equity lenders indicated that a 5% rent limitation is reasonable and would not impact their decision to move forward with an investment in new development. One lender stated that although the 5% rent limitation is reasonable, the concept of rent stabilization is not attractive. The ability to generate higher level of returns that exceed average growth rates is what attracts capital to markets like San José that are undergoing transformation. This perception of rent stabilization may or may not impact a lenders decision to invest in San José.

- **Limitations on rent increases could reduce the value of new buildings** – Developers were concerned that Ellis re-control provisions would not allow them to maximize their profit. Short-term investors and developers are typically anticipating a sale or refinancing of a new building in the first or second year following lease-up. Developers want to maximize the rents received prior to the sale as higher rents justify a higher sales price. The 5% rent limitation may reduce the potential for sharp rent increases leading up to a sale or refinancing event, however this will only impact the amount of profit made on the sale, not on the ability to pay the debt incurred to complete the development. This limitation on profit may or may not impact a lenders decision to invest in San José.

D. Summary on Interviews with Developers and Lenders

Overall, developers and lenders expressed concerns about the Ellis Act re-control provision but initially did not fully understand how it is implemented in San José. One of the primary concerns expressed is the inability to rapidly increase rents. Developers also expressed concerns that given the current market cycle and investor choice, any perceived limitation on rents may negatively impact their developments. However, developers were optimistic that their developments would perform better than historical rent increases given the significant projected changes in the downtown and surrounding neighborhoods.

II. RESULTS OF TENANT INTERVIEWS IMPACTED BY ELLIS NOTICING AND PROFILE OF TENANTS LIVING IN ARO UNITS

A. Interviews with tenants that Received Ellis Act Ordinance Noticing

Staff conducted site visits and door-to-door interviews with 57 tenants living in four properties where the owner indicated interest in withdrawing the apartments from the rental market. This represents 35% of the total units in the four properties. The purpose of the interviews was to determine if tenants could afford to live in the new development to learn about their current rents they are paying, and their occupation. The findings include:

- The occupants of these rent stabilized buildings generally represented three profiles for the larger complexes: recent immigrants, working class families, and very-low income households who often doubled up to afford the apartments.
- Each building represents a different sub-population based on the location and condition of the building.
- Tenants who would be displaced from their rent stabilized apartments reported they would not be able to afford Class A market rents if faced with their owner removing their apartment from the rental market. It is unknown whether tenants would qualify for an affordable housing apartment if the developer choose to provide the Inclusionary Housing option. It is possible tenants would be displaced by the redevelopment regardless of the option chosen by the developer.

Attachment C provides a summary of the tenant interviews.

B. Tenants and Owners of Apartments Subject to the Apartment Rent Ordinance and impacted by Ellis Act Ordinance

The Ellis Act Ordinance particularly impacts tenants and owners of rent stabilized apartments under the Apartment Rent Ordinance. The Apartment Rent Ordinance applies to 39,009 apartments built and occupied prior to September 7, 1979. This is a significant portion of the rental housing stock in San José. ARO apartments make up 49% of all market rate rental housing in San José. The “[San José ARO Study](#)” by Economic Roundtable Report includes a summary of the profile.

Ownership Characteristics

- 66% of ARO owners owned three- or four-unit rent stabilized buildings. The statistic only reflects owners’ ARO buildings located in San José that are subject to the ARO. For example, an owner may own rental properties outside of the city or apartments in San José that were built after 1979 and are not subject to the ARO.
- 50% of ARO owners (1,501) lived outside of San José. Half of ARO owners (1,479) lived in San José.

Tenant Demographics

- There are approximately 140,000 people living in ARO units in San José, making up nearly half of the tenants in market-rate rental housing. This calculation is based on an average size of 3.1 persons per household.
- In 2016, ARO tenants by ethnicity include 49% Hispanic or Latino, 34% Asian American, 20% White, and 5% African American.
- ARO tenants by education attainment include 9% graduate degree, 16% Bachelor’s Degree, 26% Associate Degree and some college, and 49% High School Diploma or less than High School Diploma.

III. CURRENT RE-CONTROL PROVISIONS OF THE ELLIS ACT ORDINANCE

The Ellis Act Ordinance impacts re-control provisions for apartments rent stabilized under the ARO as follows:

- **Re-control to the greater of: (a) the number of demolished rent stabilized units, or (b) half of newly constructed replacement apartments (rather than all the replacement units)** – In this instance, the owner sets the initial rent to the current market rate and then any subsequent rent increase is subject to the ARO’s annual maximum of 5%. All of the other provisions of the ARO would also apply to these units.
- **A re-control amendment by the City Council allows an option for developer to build affordable apartments on-site instead of re-control** – In April 2018, City Council approved an exemption from the re-control provisions if 20% of the new replacement apartments are deed-restricted affordable apartments (i.e., meet Inclusionary Housing Ordinance built on-site requirements plus 5% of units at 100% of area median income). This means that instead of being subject to rent control, projects building twenty or more

units and 20% of the rental units are dedicated as affordable to households in the following Area Median Income (AMI) categories of 9% affordable to 80% AMI, 6% affordable to 50% AMI, and 5% affordable to 100% AMI. For example, if there are currently four apartments and there are 100 apartments being proposed for building, the following new units would be subject to the following re-control provisions: 9 apartments at 9% affordable to 80% AMI; 6 apartments at 6% affordable to 50% AMI; and 5 apartments at 5% affordable to 100% AMI. As a result, of the 100 new apartments built, 20 apartments would be deemed affordable.

For apartments three units or more that are non-ARO, the re-control provisions would not apply. However, tenants would still be subject to the Ellis Act Ordinance's noticing requirements and relocation specialist assistance.

IV. ADDITIONAL RESEARCH ON OTHER CITIES' EXPERIENCE WITH THE ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS

Staff also researched the different re-control provisions in other cities. Depending on the rental market, the Ellis Act Ordinance has had various impacts on the developments of new housing in the jurisdictions.

A. The majority of cities' Ellis Act Ordinances require 100% re-control

There are six cities that have enacted local Ellis Act Ordinances. The ordinances of San Francisco, Berkeley, West Hollywood, and Santa Monica have provisions requiring that all new rental housing development, following an Ellis Act withdrawal, are subject to the rent control provisions of that jurisdiction. Los Angeles also requires 100% re-control but provides an exemption from rent control provisions to developers who replace the new units with 20% restricted affordable units. This provision is similar to the exemption in the San José Ordinance except the required target incomes are different. In Los Angeles, the target income is set at 80% of the AMI. In San José, the income targets are set at 50%, 80% and 100% of the AMI. **Table 2** summarizes these provisions. Mountain View provides a right to return to tenants impacted by an Ellis Act withdrawal, but re-control provisions are not currently in place. Mountain View is exploring whether to add a re-control provision.

Table 2 – Summary of Cities with Ellis Act Provisions

	San Francisco	Berkeley	West Hollywood	Santa Monica	Los Angeles	Mountain View
What is covered by Ellis?	3 units or more	All	2 units or more & single family homes when tenant occupied	4 units or more & single family homes	2 units or more	3 units or more
How many replacement units will be subject to re-control?	All	All	All	All	All	None
Are there exemptions to re-control?	N/A	N/A	N/A	N/A	Yes	N/A

B. Development Activity in Other Cities

Many jurisdictions are not seeing demolition following Ellis Act removals. The six cities with Ellis Act Ordinance have experienced a range of outcomes with respect to actions taken following removal of apartments from the rental market. Cities such as Berkeley and San Francisco have adopted policies discouraging the demolition of current rent stabilized housing through strict review processes and permitting restrictions. Other cities such as Santa Monica and West Hollywood are experiencing limited new construction following Ellis Act removals due to developers choosing to build condominiums or waiting five years before bringing new rental housing onto the market (avoiding re-control requirements).

- **City of Mountain View** – While Mountain View is experiencing high levels of Ellis Act removals followed by demolition and new construction activity, the Mountain View Ellis Act does not currently include a re-control provision (**Table 3**).

Table 3 – Ellis Act Activity in City of Mountain View from 2016 to 2018

	Number of Ellis Projects	# of New Units in Ellis Projects	% of Total Projects (1,627)	Redeveloped As
	224	941	58%	Rental
	380	456	28%	Rowhouses
	9	9	9%	Demolition
	56	138	8%	Condominiums
	68	68	4%	Undecided
	20	15	1%	Residential
Total:	757	1,627		<i>*Note demolition of 9 units is included</i>

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- City of Los Angeles** – Los Angeles also has a high level of Ellis Act removals followed by redevelopment activity. The Ellis Act in Los Angeles includes an exemption from re-control provisions when affordable housing units are provided on-site, so theirs is the best case example for the City of San José. In the City of Los Angeles, the Ellis Act Ordinance was adopted in 2006 impacting approximately 630,000 apartments. An owner may apply for re-control exemption if: 1) replacement of the number of demolished rental units with a number of affordable housing units (80% AMI) at least equal to the number of withdrawn rental units subject to the Rent Stabilization Ordinance on a one-for-one basis, or 2) at least 20% of the total number of newly constructed rental units, whichever is greater. The affordable housing units must be located in the newly constructed developments. Since the adoption of the Ellis Act Ordinance in Los Angeles, the new projects were typically replacing the number of apartments demolished by 2.5 times that original number of units with 100% re-control. According to the data provided by Los Angeles, from July 2014 to March 2019, Los Angeles has received a total of 1,735 project applications and 6,773 units withdrawn, with the following breakdown in **Table 4**:

Table 4 – Ellis Act Activity in City of Los Angeles from July 2014 to March 2019

	Number of Ellis Projects	# of New Units in Ellis Projects	% of Total Projects (6,773)	Redeveloped As
	748	2,967	43%	Rental Housing
	300	1,260	17%	Undecided
	214	504	12%	Single Family
	104	180	6%	Commercial
	65	299	4%	Condominiums
	304	1,563	18%	Other conversions including: Co-op ownership, hotel, housing for vets, elder care facility
Total:	1,735	6,773		

Many of the new rental developments assembled land parcels after the Ellis Act requirements and the 100% re-control provision was applied on the entire new development. It is not clear from the information provided if the average densities in Los Angeles approach those desired in San José. While the majority of developments were redeveloped as rental housing, it is not clear how many developers choose other redevelopment options in order to avoid the Ellis re-control provisions. Regardless, Los Angeles staff do not believe that the Ellis Act has stopped the redevelopment of residential apartments in Los Angeles.

V. DENSITY AND MARKET RENTS ANALYSIS

Staff was directed to consider additional analysis that maintain a minimum one-to-one replacement of rent stabilized apartments with either rent stabilized or affordable apartments that would encourage construction of new housing.

A. 7:1 Increase in Market Rate Needed to Replace Lost Units with Low Income-Restricted Affordable Housing

Staff calculated the increase in density needed in market rate development that would result in a replacement of the lost units with income-restricted affordable apartments. Staff has determined that significant increases in density would result in the replacement of the rent stabilized apartments that are demolished with the application of the Inclusionary Housing requirement. The community benefit of high-density housing coupled with the Inclusionary Housing Ordinance requirement results in an overall positive outcome when the units are provided on-site.

- **Increase in Density by x7 (15% requirement)** – The calculation shows that when the number of total apartments demolished is replaced by seven times the number of original apartments, the loss of the rent stabilized apartments can be replaced with new income-restricted housing built on-site. An increase of density of eight times or more will result in a new positive number of affordable housing units.
- **Increase in Density by x5 (20% requirement)** – Should the developer choose an option other than the onsite dispersed delivery of affordable units, the density required to replace the rent-controlled units with affordable units is 5:1. If the in-lieu fee option is selected, there will be a delay in the creation of new affordable housing units.

Table 5 below demonstrates how the original number of units demolished is replaced through the 15% on-site inclusionary build on-site requirement when seven times the original number of units are produced and five times when the 20% off-site requirement is applied.

Table 5 – Density Increase Necessary to Replace Demolished Units

Number of Units Demolished	Increase in Density	Number of New Units	15% of New Units	20% of New Units (off-site or in-lieu)
5	x2	10	2	2
5	x3	15	2	3
5	x4	20	3	4
5	x5	25	4	5
5	x6	30	4	6
5	x7	35	5	7
5	x8	40	6	8

B. Impact of Re-Control when New Development has a Significantly Higher Density than Existing Apartments

Staff examined the impact of re-control when new development is proposed at a density level significantly higher than the existing building. When projects increase the density significantly, there are greater numbers of apartments subject to re-control that may act as a disincentive for developers to increase the density of the development. One potential modification to re-control is decreasing the replacement requirement if certain levels of density are achieved as a way to avoid disincentivizing density. **Table 6** illustrates how density impacts the number of re-control under the current Ellis Act provisions.

Table 6 – Examples of Re-control Provisions Based on Density of Proposed Projects

Number of Units Demolished	Number of New Units in the Proposed Development	Re-control (Greater of 1:1 or 50% of new)	20% Affordable
5	249	125	50
16	22	16	4
20	85	43	17
30	218	109	44
124	710	355	142

C. Comparison of Average Rents of Class A Market Rents, Rent Stabilized Apartment Rents And Affordable Rents at Levels Required by the Inclusionary Housing Ordinance

Staff analyzed the average rents of Class A, B, and C market rate apartment rents, as well as rent stabilized and restricted affordable apartment rents to provide a comparison of the potential income levels of tenants in each apartment type (**Table 7**). Assumed income levels were calculated for each market rate example by applying minimum income standards that market rate property managers use to qualify households to rent their apartments. Typically, the owner requires that the gross monthly income of the household must be at least 2.5 to 3 times the monthly rent. The income calculations for the restricted affordable apartments are based on the provisions of the Inclusionary Housing Ordinance, which assumes that the household cannot pay more than 30% of their income for the apartment. The one-bedroom assumes a two-person household and the two-bedroom assumes a three-person household. It should be noted, for market-rate apartments, the incomes listed are minimums needed to qualify. For the affordable apartments, incomes listed are maximum incomes allowed for qualifying households.

Table 7 – Average Effective Rents in San José and Incomes

	1 Bedroom Rents	1 Bedroom Income at 2.5 Factor	2 Bedroom Rents	2 Bedroom Income at 3.0 Factor
Class A	\$2,752	\$82,560	\$3,292	\$118,512
Class B	\$2,383	\$71,490	\$2,846	\$102,456
Class C	\$1,794	\$53,820	\$2,279	\$82,044
Rent Stabilized Apartments	\$1,644	\$49,320	\$1,957	\$70,452
Affordable Rent: 80% of the AMI	\$1,890	\$75,600	\$2,126	\$85,050
Affordable Rent: 60% of the AMI	\$1,596	\$63,840	\$1,796	\$71,820
Affordable Rent: 50% of the AMI	\$1,330	\$53,200	\$1,496	\$59,850

Sources: CoStar, February 27, 2019 and City of San José Housing Department and Rent Registry April 2, 2019
Costar Definitions for Building Class:

Class A: *In general, a class A building is an extremely desirable investment-grade property with the highest quality construction. It may have been built within the last 5-10 years, but if it is older, it has been renovated to maintain its status and provide it many amenities.*

Class B: *In general, a class B building offers more utilitarian space without special attractions. It will typically not have the abundant amenities and location that a class A building will have.*

Class C: *In general, a class C building is a no-frills, older building that offers basic space. The property has below-average maintenance and management, a mixed or low tenant prestige, and inferior elevators and mechanical/electrical systems.*

The rental data from the Rent Stabilization Program Rent Registry, which currently represents 73% of total rent stabilized apartments, indicate that the average rent for a one-bedroom apartment is \$1,644, and a two-bedroom apartments is \$1,957. For a two-bedroom rent stabilized apartment, a family needs to earn a minimum of \$70,452 to afford rent (assuming an owner requires a tenant earn income that is three times the amount of rent). These assumed income levels are comparable to households qualifying for restricted affordable apartment rents at 60% of area median income.

VI. OTHER POLICY MODIFICATIONS FOR RE-CONTROL

Given the information collected through this process, staff developed policy modifications for the City Council to consider regarding Ellis Act provisions. These modification options provide incentive to build affordable housing on-site. A summary of the potential impacts by example developments is summarized in **Table 8**.

A. Modifications to the Base Requirement for 50% Re-control

Modification #1: Re-control of new units capped to seven times apartments demolished – This modification would cap the number of re-control units to seven times the number demolished. The Ellis Act Ordinance will continue to require 50% of the total proposed apartments to be built be subject to the Apartment Rent Ordinance.

- If the number of apartments demolished multiplied by seven is less than the 50% requirement, the number of apartments re-controlled would be capped.

- If a development increases density more than seven times, developers will benefit from this provision. Overall, the increase in density to the community provides a benefit along with a significant increase in the number of rent stabilized units.

B. Consideration of New Options to Meet Requirements for Re-control

Modification #2: Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index – The Ellis Act would allow a waiver of the re-control provisions if two provisions were met:

- 15% of the new units were restricted at affordable rents onsite (consistent with Inclusionary Ordinance standards), and
- Tenants with income of 80% Area Median Income or below displaced by the development were offered a right to return to the new development at the rent paid at the time of displacement (increased annually by Consumer Price Index during the construction period) with a subsequent maximum 5% annual rent increase for the duration of their tenancy.

The obligation terminates once the tenant vacates, the apartment returns to full market rate or restricted rent. This alternative will allow low-income displaced tenants to have an option to return to their communities following the development of new housing.

Modification #3: Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis – The Ellis Act Ordinance would be modified to allow developers to receive “credit” towards their 50% re-control requirement by providing onsite affordable housing. For every one unit of onsite affordable housing created, the developer would receive three units of “credit” towards the re-control requirement. For example, in a 90-unit development, the developer may choose to provide 13 onsite affordable units, resulting in 39 (three to one credit so product of 13 and 3) units of credit towards the 45-unit (50% of 90) requirement for re-controlled units. The developer would then provide 39 affordable units and 6 re-controlled units (difference between 45 and 39).

C. Summary of Modifications

A summary of all three modifications is summarized in **Table 8**.

Table 8 – Examples of Re-control Provisions with the Three Different Modifications

	Current # of Rent Stabilized Apartments	# of New Units in the Proposed Development	Modification #1: <i>50% re-control of new units capped to seven times apartments demolished</i> <i>Number of re-controlled apartments</i>	Modification #2: <i>Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index</i> <i>Number of onsite affordable units</i>	Modification #3: <i>Onsite Affordable Housing Incentive</i> <i>Number of onsite affordable units needed to meet 50% re-control requirement</i>
	3	249	21	37	42
	16	22	112	3	4
	20	85	140	13	14
	30	218	210	33	36
	124	710	868	107	118
TOTALS:	193	1,284	1,351	193	214

RECOMMENDATION

Staff recommends the underlying requirement for 50% of all units developed following the removal of apartments from the rental market under the Ellis Act remain re-controlled. This requirement may serve as a deterrent for sites with existing rent-stabilized housing for future development. However, in light of the conversations with developers and lenders, additional modifications as options for developers would allow for a variety of outcomes for new development.

After studying this issue, staff is recommending all three of the proposed modifications to the Ellis Act Ordinance, providing additional options to developers and creating new options for long-term affordable housing throughout the City.

Staff recommends the following modifications to the Ellis Act Ordinance:

- **Modification #1** – Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished
- **Modification #2** – Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index

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- **Modification #3** – Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

PUBLIC OUTREACH

The Housing Department conducted community outreach and met with stakeholders while developing the revisions to the Ellis Act Ordinance. Staff also interviewed developers, lenders, owners, and tenants for feedback on re-control impacts and modifications to the current provisions. Additional public comments are included as **Attachment D**.

/s/

JACKY MORALES-FERRAND

Director, Housing Department

For questions, please contact Rachel VanderVeen, Deputy Director of Housing, at (408) 535-8231.

ATTACHMENTS:

- **Attachment A** – Letter from the Housing and Community Development Commission
- **Attachment B** – Summary of Lender and Developer Feedback
- **Attachment C** – Summary of Tenant Feedback
- **Attachment D** – Additional Public Comments



Housing and Community Development Commission

March 28, 2019

Mayor Sam Liccardo
Members of the City Council
200 E. Santa Clara St, 18th Floor
San José, CA 95113

RE: Recommended City Council Amendments to the Ellis Act Ordinance

Members of the City Council,

We, the members of the Housing and Community Development Commission, strongly urge you to vote against any changes to the Ellis Act Ordinance at this time.

The Ellis Act Ordinance in its current form was enacted only ten months ago, and only after extensive community engagement and public comment was conducted. The process for crafting the current Ellis Act Ordinance took two years and gathered input from hundreds of stakeholders, including developers, lenders, residents and owners of rent-stabilized units. When contrasted with the rushed push by the City Council to amend the Ellis Act Ordinance now, the Commission is left questioning whether the Council truly wants a deliberative process.

The Ellis Act Ordinance, as it stands, was enacted on April 24, 2018 as a means of ensuring that housing units governed by the Apartment Rent Ordinance (ARO) would not undergo conversion to get around the rent-stabilization program that was adopted therein. The simple premise behind the Ellis Act Ordinance is to ensure that affordable housing rental units could not be torn down without being rebuilt if more rental units were to be created. The way this works is that buildings with rent-stabilized apartments could not be taken off the market and replaced by newer apartments unless fifty percent (50%) of the rental units of the new building, or an equal number of rental units that were lost, whichever is greater, were rent-stabilized. Alternatively, the developer could choose to dedicate twenty percent (20%) of the new units to income restrictions, meaning that those units could only be rented to those who met the lower-income requirements.

The current Ordinance provides developers with some flexibility in building high-density housing while contributing to the supply of affordable housing in San Jose. It was also a compromise from the original Ellis Act Ordinance, which required 100% of new rental units to be rent-stabilized if they were built to replace buildings that were subject to rent stabilization. The long and transparent process that produced this compromise was the culmination of a vast

MAYOR AND CITY COUNCIL

RE: Recommended City Council Amendments to Ellis Act Ordinance

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amount of effort invested by the Housing Department and by this Commission, including twenty separate community engagement sessions with stakeholders and four HCDC meetings.

The present direction to re-evaluate the Ordinance was prompted by purely anecdotal incidents, as acknowledged in Mayor Liccardo's Feb 1, 2019 memo. At the March 7, 2019 HCDC meeting, the Housing Department presented two redevelopments which have proceeded under the current Ordinance, and no evidence of developments which have stalled because of the Ordinance. Furthermore, the 2019 report on the Housing Element of San Jose's General Plan makes clear that the City of San Jose is ahead of its market-rate development goals while falling further behind in meeting its affordable housing goals.

The public engagement process for the Google/Diridon Station Area made very clear that the people of San Jose are actively concerned about displacement in San Jose. In voting to re-examine the Ellis Act Ordinance has given the Housing Department less than two months and this Commission only one week to review. This hasty push by the Council to weaken the tenant protections of the Ellis Act Ordinance is particularly troubling in light of the stated goals of Mayor Liccardo to improve transparency around development in San Jose.

We as the HCDC cannot endorse any changes to the Ellis Act Ordinance under these circumstances. This process is rushed and flawed. The care and study that went into creating the current ordinance is being tossed out by the hastiness displayed in the Council's current decision. If this policy is to be revisited, HCDC needs more than anecdotal evidence to support changes. Adequate data, including third-party data, cannot be gathered by the Housing Department without adequate time and preparation.

We thank you for the opportunity to serve our city as citizen commissioners and we appreciate you hearing our concerns. We care deeply about housing issues and are fortunate to have the opportunity to work on them with you and city staff. If you have any follow up questions about our position, we are happy to hear them. Please feel free to contact me at HCDC6@sanjoseca.gov.

Sincerely,

/s/

Andrea Wheeler
Commission Chair

SUMMARY OF DEVELOPER AND LENDER FEEDBACK

Summary of Interviews with Developers

Developer Interviews

Factors to Consider when Determining if the Development will Move Forward

- Financial feasibility – price difference between the current sale price and the redevelopment resale value.
- Historic structures on adjacent parcels are presenting a challenge.
- Challenges negotiating land price.
- Park fees are challenging for the development.
- Housing type is challenging; wanting to explore options such as co-living to make the development move forward.
- The developer's lender needs to see \$4,000 monthly rent for the new apartments to make the investment.
- Developer is looking for a 10% return; narrow margin considering all of the variables that may shift during the development process.
- Ellis requirements represent another item in a long list of requirements by the City that make developing residential difficult.
- Developing in an opportunity zone – rushed timeline means the Developer needs the development process to move forward quickly to maintain investment.
- Developers are making investments in areas where they think the market will develop and improve over time – speculating on the opportunity to make a larger return in areas as they become more desirable. Ellis potentially limits the opportunity (and therefore the attractiveness) of these areas.
- Land costs already reflect future investment in San José including Bay Area Rapid Transit (BART) and Diridon expansions. Returns must be made on the development to recapture the initial funding of the land purchase.
- High rise housing developments face unique challenges due to the cost of development and difficulty building to the heights necessary to cover the costs.
- While the cost of steel, glass and labor are always a concern, the cost of land in San José is the greatest concern.
- Softening rents are making new developments difficult to move forward.

Familiarity with Affordable Housing Programs

- No direct experience with affordable housing.
 - Familiar – interested in producing the 20% affordable option rather than having 50% of the new apartments subject to the Rent Stabilization program.
 - Very interested in affordable housing – if the requirement to replace the demolished apartments on a one-for-one basis with affordable apartments restricted at 80% to 100% Area Median Income (AMI), the development could move forward. This option would be preferred over the 50% re-control provision.
-

*Summary of Interviews with Lenders***Lender Interviews****Current Market**

- Developments are moving forward with approximately 30% from equity investors and 70% from typical bank loans. Equity investors are assuming greater risk on the development.
- Equity investors are concerned about the first five years of a development – construction and lease up are the most critical points in the process.
- Long-term investors purchase the property once construction is complete and the building is stabilized – meaning it is leased up for one to two years.

Impact of Ellis Act on Development

- In general, equity investors and bank underwriters are projecting conservative growth rates on rents generally tracking the Consumer Price Index (CPI). The 5% annual increases under the re-control provisions are generous and reasonable.
- Debt providers will be comfortable with a 5% growth rate; equity investors may feel a little tighter with the 5% limitation; overall, both types of lenders will find a 5% rent increase reasonable.
- Approximately 70% of the developers partnered with use rent discounting as a business model to ensure an expedited lease up period. If the re-control provisions would not allow the rents to “catch up” to market in the first two years, this may be a challenge.

Familiarity with affordable housing programs

- Familiar – affordable rents work at the 80% to 100% AMI levels when included in a market-rate development.
 - Familiar – for sale is challenging to make work due to the high sale prices; rental at lower income levels is also challenging. Generally, affordable housing works best when concentrated in a separate building.
 - Deed restrictions are predictable and the programs are clearly defined.
-

SUMMARY OF TENANT FEEDBACK*Summary of Interviews with Tenants***Tenant Interviews****Current Rent Levels**

- \$1,900
- \$1,992
- \$2,042
- \$2,100
- \$2,300

Aspects of living in this Neighborhood or Complex

- Access to transportation, such as light rail, is critical to some residents.
- Lack of maintenance or dilapidated buildings, but rents are still high.
- Immigrants of India - work for tech companies but are contracted out and do not make a six figure salary, or they make a six figure salary, but support their families back home. Cost of day care and school is also expensive and eats away at what appears to be a larger salary.
- Transportation and amenities attract lower income families to certain neighborhoods, and also attract tech workers traveling to neighboring cities.
- Majority are seniors with fixed incomes, that live pay-check to pay-check. Can't imagine moving to another apartment because of market-rate rents. Residents would most likely have to leave the State or would be forced to move in with family members.
- Long-term tenants who have established a community and raised their families feel uncertain and uneasy about pressures of displacement. Questions such as, "Where will I move to?"; "What will happen to my neighbors?"; and "How will I afford market-rate rents?"

Occupation and Work Location

- Hospital – City of Santa Clara
- Software engineer – City of Palo Alto
- Teacher – City of San José
- Real estate – City of San José
- Driver – City of San José
- Engineer – City of San José
- Consultant – City of San José
- Custodian and truck driver – City of San José
- Construction – City of San José
- Retired and on fixed-income
- Domestic worker- City of San Jose



April 4, 2019

Honorable Mayor Sam Liccardo and City Council
 City of San José
 200 East Santa Clara Street
 San José, CA 95113

Executive Committee

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PRESIDENT & CEO
 Matthew R. Mahood
 The silicon valley organization

Re: Ellis Act Re-Control Provisions

Dear Mayor Liccardo and City Council:

On behalf of The Silicon Valley Organization (The SVO), I am writing to urge the Council to adopt a 1-for-1 replacement policy of rent-controlled units for new residential projects under the Ellis Act. By way of background, The SVO is the Silicon Valley's premier business advocacy organization representing nearly 1,200 companies that employ over 300,000 workers, and we represent our membership as the region's largest Chamber of Commerce.

Any revisions to the Ellis Act re-control rules should preserve the existing supply of rent-controlled housing units, while avoiding unnecessary policies that would make residential projects infeasible for redevelopment opportunities. The city's existing 50% re-control rules on new construction projects makes it extremely difficult for housing developers to obtain adequate financing to increase the city's housing stock. The key to solving the housing crisis is to significantly accelerate housing production at all income levels – we must do everything we can to remove impediments to housing and the Council must not impose a 50% re-control rule that would be counterproductive to the city's housing production goals.

According to a recent staff report on the Housing Crisis Work Plan, an average of 2,800 residential units were built between 2010 and 2017. There simply is not enough housing production to tackle the housing affordability crisis head-on. Furthermore, we are aware that the Housing Department is floating a proposal to exempt the 50% re-control provisions, but only for new residential projects that generate at least 7 times the number of original units on the existing site. Many small sites will be unable to meet this density requirement and this policy proposal essentially supports the status quo by denying redevelopment opportunities. By amending the Ellis Act re-control provisions to strictly a 1-for-1 replacement rule, we can remove obstacles to construction and start encouraging residential development that will address housing affordability in the region.

In closing, we strongly urge the Council to exempt new residential construction from the Ellis Act 50% re-control provisions. If you have any questions about The SVO's position on this issue, please contact Eddie Truong, Director of Government and Community Relations, at

[REDACTED]

Sincerely,

[REDACTED]

Matthew R. Mahood
 President & CEO



April 5, 2019

Mayor Sam Liccardo
San Jose City Council
Via email submittal

RE: San Jose CC Meeting 4.9.19 Ellis Act Recontrol Provisions

Dear Mayor Liccardo and San Jose City Council,

BIA Bay Area urges the City Council to eliminate the 50% re-control provisions under the Ellis Act and adopt a 1-for-1 replacement policy of rent-controlled units for new residential projects. Any revisions to the Ellis Act re-control rules must eschew counterproductive policies from current housing law that make residential redevelopment opportunities infeasible.

The city's existing 50% re-control rules on new construction projects effectively kills the potential of any redevelopment project on older rent controlled properties. The City should be working to achieve housing goals by removing impediments to new development. The Ellis Act 50% re-control rule is yet another obstacle to achieving the city's housing production goals vital to improving housing availability at all income levels.

According to a recent staff report on the Housing Crisis Work Plan, an average of 2,800 residential units were built between 2010 and 2017. There simply is not enough housing production to tackle the housing affordability crisis head-on. By amending the Ellis Act re-control provisions to strictly a 1-for-1 replacement rule, we can remove obstacles to construction and start encouraging residential development that will address housing affordability in the region.

California's high housing cost and lack of housing supply compromise the ability to access opportunity (jobs, health, stability) for families and individuals, including working families. Homeownership rates are the lowest since the 1940s and the State has not met its projected need for housing in the last 15 years. Housing supply needs are of vital importance and the highest priority.

In conclusion, BIA Bay Area strongly urges the Council to eliminate the Ellis Act 50% re-control provisions on new residential construction. BIA remains ready to work with the City to assist in any way we are able. Please feel free to contact me at dmartin@biabayarea.org.

Yours truly,

Dennis Martin
BIA BAY AREA



Honorable Mayor Sam Liccardo and City Council
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113
Re: Ellis Act RE-Control Provisions

Dear Mayor Liccardo and City Council:

On behalf of the Santa Clara County Association of REALTORS® (SCCAOR), and the 6,500 Real Estate Professionals we represent, I am writing to you to express support for revising the existing Ellis Act ordinance to reduce the re-control requirement to a 1-to-1 ratio.

SCCAOR is committed to the defense of private property rights and to taking action on policy issues that support the expansion of our housing supply at all levels. A reduction in the re-control requirement of the Ellis Act is a step in the right direction – and indicates a commitment to expedient action as is necessary when addressing a crisis.

As is evident by the stagnation of applications for redevelopment projects being done under the Ellis Act, it is clear that the Ellis Act is not supporting the Mayor’s vision to build 25,000 units of housing. According to the Housing Department’s memorandum dated February 28, 2019 and submitted to HCDC on March 3, 2019, “to date, two properties have issued a notice to withdraw” under the Ellis Act. This is clear indication that investment confidence in these type of redevelopment projects is low under the status-quo of the Ellis Act.

Lowering the re-control provision to 1-to-1 is a necessary step to reduce the reluctance of investors. Redevelopment of properties under the Ellis Act have so many net-benefits to our community that are being prevented under the existing ordinance: Dramatically increased supply (two projects have set to build 529 units, imagine how many more that could be), safety (new units will be up to code), higher quality units, and stronger communities.

It is our hope that you will act with a crisis mindset in the best interest of affordability and housing supply and amend the Ellis Act re-control provision to be 1-to-1.

Thank you for your service to our community and for considering SCCAOR’s position on this issue.

Regards,


Gustavo Gonzalez, President
Santa Clara County Association of REALTORS®

CALIFORNIA’S FIRST REAL ESTATE BOARD

*SCCAOR exists to meet the business, professional and political needs of its members
and to promote and protect home ownership and private property rights.*

ELLIS ACT ORDINANCE COMMUNITY MEETING

WHEN: March 20, 2019

WHERE: Seven Trees Community Center

NOTES:

Rent Control vs. Affordable

- I think that the 100%-50% subject to re-control was a move to encourage new developments. Too many restrictions will deter development.
- Rent Stabilization is preferable to an income-restricted property because AMI may grow rapidly with new developments/changing composition of region.
- 1 Re-control
- Must replace existing units or meet 15% inclusionary standard
- If a rent-controlled complex is removed from the market and processed as Ellis, we are essentially losing affordable housing, because the re-control aspect doesn't matter when rents are reset to market rates.
- Can we income-restrict properties for longer than 55 years?

Rent Control Solutions

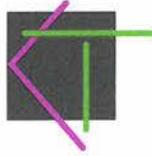
- Idea, poll developers to understand why they are not moving forward.
- Should be tied to AMI/CPI
- Fair Housing Act concerns with allowing off-site affordable option (or in lieu fee) (disproportionate impact on POC). On-site requirements for all re-control or those that qualify for 7Xs exemption would help.
- 1:1 with new unit being affordable rather than rent stabilized
- Affordable period be limited to 10 years creating an incentive

Smaller Development Considerations:

- Allow projects replacing same # of units some flexibility

Barriers to Development

- Ellis Act Ordinance is about preventing displacement, not promoting development. We don't know if last change (April 2018) has made an impact
- Concern regarding displacement of low income people in the Diridon Area. In this case the affordable option is better
- Concerns about displacement and its disproportionate effects on low-income minority populations.
- 55 years of income-restrictions are too long, should be 10 years plus % increase allowed



KT URBAN

March 28, 2019

Jacky Morales-Ferrand
Director, Housing Department
City of San Jose
200 E Santa Clara Street
San Jose, CA 95113

Dear Jacky,

I am currently the CFO for KT Urban. I have been a Chief Financial Officer for the past 16 years for several real estate companies including a publicly traded company (NYSE: UCP) based in San Jose, which completed an IPO in 2013 and raised approximately \$200 MM in construction financing, as well as over \$275 MM of other debt and equity proceeds in the capital markets. Prior to my experience in the real estate industry, I spent many years working at international banks such as BNP and Deutsche Bank that provided various forms of financing for several technology companies here in the Bay Area (Sun Microsystems, 3Com, Informix, Sybase) totaling some \$2 billion.

I understand that you are considering matters pertaining to the City San Jose's Ellis Act Ordinance and its re-control provisions impact on the ability of projects to obtain equity and construction financing in the capital markets. I would like to, respectfully, offer a few observations for your consideration:

1. **Rent controlled projects increase risk** as rent controlled projects recover more slowly from market downturns. In Table 1 of the David Paul Rosen & Associates report, the market rents for that sampling of projects declined 8.7% in 2009 and it took over 2 years for the market to recover. If a 5% rent cap were in place, it would have taken the markets rents nearly 4 years to recover. The capital markets (institutional investors and the debt market) study long term cycles carefully and the reduced ability to recover from inevitable market downturns increases risk. Projects with higher risk require higher returns which, in turn, reduces the number of viable projects and investors while at the same time increasing the need for equity investment as higher risk projects are not able to borrow as much.
2. **Rent controlled projects are less valuable**, of course, because of reduced revenue and cash flow. Again, using the Dave Paul Rosen data and applying the 5% cap, the 11-year average annual rent growth would have been less than 2.5%. Separate but in addition to the risk issue discussed above, less valuable projects attract fewer investors and require

more equity as the borrowing capacity of the project is reduced. If we factor in reduced annual growth rate and the increased risk and apply this data to a large multifamily project we are currently working on located in San Jose, we estimate the pretax profit of the project would be reduced by approximately \$50 MM.

3. From a capital markets standpoint, ***addressing the housing crisis in the Bay Area requires large scale institutional investors and debt.*** For the reasons cited above, institutional investors will shy away from and in some cases be precluded, as a matter of policy, from investing projects that have rent control or other limitations.
4. Over \$30 billion was invested in US in value-add multifamily projects in 2018. In this category of investment ***private equity and debt funds specifically target under-utilized, neglected or under-performing urban, infill properties with the primary goal of redeveloping the property at higher densities and increasing rents at above market rates.*** By definition, this type of significant investment, while usually being welcomed in the community, would be significantly diminished under the proposed Ellis Act ordinance.
5. ***It is widely understood by economists that rent control often results in having the opposite effect than intended.*** In a recent study from Stanford University on this topic, which I am sure you are aware, the authors concluded that rent control reduces housing supply and drives up rent.

Having lived my whole life in the Bay Area, most of which living or working in Santa Clara Valley, I am very excited to see the development of Downtown San Jose over the past 10+ years. Downtown San Jose is emerging as the social and cultural hub of Silicon Valley. Very significant large-scale investment seems to be on the near-term horizon, but the Ellis Act's re-control provision will discourage investment activity. I am very hopeful that the City of San Jose will continue to work hard to encourage this continued investment.

Sincerely,



William J. La Herran
Chief Financial Officer
KT Urban

Nguyen, Viviane

From: VanderVeen, Rachel
Sent: Thursday, April 11, 2019 7:03 PM
To: Nguyen, Viviane
Subject: FW: Ellis Act
Attachments: ARO-Ellis 4.9.19 Reflections.docx

Public comment

Rachel VanderVeen

Deputy Director
Housing Department
[REDACTED]

From: David Eisbach [REDACTED]
Sent: Thursday, April 11, 2019 10:08 AM
To: VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>
Subject: Fw: Ellis Act

Sent: Thursday, April 11, 2019, 9:54:03 AM PDT
Subject: Ellis Act

Hi Rachel

I believe that the Ellis Act, works so far as protecting and relocating tenants, but it serves as a stumbling block for owners, who are considering expanding their properties. I make some suggestions, that may be helpful in expanding the affordable and the market rents in San Jose.

I hope you will read the attached and put it on the record.

Regards

David Eisbach

ARO-Ellis Act, 4.9.10 Reflections

A February 7, 2019 article in the San Jose Mercury News, “San Jose to Review Rent Control” quoted Housing Director, Jacky Morales-Ferrand The Ellis Act... “is designed to make developers think Twice.”

If she is referring to protecting tenants by charging up to \$15,000 per family to relocate them and allowing up to a year notice, then I would say I understand the intent even though both are excessive.

If she is referring to an owner who wishes to expand his five unit apartment to ten but realizes that once the units are ready five of the new units must be placed under the ARO, he decides that the numbers do not work. He Thought Twice!

I have read some lines that stated that negotiations could allow 20% be placed under the ARO, i.e. 2 units. I also read that the new empty units would allow the owner to set rents and then be bound to the annual 5%. I fear that the original thought is new units would reflect the original rents plus 5% for each year passed.

I think there are current owners who might have contiguous plots large enough to physically expand their units by two to three times. These are owners, not developers, who are into large properties. They are not financial giants.

It is clear that the City must build housing. What we see is a black and white non-negotiable piece of legislation. We wonder why owners are not building? Do we not see that all the costs of expanding rental stock is borne by the owner along with the promise of reduced income in the end product. Here are some suggestions:

1. If the owner's old units were under market, and the new units would reduce the annual income by a considerable amount, Independent Agents could adjust the new rates.
2. The Planning, Permits, Code Enforcement costs be reduced by 15%; the projects should be given assistance and priority.
3. The property will be reassessed; the City could waive 10% and convince the County to do the same. (Make the adjustment in the property assessment).

4. The Ellis eviction timing is a mine field; If there are seniors, or school age tenants then the timing could be extended up to a year. If the owner just says in one year you all must be out, and three leave right away that leaves two, that's a lot of lost rent because of this notice period. If there is an unforeseen loss, it should be considered in costs somewhere else.
5. The owner is responsible for construction and labor. Delays cost money, the City should be accommodating.
6. If the City can pay \$600,000 to develop one Cargo Bin into a living unit, it can certainly apply a lot less in the expansion of more existing housing.

Instead of using the Ellis Act to dissuade owners, steps could be taken to aid in the process. If we could stop viewing owners as greedy, lawless trolls and listen to each other, we might find room for negotiation. Who knows if some or all of the above suggestions were followed, the City could gain five lower cost units under ARO and Five market properties.

David Eisbach, Broker, Property Manager, Owner

[REDACTED]

[REDACTED]



Advancing Justice
Housing | Health | Children & Youth

April 16, 2019

City of San José Housing Department
200 E. Santa Clara St.
San José, CA 95113

RE: Item 4.2 – Ellis Act Ordinance Re-Control Provisions

Dear Director Morales-Ferrand:

We write to strongly urge the Housing Department to recommend no changes to the current Ellis Act Ordinance. The Ellis Act Ordinance (the “Ordinance”) was originally passed in April of 2017 as part of a package of protections against displacement for San José tenants and measures to preserve San José’s supply of affordable housing, including San José’s Apartment Rent Ordinance. These protections were passed as hundreds of tenants were losing their rent-controlled units, including over 670 tenants at the Reserve Apartments, and with broad community support following extended public comment highlighting the need to better preserve San José’s stock of affordable housing and prevent the displacement of low-income tenants.

Despite this need, the Ellis Act Ordinance was rolled back just last year to allow developers to recontrol fewer of the affordable units they demolish and to seek exemption from the recontrol requirement altogether under certain circumstances. In the midst of an unprecedented housing crisis causing massive dispossession of homes and displacement of people, it would be reckless and pernicious to further weaken this important tool for preserving affordable housing. Furthermore, such an action would likely have a disparate impact on people of color and perpetuate segregation in violation of the federal Fair Housing Act (FHA) and California Fair Housing and Employment Act (FEHA) as the City has utterly failed to evaluate the effect of such a rollback on low-income communities of color.

Efforts to prioritize the production of affordable housing that undoubtedly will lead to the displacement of low-income families of color, including rolling back the Ellis Act Ordinance, ignore the long history of discriminatory housing policy in San José and the vulnerability of the city’s existing affordable housing stock. While we agree that we need to develop more affordable housing, such development should not be to the detriment of our low-income communities of color, who disproportionately live in rent-stabilized units. Anecdotal evidence from developers regarding their motivations should not, as a matter of sound and equitable



policy making, outweigh tangible community needs especially given the failure to evaluate the effect of the loss of rent-controlled buildings both before and after the passage of the Ellis Act.

The City should instead ask the Housing Department to track how the demolishing of rent-controlled buildings have affected the displacement of low-income families out of San Jose. Why has the City not pushed the Housing Department to find out the fates of the more than 670 tenants displaced from the Reserve Apartments? Such data, rather than anecdotal data from developers, will be telling of the importance and necessity of the Ellis Act to keep low-income families in San Jose.

1. The Failure to Preserve Naturally Occurring Affordable Housing Units Has Driven Displacement and the Affordable Housing Crisis in San José

Recent studies on the scale and scope of displacement in the Bay Area have found that San José residents have been hit particularly hard by displacement and gentrification in the past ten years. The Urban Displacement Project found that every census tract within and surrounding downtown San José has seen or is currently experiencing either ongoing gentrification and displacement or advanced gentrification and displacement.¹

Efforts to produce new affordable units have not kept up with the community's needs for affordability and created a massive gap in San José's housing supply. The City of San José's General Plan Housing Element found that the City issued permits to build less than 22% of needed low-, very low-, and extremely low-income deed-restricted affordable housing units from 2007 to 2013.²

Meanwhile, the need for affordable units is only expected to grow. The City's need for housing units affordable to renters with very low incomes alone is nearly 20% greater, an increase of over 1400 units, for the 2014–2022 planning period.³ The 2018 Annual Element Plan Update reports that San José is already falling behind in meeting this goal, even while exceeding its needs for market rate housing.⁴ As the Housing and Community Development Commission emphasizes in their letter, **the City has presented no evidence that this shortfall in production is linked to incentives under the Ellis Act Ordinance.**

In light of this massive shortfall in the production of new affordable units, the failure to preserve existing affordable housing has been a key driver of displacement. This failure compounds a long history of racially discriminatory residential policy that has denied fair

¹ See *Mapping Displacement and Gentrification in the San Francisco Bay Area*, URBAN DISPLACEMENT PROJ. (2018), <http://www.urbandisplacement.org/map/sf>.

² CITY OF SAN JOSÉ, HOUSING ELEMENT VIII-4 (2015).

³ *Id.* at III-3.

⁴ SAN JOSÉ HOUS. DEP'T, ANNUAL ELEMENT PLAN UPDATE 2018, at 6 (2019), <http://www.sanjoseca.gov/DocumentCenter/View/83510>.

housing choice and made it difficult for people of color to remain stably housed in decent, affordable homes.

Beginning in the 1930's and continuing until 1976, the federal government engaged in a practice known as "redlining," whereby the federal government assigned ratings to neighborhoods to guide public and private investment. As a rule, neighborhoods where people of color lived received the lowest possible investment grade, often merely because people of color lived there.⁵ These explicitly discriminatory investment grades precluded private investment in these redlined areas, prevented residents from securing federally-insured loans to buy homes, and all but guaranteed that these neighborhoods would fall into disrepair and dilapidation.

Redlined neighborhoods, because of the economic depression and urban blight that years of *de jure* discrimination and total disinvestment created, were then targeted for redevelopment by the San José Redevelopment Authority (SJRA) in the 1980's, and '90's. Unfortunately, the SJRA's efforts to create "a thriving urban center, offering an amalgamation of cultural, professional, and residential amenities,"⁶ displaced many of the people of color that had been forced to settle in these redlined areas.

In a case study of the Diridon Station Area, for example, the U.C. Berkeley Center for Community Innovation found that "development activities, including a significant loss of housing units in the 1980s, may have primed this area for the gentrification it is experiencing today."⁷ During this period, the SJRA merged redevelopment revenues generated from neighborhoods across the city to focus development downtown.⁸ This strategy allowed the SJRA to carry out massive projects such as the Guadalupe corridor transportation project, a widening of the Guadalupe River channel, and the construction of what is now the SAP Center. Together, these projects directly displaced a significant number of Hispanic households and spurred gentrification that has driven continued home loss.⁹

Indeed, the National Community Reinvestment Coalition found that between 2000 and 2013, census tract 5003 (which covers the Diridon Station Area and the tract of land bordering Guadalupe Creek to the west between Interstate 880 and Park Ave), saw significant displacement of Hispanic residents.¹⁰ Perhaps unsurprisingly, census tract 5003 includes two sizeable

⁵ *Redlining and Gentrification*, URBAN DISPLACEMENT PROJ. (2018), <https://www.urbandisplacement.org/redlining>.

⁶ *Downtown San José*, SAN JOSÉ REDEVELOPMENT ASSOC., <http://www.sjredevelopment.org/downtown.htm> (last visited April 3, 2019).

⁷ U.C. BERKELEY CTR. COMM. INNOVATION, DIRIDON STATION CASE STUDY 8 (2015), http://www.urbandisplacement.org/sites/default/files/san_jose_final.pdf.

⁸ *See id.* at 9.

⁹ *See id.*

¹⁰ *Shifting Neighborhoods*, NAT'L COMM. REINVESTMENT COALITION (2019), <http://maps.ncrc.org/gentrificationreport/index.html?bookmark=Map>.

neighborhoods that were redlined by the federal government throughout most of the twentieth century.¹¹

By specifically targeting communities of color for disinvestment, redlining created severe poverty in these neighborhoods that has incentivized developers to demolish and replace them with more profitable properties. The economic impact of redlining also has created obstacles for the residents of these ostracized neighborhoods in resisting changes to their community.

The result is that the low-income people of color who were cut-off and denied investment for much of the last century because they were told their very presence made these neighborhoods undesirable are now being pushed out so that their neighborhoods can be redeveloped to be desirable to other, richer, and perhaps newer, residents of San José.

This history demands a renewed emphasis on preserving affordable housing units, like rent-stabilized units, because, unlike production, preservation maintains existing tenancies and conserves the cultural identity of the neighborhoods in which it takes place. Focusing only on production of new units through redevelopment will perpetuate a long history of inequity in housing policy in San José, and all but guarantee that low-income tenants will once again be excluded from the economic growth that City policy seeks to stimulate.

2. The Ellis Act Ordinance Must be Retained in its Current Form in Order to Fulfill its Purpose to Preserve Naturally Occurring Rent-Stabilized Units

In addition to being counter-productive to promoting equitable housing policy, efforts to prioritize the production of affordable housing that inhibit the City's ability to preserve affordable units are also self-defeating. Strong measures to preserve San José's existing affordable housing stock are needed to mitigate economic pressures that have already caused severe displacement in our community. Although not all ARO-covered units remain affordable due the vacancy decontrol requirement of the Costa Hawkins Rental Housing Act, rent-stabilized units remain an important and significant source of naturally-occurring affordable housing. The legislative history of the Ellis Act Ordinance shows that its primary purpose is to preserve rent-controlled units and prevent the displacement of low-income tenants.

City Council initially directed Housing Department staff to formulate the ordinance in May 2016 in order to address concerns about the demolition of affordable apartments covered by San José's Apartment Rent Ordinance (ARO) and displacement of tenants residing in ARO-covered properties.¹² Following extended public outreach, Housing Staff returned in April of 2017 with an ordinance that sought to prevent displacement by requiring landlords who want to remove a building from the rental market to provide to tenants certain notices, relocation services

¹¹ See *Redlining and Gentrification*, *supra*, note 5.

¹² See Synopsis of May 10, 2016 City Council Meeting at 8, SAN JOSÉ CITY COUNCIL (2016), <http://www.sanjoseca.gov/DocumentCenter/View/56624>.

and benefits, and a right to return and/or reconrol of new units under certain circumstances. The ordinance was passed after several hours of public comments, many of which focused on the need to preserve San José's supply of affordable housing units.

Indeed, San José needs its Ellis Act Ordinance to remain as strong as possible in order to preserve its stock of affordable housing. As the Housing Department's memorandum explains, there are many reasons why rent-controlled units never return to the rental market following an Ellis Act conversion, but the most common are that building is replaced with a commercial use or for-sale housing instead of rental housing and that developers fail to return to the building within five years as required under the Ellis Act's reconrol provisions.¹³

Thus, even in jurisdictions that require 100% of new rental units to be reconrolled, the demolition of buildings with rent-controlled units under the Ellis Act consistently results in an overall loss of affordable units. San Francisco, for example, requires 100% reconrol, but still suffered a loss of 1,257 affordable units due to Ellis Act conversions alone between 2008 and 2018.¹⁴ San José can count on similar losses to its affordable housing stock, and allowing developers who do not find a way to skirt the Ellis Act Ordinance's reconrol requirement to reconrol fewer units will only make these losses more severe.

Strong measures to preserve San José's affordable housing stock are urgently needed, particularly given that "nearly 14% of the City's deed-restricted housing stock is at risk of conversion within the next ten years."¹⁵ Specifically, the Ellis Act Ordinance's protection for rent-controlled units in buildings with a potential for redevelopment must remain in place because of San José's affordable housing units, over 40% "are owned by profit-motivated companies and are thus at greater risk of conversion in the next ten years."¹⁶

3. Further Limiting the Reconrol Requirements of the Ellis Act Ordinance Without Studying the Effects Such Policies May Have on Communities of Color Likely Violates the Fair Housing Act and California Fair Housing and Employment Act and the City's Responsibility to Affirmatively Further Fair Housing

Further rolling back the reconrol requirements of the Ellis Act Ordinance would likely have a disparate impact on people of color in violation of the Federal Fair Housing Act¹⁷ and

¹³ See Memorandum from San José Housing Department to City Council RE: Item 4.2 – Ellis Act Ordinance Reconrol Provisions, at 5 (Apr. 9, 2019).

¹⁴ S.F. PLANNING DEP'T, HOUSING BALANCE REPORT NO. 7, at 10 (2018), http://default.sfplanning.org/publications_reports/20180920_HousingBalance7CPC.pdf.

¹⁵ CITY OF SAN JOSÉ, HOUSING ELEMENT VI-6 (2015).

¹⁶ *Id.* at VII-4.

¹⁷ See *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

California FEHA,¹⁸ as well as the City’s Obligation to Affirmatively Further Fair Housing.¹⁹ As explained above, modifying the Ellis Act Ordinance to allow developers to recontrol fewer of the rent-stabilized units they demolish or more easily seek exemption from the ordinance altogether will cause the loss of affordable units. This loss will have a disparate impact on tenants who are people of color and female heads of households because these residents are the most highly-rent-burdened and frequently-evicted for not being able to afford the rent or for no cause.²⁰

While the City absolutely has an ethical obligation to mitigate the impact of displacement by providing alternative housing, it is unlikely that providing housing elsewhere would absolve the City of all liability under the FHA and FEHA if it were to weaken the recontrol provision of the Ellis Act Ordinance. This is because alternative housing must be “truly comparable” to the housing denied, which “is not simply a question of price and model, but also of the factors that determine the desirability of particular locations—factors such as similarly or better performing schools, comparable infrastructure, convenience of public transportation, availability of amenities such as public parks and community athletic facilities, access to grocery or drug stores, as well as equal or lower crime levels.”²¹

The Ellis Act Ordinance already provides a compliance option for developers to meet their recontrol obligation through payment of a fee to the City to develop affordable housing offsite.²² Expanding the offsite compliance option will make it particularly difficult for the City to show that its policy provides for truly comparable housing to displaced tenants because throughout the Bay Area, tenants who are forced to move consistently end up in more highly rent-burdened units.²³

It is also unlikely that any affordable units actually produced through the off-site options are truly comparable to those demolished because so many of the factors affecting whether the units are truly comparable to those denied rely on the neighborhood in which the units are located. Moreover, those tenants displaced during construction may never be financially able to remain and return to San Jose. Therefore, even under the convenient and misleading fiction that the people whose rent-controlled units are demolished for redevelopment are the people who are

¹⁸ See *Yazdinin v. Las Virgenes Vill. Cmty. Ass'n*, 2012 U.S. Dist. LEXIS 191221, *14 (C.D. Cal. 2012) (“Plaintiffs must demonstrate that the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole.” (citing *Charleston Hous. Auth. v. USDA*, 419 F.3d 729, 740-741 (8th Cir. 2005))).

¹⁹ See Cal. Gov’t Code § 65583.

²⁰ SILICON VALLEY RISING, CASHING IN ON RENTERS 1, 2 (Apr. 2017), <https://www.siliconvalleyrising.org/files/CashingInOnRenters.pdf>.

²¹ *Ave. 6E Invs., Ltd. Liab. Co. v. City of Yuma*, 818 F.3d 493, 512 (9th Cir. 2016).

²² See

²³ U.C. BERKELEY URBAN DISPLACEMENT PROJ. AND THE CAL. HOUS. P’SHIP, RISING HOUSING COSTS AND RE-SEGREGATION IN THE SAN FRANCISCO BAY AREA 16 (2019), http://www.urbandisplacement.org/sites/default/files/images/bay_area_re-segregation_rising_housing_costs_report_2019.pdf.

actually able to occupy newly-developed units,²⁴ off-site compliance options still create barriers to fair housing choice. This is especially true in an era of transit-oriented and mixed-use development that add neighborhood amenities and enhance community livability while increasing the number of residential units.

Although renters of all racial backgrounds typically see a rent hike when moving, low-income renters who are people of color frequently end up in highly segregated, high-poverty regions while low-income white renters are able to access more resource-rich areas.²⁵ Therefore, weakening the Ellis Act Ordinance’s reconrol provisions will perpetuate residential segregation in San José, which is already highly divided by race and income.

The City of San José’s Housing Element for 2014–2023 observes that “certain race/ethnic groups tend to concentrate in specific parts of the City.”²⁶ Hispanic residents live in higher numbers “on the east side of San José (Central, Alum Rock, and Alviso areas) where traditionally lower income neighborhoods exist, while Asians and Whites are the majority group in the northern, southern, and western parts (Berryessa, Evergreen, Willow Glen, West Valley, Cambrian, and Almaden areas) where traditionally higher income neighborhoods are found.”²⁷

As explained above, this distribution originated in the explicitly discriminatory and intentionally segregative practice of redlining that existed for much of the twentieth century. Not surprisingly, the majority of aging properties with rent-controlled units that are being considered for Ellis Act conversion are located in these predominately Hispanic, low-income neighborhoods.²⁸ Thus, redevelopment of these buildings and surrounding neighborhoods will not only disproportionately displace Hispanic tenants, it will do so just before these neighborhoods become some of the City’s newest, most desirable places to live. The City should be studying the segregative effects of the loss of such rent-controlled units, not accelerating their redevelopment.

After decades of targeted and intentional disinvestment of communities of color followed by a concerted effort to gentrify the same neighborhoods through redevelopment, the City has an obligation to invest in preserving and improving the affordable units that still exist in these

²⁴ Displaced tenants typically cannot access affordable units constructed off-site because tenants in rent-controlled apartments are displaced prior to their building’s demolition, but fees for off-site affordable housing development are not collected until the certificate of occupancy is issued.

²⁵ *Id.* at 15.

²⁶ CITY OF SAN JOSÉ, HOUSING ELEMENT II-9 (2015).

²⁷ *Id.* at II-9.

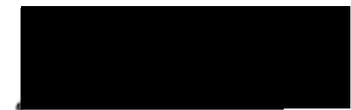
²⁸ See Attachment A to Memorandum from San José Housing Department to City Council RE: Item 4.2 – Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance) (Mar. 15, 2018), <https://sanjose.legistar.com/View.ashx?M=F&ID=6190894&GUID=12094E01-AB81-4478-B7BD-7759773FE62B> (providing the location of properties up for conversion under the Ellis Act).

neighborhoods. The notion that a policy change that will make it more profitable for developers to flip ARO-covered buildings will somehow lead to a net benefit for low-income renters sometime after the actual occupants of those buildings are displaced is totally backwards. This logic shows a callous disregard for the history of oppression that San José's people of color have suffered due to housing policy and promises to reproduce the existing segregation that such policy created.

4. Conclusion

Reflecting on the long history of discriminatory housing policy in San José and those of our neighbors who have been forced out of their homes following the demolition of their building under the Ellis Act, we urge you to recommend that City Council abstain from further rolling back the Ellis Act Ordinance for the second time within a year. We would be happy to meet with you to discuss this matter further. You can reach me at

Sincerely,


Nadia Aziz, Supervising Attorney
Michael Trujillo, Staff Attorney

CC:
San José City Council
Rick Doyle, City Attorney
David Sykes, City Manager



Advancing Justice
Housing | Health | Children & Youth

April 16, 2019

City of San José Housing Department
200 E. Santa Clara St.
San José, CA 95113

RE: Item 4.2 – Ellis Act Ordinance Re-Control Provisions

Dear Director Morales-Ferrand:

We write to strongly urge the Housing Department to recommend no changes to the current Ellis Act Ordinance. The Ellis Act Ordinance (the “Ordinance”) was originally passed in April of 2017 as part of a package of protections against displacement for San José tenants and measures to preserve San José’s supply of affordable housing, including San José’s Apartment Rent Ordinance. These protections were passed as hundreds of tenants were losing their rent-controlled units, including over 670 tenants at the Reserve Apartments, and with broad community support following extended public comment highlighting the need to better preserve San José’s stock of affordable housing and prevent the displacement of low-income tenants.

Despite this need, the Ellis Act Ordinance was rolled back just last year to allow developers to recontrol fewer of the affordable units they demolish and to seek exemption from the recontrol requirement altogether under certain circumstances. In the midst of an unprecedented housing crisis causing massive dispossession of homes and displacement of people, it would be reckless and pernicious to further weaken this important tool for preserving affordable housing. Furthermore, such an action would likely have a disparate impact on people of color and perpetuate segregation in violation of the federal Fair Housing Act (FHA) and California Fair Housing and Employment Act (FEHA) as the City has utterly failed to evaluate the effect of such a rollback on low-income communities of color.

Efforts to prioritize the production of affordable housing that undoubtedly will lead to the displacement of low-income families of color, including rolling back the Ellis Act Ordinance, ignore the long history of discriminatory housing policy in San José and the vulnerability of the city’s existing affordable housing stock. While we agree that we need to develop more affordable housing, such development should not be to the detriment of our low-income communities of color, who disproportionately live in rent-stabilized units. Anecdotal evidence from developers regarding their motivations should not, as a matter of sound and equitable

policy making, outweigh tangible community needs especially given the failure to evaluate the effect of the loss of rent-controlled buildings both before and after the passage of the Ellis Act.

The City should instead ask the Housing Department to track how the demolishing of rent-controlled buildings have affected the displacement of low-income families out of San Jose. Why has the City not pushed the Housing Department to find out the fates of the more than 670 tenants displaced from the Reserve Apartments? Such data, rather than anecdotal data from developers, will be telling of the importance and necessity of the Ellis Act to keep low-income families in San Jose.

1. The Failure to Preserve Naturally Occurring Affordable Housing Units Has Driven Displacement and the Affordable Housing Crisis in San José

Recent studies on the scale and scope of displacement in the Bay Area have found that San José residents have been hit particularly hard by displacement and gentrification in the past ten years. The Urban Displacement Project found that every census tract within and surrounding downtown San José has seen or is currently experiencing either ongoing gentrification and displacement or advanced gentrification and displacement.¹

Efforts to produce new affordable units have not kept up with the community's needs for affordability and created a massive gap in San José's housing supply. The City of San José's General Plan Housing Element found that the City issued permits to build less than 22% of needed low-, very low-, and extremely low-income deed-restricted affordable housing units from 2007 to 2013.²

Meanwhile, the need for affordable units is only expected to grow. The City's need for housing units affordable to renters with very low incomes alone is nearly 20% greater, an increase of over 1400 units, for the 2014–2022 planning period.³ The 2018 Annual Element Plan Update reports that San José is already falling behind in meeting this goal, even while exceeding its needs for market rate housing.⁴ As the Housing and Community Development Commission emphasizes in their letter, **the City has presented no evidence that this shortfall in production is linked to incentives under the Ellis Act Ordinance.**

In light of this massive shortfall in the production of new affordable units, the failure to preserve existing affordable housing has been a key driver of displacement. This failure compounds a long history of racially discriminatory residential policy that has denied fair

¹ See *Mapping Displacement and Gentrification in the San Francisco Bay Area*, URBAN DISPLACEMENT PROJ. (2018), <http://www.urbandisplacement.org/map/sf>.

² CITY OF SAN JOSÉ, HOUSING ELEMENT VIII-4 (2015).

³ *Id.* at III-3.

⁴ SAN JOSÉ HOUS. DEP'T, ANNUAL ELEMENT PLAN UPDATE 2018, at 6 (2019), <http://www.sanjoseca.gov/DocumentCenter/View/83510>.

housing choice and made it difficult for people of color to remain stably housed in decent, affordable homes.

Beginning in the 1930's and continuing until 1976, the federal government engaged in a practice known as "redlining," whereby the federal government assigned ratings to neighborhoods to guide public and private investment. As a rule, neighborhoods where people of color lived received the lowest possible investment grade, often merely because people of color lived there.⁵ These explicitly discriminatory investment grades precluded private investment in these redlined areas, prevented residents from securing federally-insured loans to buy homes, and all but guaranteed that these neighborhoods would fall into disrepair and dilapidation.

Redlined neighborhoods, because of the economic depression and urban blight that years of *de jure* discrimination and total disinvestment created, were then targeted for redevelopment by the San José Redevelopment Authority (SJRA) in the 1980's, and '90's. Unfortunately, the SJRA's efforts to create "a thriving urban center, offering an amalgamation of cultural, professional, and residential amenities,"⁶ displaced many of the people of color that had been forced to settle in these redlined areas.

In a case study of the Diridon Station Area, for example, the U.C. Berkeley Center for Community Innovation found that "development activities, including a significant loss of housing units in the 1980s, may have primed this area for the gentrification it is experiencing today."⁷ During this period, the SJRA merged redevelopment revenues generated from neighborhoods across the city to focus development downtown.⁸ This strategy allowed the SJRA to carry out massive projects such as the Guadalupe corridor transportation project, a widening of the Guadalupe River channel, and the construction of what is now the SAP Center. Together, these projects directly displaced a significant number of Hispanic households and spurred gentrification that has driven continued home loss.⁹

Indeed, the National Community Reinvestment Coalition found that between 2000 and 2013, census tract 5003 (which covers the Diridon Station Area and the tract of land bordering Guadalupe Creek to the west between Interstate 880 and Park Ave), saw significant displacement of Hispanic residents.¹⁰ Perhaps unsurprisingly, census tract 5003 includes two sizeable

⁵ *Redlining and Gentrification*, URBAN DISPLACEMENT PROJ. (2018), <https://www.urbandisplacement.org/redlining>.

⁶ *Downtown San José*, SAN JOSÉ REDEVELOPMENT ASSOC., <http://www.sjredevelopment.org/downtown.htm> (last visited April 3, 2019).

⁷ U.C. BERKELEY CTR. COMM. INNOVATION, DIRIDON STATION CASE STUDY 8 (2015), http://www.urbandisplacement.org/sites/default/files/san_jose_final.pdf.

⁸ *See id.* at 9.

⁹ *See id.*

¹⁰ *Shifting Neighborhoods*, NAT'L COMM. REINVESTMENT COALITION (2019), <http://maps.ncrc.org/gentrificationreport/index.html?bookmark=Map>.

neighborhoods that were redlined by the federal government throughout most of the twentieth century.¹¹

By specifically targeting communities of color for disinvestment, redlining created severe poverty in these neighborhoods that has incentivized developers to demolish and replace them with more profitable properties. The economic impact of redlining also has created obstacles for the residents of these ostracized neighborhoods in resisting changes to their community.

The result is that the low-income people of color who were cut-off and denied investment for much of the last century because they were told their very presence made these neighborhoods undesirable are now being pushed out so that their neighborhoods can be redeveloped to be desirable to other, richer, and perhaps newer, residents of San José.

This history demands a renewed emphasis on preserving affordable housing units, like rent-stabilized units, because, unlike production, preservation maintains existing tenancies and conserves the cultural identity of the neighborhoods in which it takes place. Focusing only on production of new units through redevelopment will perpetuate a long history of inequity in housing policy in San José, and all but guarantee that low-income tenants will once again be excluded from the economic growth that City policy seeks to stimulate.

2. The Ellis Act Ordinance Must be Retained in its Current Form in Order to Fulfill its Purpose to Preserve Naturally Occurring Rent-Stabilized Units

In addition to being counter-productive to promoting equitable housing policy, efforts to prioritize the production of affordable housing that inhibit the City's ability to preserve affordable units are also self-defeating. Strong measures to preserve San José's existing affordable housing stock are needed to mitigate economic pressures that have already caused severe displacement in our community. Although not all ARO-covered units remain affordable due the vacancy decontrol requirement of the Costa Hawkins Rental Housing Act, rent-stabilized units remain an important and significant source of naturally-occurring affordable housing. The legislative history of the Ellis Act Ordinance shows that its primary purpose is to preserve rent-controlled units and prevent the displacement of low-income tenants.

City Council initially directed Housing Department staff to formulate the ordinance in May 2016 in order to address concerns about the demolition of affordable apartments covered by San José's Apartment Rent Ordinance (ARO) and displacement of tenants residing in ARO-covered properties.¹² Following extended public outreach, Housing Staff returned in April of 2017 with an ordinance that sought to prevent displacement by requiring landlords who want to remove a building from the rental market to provide to tenants certain notices, relocation services

¹¹ See *Redlining and Gentrification*, *supra*, note 5.

¹² See Synopsis of May 10, 2016 City Council Meeting at 8, SAN JOSÉ CITY COUNCIL (2016), <http://www.sanjoseca.gov/DocumentCenter/View/56624>.

and benefits, and a right to return and/or reconrol of new units under certain circumstances. The ordinance was passed after several hours of public comments, many of which focused on the need to preserve San José’s supply of affordable housing units.

Indeed, San José needs its Ellis Act Ordinance to remain as strong as possible in order to preserve its stock of affordable housing. As the Housing Department’s memorandum explains, there are many reasons why rent-controlled units never return to the rental market following an Ellis Act conversion, but the most common are that building is replaced with a commercial use or for-sale housing instead of rental housing and that developers fail to return to the building within five years as required under the Ellis Act’s reconrol provisions.¹³

Thus, even in jurisdictions that require 100% of new rental units to be reconrolled, the demolition of buildings with rent-controlled units under the Ellis Act consistently results in an overall loss of affordable units. San Francisco, for example, requires 100% reconrol, but still suffered a loss of 1,257 affordable units due to Ellis Act conversions alone between 2008 and 2018.¹⁴ San José can count on similar losses to its affordable housing stock, and allowing developers who do not find a way to skirt the Ellis Act Ordinance’s reconrol requirement to reconrol fewer units will only make these losses more severe.

Strong measures to preserve San José’s affordable housing stock are urgently needed, particularly given that “nearly 14% of the City’s deed-restricted housing stock is at risk of conversion within the next ten years.”¹⁵ Specifically, the Ellis Act Ordinance’s protection for rent-controlled units in buildings with a potential for redevelopment must remain in place because of San José’s affordable housing units, over 40% “are owned by profit-motivated companies and are thus at greater risk of conversion in the next ten years.”¹⁶

3. Further Limiting the Reconrol Requirements of the Ellis Act Ordinance Without Studying the Effects Such Policies May Have on Communities of Color Likely Violates the Fair Housing Act and California Fair Housing and Employment Act and the City’s Responsibility to Affirmatively Further Fair Housing

Further rolling back the reconrol requirements of the Ellis Act Ordinance would likely have a disparate impact on people of color in violation of the Federal Fair Housing Act¹⁷ and

¹³ See Memorandum from San José Housing Department to City Council RE: Item 4.2 – Ellis Act Ordinance Reconrol Provisions, at 5 (Apr. 9, 2019).

¹⁴ S.F. PLANNING DEP’T, HOUSING BALANCE REPORT NO. 7, at 10 (2018), http://default.sfplanning.org/publications_reports/20180920_HousingBalance7CPC.pdf.

¹⁵ CITY OF SAN JOSÉ, HOUSING ELEMENT VI-6 (2015).

¹⁶ *Id.* at VII-4.

¹⁷ See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

California FEHA,¹⁸ as well as the City’s Obligation to Affirmatively Further Fair Housing.¹⁹ As explained above, modifying the Ellis Act Ordinance to allow developers to recontrol fewer of the rent-stabilized units they demolish or more easily seek exemption from the ordinance altogether will cause the loss of affordable units. This loss will have a disparate impact on tenants who are people of color and female heads of households because these residents are the most highly-rent-burdened and frequently-evicted for not being able to afford the rent or for no cause.²⁰

While the City absolutely has an ethical obligation to mitigate the impact of displacement by providing alternative housing, it is unlikely that providing housing elsewhere would absolve the City of all liability under the FHA and FEHA if it were to weaken the recontrol provision of the Ellis Act Ordinance. This is because alternative housing must be “truly comparable” to the housing denied, which “is not simply a question of price and model, but also of the factors that determine the desirability of particular locations—factors such as similarly or better performing schools, comparable infrastructure, convenience of public transportation, availability of amenities such as public parks and community athletic facilities, access to grocery or drug stores, as well as equal or lower crime levels.”²¹

The Ellis Act Ordinance already provides a compliance option for developers to meet their recontrol obligation through payment of a fee to the City to develop affordable housing offsite.²² Expanding the offsite compliance option will make it particularly difficult for the City to show that its policy provides for truly comparable housing to displaced tenants because throughout the Bay Area, tenants who are forced to move consistently end up in more highly rent-burdened units.²³

It is also unlikely that any affordable units actually produced through the off-site options are truly comparable to those demolished because so many of the factors affecting whether the units are truly comparable to those denied rely on the neighborhood in which the units are located. Moreover, those tenants displaced during construction may never be financially able to remain and return to San Jose. Therefore, even under the convenient and misleading fiction that the people whose rent-controlled units are demolished for redevelopment are the people who are

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actually able to occupy newly-developed units,²⁴ off-site compliance options still create barriers to fair housing choice. This is especially true in an era of transit-oriented and mixed-use development that add neighborhood amenities and enhance community livability while increasing the number of residential units.

Although renters of all racial backgrounds typically see a rent hike when moving, low-income renters who are people of color frequently end up in highly segregated, high-poverty regions while low-income white renters are able to access more resource-rich areas.²⁵ Therefore, weakening the Ellis Act Ordinance’s reconrol provisions will perpetuate residential segregation in San José, which is already highly divided by race and income.

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As explained above, this distribution originated in the explicitly discriminatory and intentionally segregative practice of redlining that existed for much of the twentieth century. Not surprisingly, the majority of aging properties with rent-controlled units that are being considered for Ellis Act conversion are located in these predominately Hispanic, low-income neighborhoods.²⁸ Thus, redevelopment of these buildings and surrounding neighborhoods will not only disproportionately displace Hispanic tenants, it will do so just before these neighborhoods become some of the City’s newest, most desirable places to live. The City should be studying the segregative effects of the loss of such rent-controlled units, not accelerating their redevelopment.

After decades of targeted and intentional disinvestment of communities of color followed by a concerted effort to gentrify the same neighborhoods through redevelopment, the City has an obligation to invest in preserving and improving the affordable units that still exist in these

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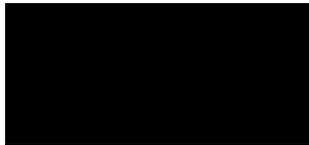
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neighborhoods. The notion that a policy change that will make it more profitable for developers to flip ARO-covered buildings will somehow lead to a net benefit for low-income renters sometime after the actual occupants of those buildings are displaced is totally backwards. This logic shows a callous disregard for the history of oppression that San José's people of color have suffered due to housing policy and promises to reproduce the existing segregation that such policy created.

4. Conclusion

Reflecting on the long history of discriminatory housing policy in San José and those of our neighbors who have been forced out of their homes following the demolition of their building under the Ellis Act, we urge you to recommend that City Council abstain from further rolling back the Ellis Act Ordinance for the second time within a year. We would be happy to meet with you to discuss this matter further. You can reach me at michael.trujillo@lawfoundation.org and (408) 280-2454.

Sincerely,



Nadia Aziz, Supervising Attorney
Michael Trujillo, Staff Attorney

CC:
San José City Council
Rick Doyle, City Attorney
David Sykes, City Manager

From: Jeffrey Buchanan < >

Sent: Tuesday, April 23, 2019 9:56 AM

To: City Clerk; The Office of Mayor Sam Liccardo; District7; Khamis, Johnny; Jimenez, Sergio; Diep, Lan; Perez, Raul; Jones, Chappie; Carrasco, Magdalena; Davis, Dev; Arenas, Sylvia; Foley, Pam

Cc: Quintero, Andres; Sandoval, Vanessa; Ramos, Christina M; Herbert, Frances; McGarrity, Patrick; Gomez, David

Subject: Item 4.4: Jimenez Memo 4/22 (SUPPORT)

Greetings:

On behalf of Working Partnerships USA, I encourage the Council to support the [4/22 memo from Councilmember Jimenez](#) on item 4.4 (the Ellis Act Ordinance) as the Council gives direction on deferring this item to a later date. The memo adds to the list of additional information requested from staff for when the item comes back to Council within Mayor Liccardo's 4/19 memo. Specifically, the memo encourages staff to bring back information on the San Jose families and seniors who live in homes governed by the Apartment Rental Ordinance which are subject to current recontrol provisions under the Ellis Act Ordinance. These families depend on ARO units as naturally occurring affordable housing and would be put at greater risk of eviction and displacement if changes are made to the ordinance, impacts that will be important for Council to consider as it weighs any policy changes.

In order to have a fuller discussion about the impacts of these policies, it will be important to not only review the surveys with bankers and developers who have inquired about Ellis Act redevelopments but the debate could benefit from a presentation of how this policy may impact access to housing and personal finances of San Jose's communities of color, seniors, families with school-aged children, single parent households, veterans, low-income, disabled tenants, and other vulnerable populations that either depend disproportionately on ARO housing or are at greater risk of experiencing impacts. We believe City staff should be able to do this building on previous work, including the City's 2016 comprehensive report by the Economic Roundtable on the Apartment Rental Ordinance which included extensive data on these topics.

Thank you for your consideration.

Best,
Jeffrey

Jeffrey Buchanan, Director of Public Policy
Working Partnerships USA

GOLDEN STATE MANUFACTURED - HOME OWNERS
LEAGUE



GSMOL Superchapter 0018 - Pepper Tree- and 0018A - Colonial Mobile Manor

April 23, 2019

TO: Mayor and Council

FROM: Glenna Howcroft, President

Martha O'Connell, Secretary

RE: Ellis Act Ordinance Recontrol Provisions
Council agenda 4-23-19 item 4.4

GSMOL Superchapter 00018/0018A joins with the City's Housing and Community Development Commission, the Law Foundation of Silicon valley, Working Partnerships USA, the Affordable Housing Network, PACT, Debug, and other community leaders who oppose any changes to the current recontrol provisions of the Ellis Act.

We understand that affordable housing is an extensive matrix which is why we support all affordable housing and not just that inherent in mobilehomes.

We also support the 4-22-19 letter submitted by Councilperson Sergio Jimenez.



Memorandum

TO: HOUSING COMMUNITY
DEVELOPMENT COMMISSION

FROM: Fred Tran

SUBJECT: SEE BELOW

DATE: July 30, 2019

Approved

Date

SUBJECT: 2018-2019 RENT STABILIZATION PROGRAM FOURTH QUARTER REPORT FOR THE APARTMENT RENT ORDINANCE, TENANT PROTECTION ORDINANCE, AND ELLIS ACT ORDINANCE

PURPOSE

The Rent Stabilization Program is providing a summary of Program activities including apartment call log inquiries, petitions filed, for the fourth quarter 2018–2019. The Rent Stabilization Program provides education and information for tenants and landlords.

PROGRAM HIGHLIGHTS

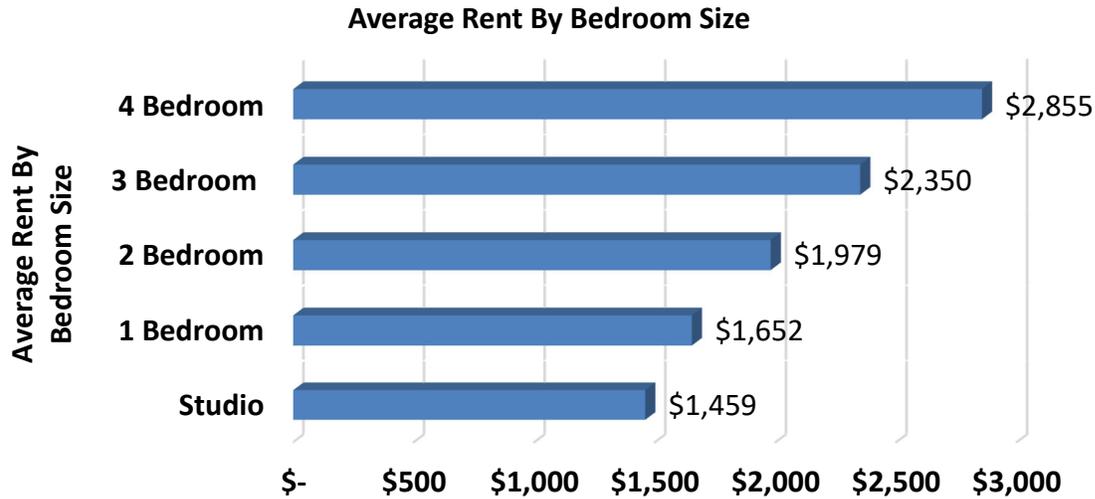
Major actions taken during the fourth quarter FY2018–19 are summarized below.

A. APARTMENT RENT ORDINANCE – Program Implementation and Updates

Rent Registry

The first registration period began August 17, 2018, and ended on March 1, 2019. At the end of the registration period, there were 28,526 units registered or 73% of the ARO housing stock. As of June 30, 2019, an additional 805 apartment units have been registered totaling 29,331 or 76%. All property owners subject to Apartment Rent Ordinance can log into the Rent Registry at <https://sjregistry.force.com>. **Table 1** summarizes the rental information collected from the Rent Registry during the first registration period. Apartments not registered will be ineligible for general annual rent increases.

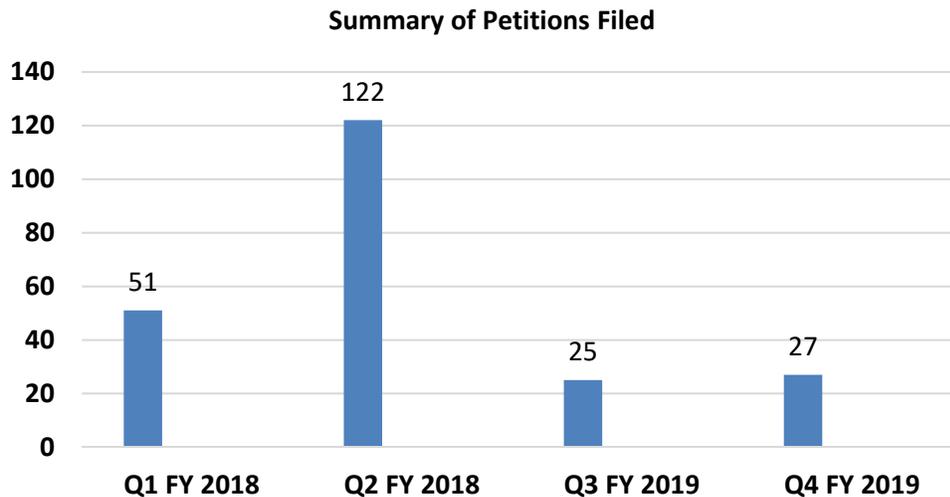
Table 1 – Rental Information from the Rent Registry



Summary of Petitions Filed

A summary of petitions filed quarterly is provided in **Table 2**. The Rent Stabilization Program received 27 petitions between April 1, 2019 and June 30, 2019. Overall, the number of petitions filed with the Rent Stabilization Program remained consistent with the prior quarter. A predominant amount of the petitions filed were for housing service reductions.

Table 2 – Summary of Petitions Filed



For the fourth quarter, the breakdown of those 27 petitions are:

- 18 service reductions,
- 3 rent increases,
- 3 ineligible for the Mediation, and
- 3 Joint petitions filed for additional occupants.

The outcomes of the petitions filed for the fourth quarter are:

- 3 (11%) pending hearing,
- 1 (4%) pending Decision,
- 7 (26%) resolved voluntarily by Hearing Officer,
- 6 (22%) resolved by staff,
- 3 (11%) Hearing Officer Decision,
- 4 (15%) withdrawn, and
- 3 (11%) ineligible.

Ratio Utility Billing System (RUBS) – Landlord Petitions

The Apartment Rent Ordinance, Chapter 17.23 was amended on May 22, 2018 to allow for landlords to petition for a one-time offset rent increase. An “Off Set” Petition must have been filed by October 31, 2018 and determined to be complete by November 5, 2018 to be eligible for this process. The Rent Stabilization Program received 126 petitions for RUBS between July 1, 2018 and October 31, 2018.

Of the 126 petitions filed for RUBS, 122 decisions were completed. The four remaining petitions are from one owner who requested a hearing process. A summary of the RUBS outcomes are as follows impacting 6,455 apartments:

- 97 petitions approved through administrative decision impacting 5,578 apartments;
- 3 petitions approved through hearing decision impacting 48 apartments;
- 22 petitions ineligible impacting 784 apartments; and
- 4 petitions pending hearing impacting 35 apartments.

Ratio Utility Billing System (RUBS) – Tenants Petitions

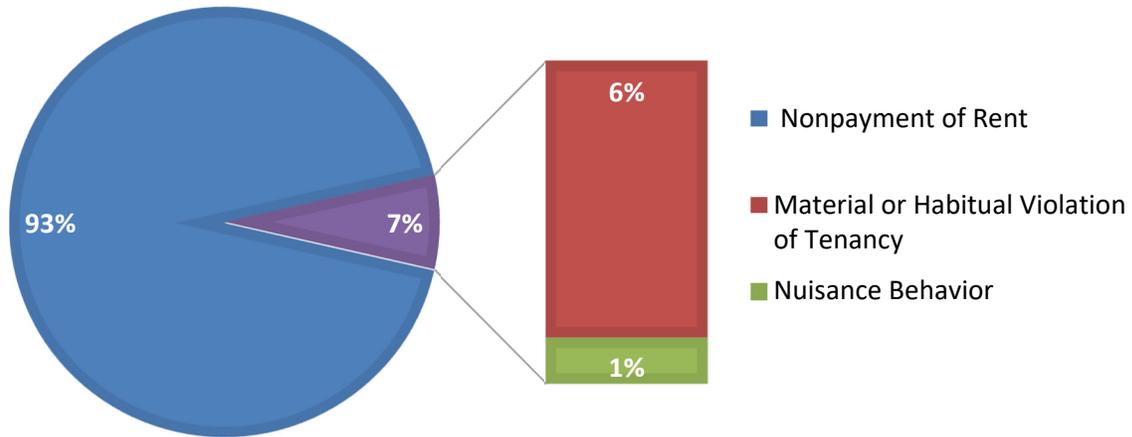
Currently Rent Stabilization Program received 10 tenants’ petitions regarding utility charges. One petition went through the hearing process and is pending a hearing officer decision. Nine tenant petitions have been scheduled for a hearing.

B. TENANT PROTECTION ORDINANCE – Just Cause Terminations

From April 1, 2019 through June 30, 2019, the Rent Stabilization Program received 2,156 Just Cause Termination notices. During the last two quarters, 4,212 notices were filed with the Rent Stabilization Program. 92% or 1,986 of the fourth quarter just cause was due to nonpayment of rent. **Table 3** summarizes the Just Cause notices received during the fourth quarter.

Table 3 – Just Cause Notices Received for 4th Quarter

Just Cause Termination Notices Received for 4th Quarter



Just Cause Reasons	April 2019	May 2019	June 2019	Total
1. Nonpayment of rent	524	645	817	1,986
2. Material or habitual violation of tenancy	46	70	22	138
3. Substantial damage to the apartment			1	1
4. Refusal to agree to a similar or new rental agreement	1			1
5. Nuisance behavior	7	6	4	17
6. Refusing access to the apartment	1			1
7. Unapproved holdover subtenant		2	1	3
8. Substantial rehabilitation of the apartment	7			7
10. Owner move-in		1		1
11. Order to vacate			1	1
Total	586	724	846	2,156

C. ELLIS ACT ORDINANCE – Additional Policy Research

On February 5, 2019 the City Council directed Staff to conduct additional analysis of the re-control provisions for the Ellis Act Ordinance and return with a verbal update. Staff conducted interviews with developers, lenders, and tenants. Staff plans to report the findings to the City Council on September 24, 2019.

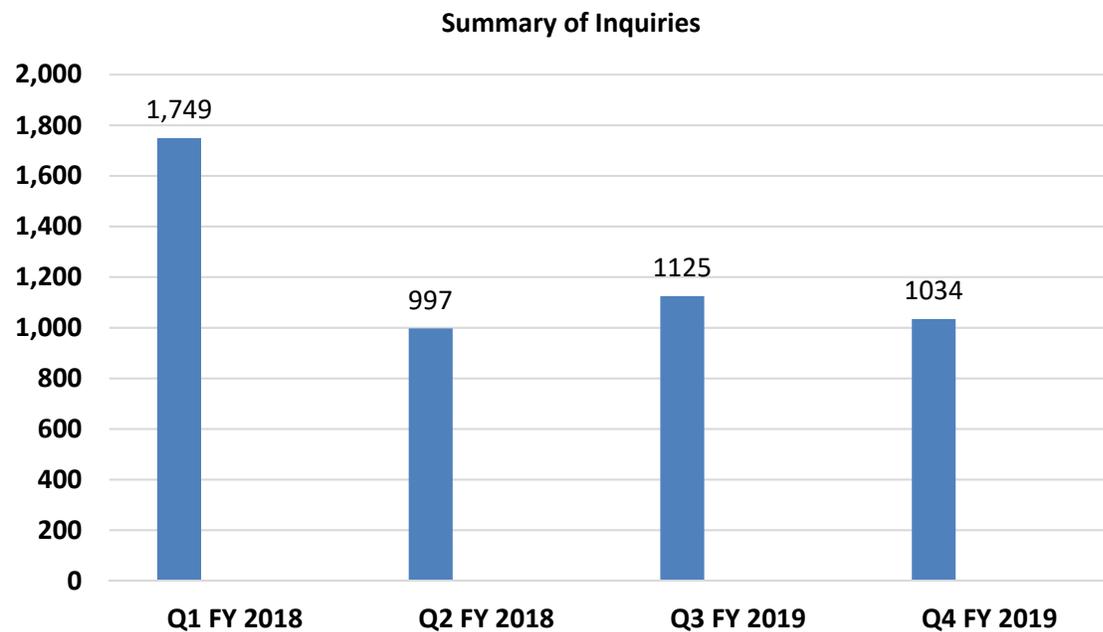
PUBLIC OUTREACH

Staff conducted 20 community meetings and outreach events. The outreach included stakeholders of tenants, landlords, lenders, and developers for feedback to develop possible amendments to the Ordinances during the quarter. The Legal Services grant also included an outreach component that allows legal partners to also conduct outreach. A summary of all meetings is listed in **Attachment A**.

Apartment Call Log Report Inquiries

From April 1, 2019 through June 30, 2019, the Rent Stabilization Program received 1,034 inquiries. During the fourth quarter the inquiries received were primarily regarding rent registry and RUBS petitions. **Table 4** summarizes the inquiries by members of the public received by the Rent Stabilization Program:

Table 4 – Summary of Inquiries by Members of the Public

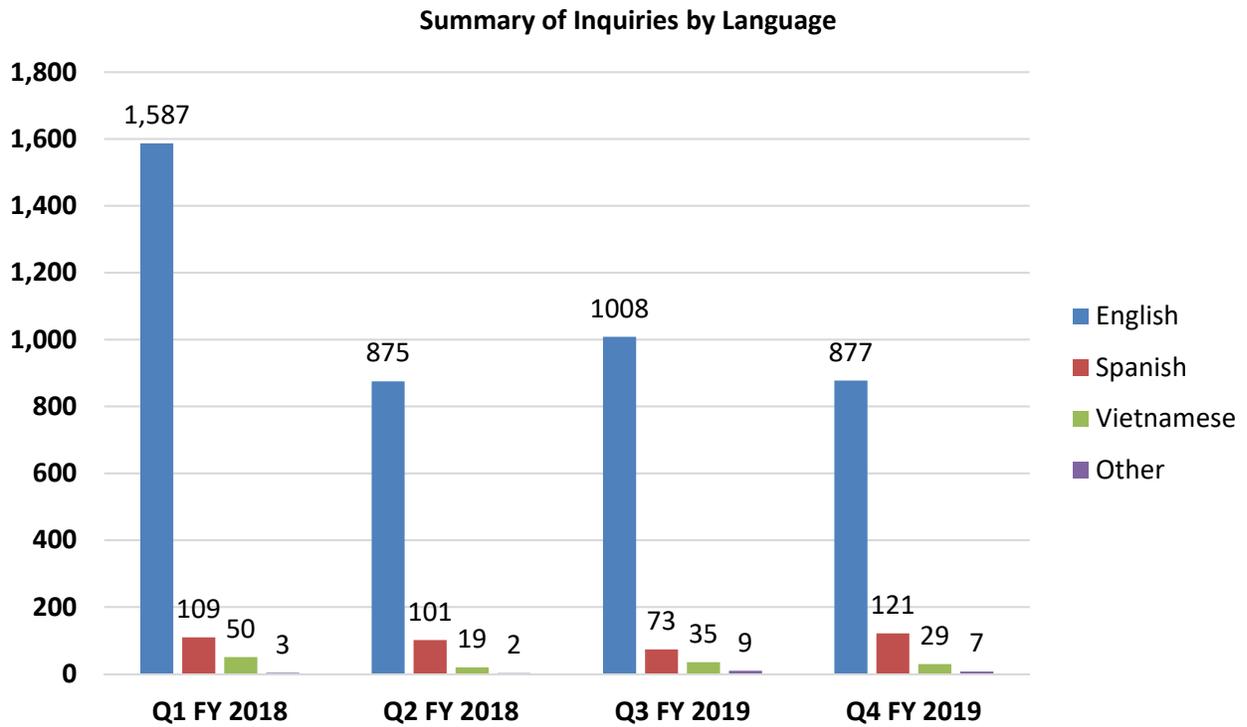


Summary of Inquiries by Language

The Rent Stabilization Program received 1,034 inquiries during the fourth quarter 2018-2019. During the fourth quarter 2018-2019, the language spoken by individuals making inquiries is provided below in **Table 5**:

- 877 inquiries (84%) received in English;
- 121 inquiries (12%) received in Spanish;
- 29 inquiries (3%) received in Vietnamese; and
- 7 inquiries (1 %) received in other.

Table 5 – Summary of Inquiries by Language



For any questions, please contact Fred Tran at 408-975-4443.

/s/
Fred Tran
Acting Program Manager
Rent Stabilization Program

ATTACHMENT:

Attachment A – Summary of Community Outreach Meetings and Events

Summary of Community Outreach Meetings

Community Meetings (3)

- Source of Income Ordinance 5/30/2019
- Source of Income Ordinance 5/23/2019
- Source of Income Ordinance 5/22/2019

Outreach Events (5)

- Mobilehome Homeowner Association 6/5/2019
- Eastridge Senior Health Care 5/28/2019
- Viva Calle 5/19/2019
- Project Hope 5/3/2019
- Law Foundation 4/17/2019

Legal Services Outreach (12)

- Project Sentinel @ St. Lucie's Parish 6/11/2019
- SALA @ Willow Senior Center 6/5/2019
- Project Sentinel @ Project Access Resource Center 5/17/2019
- Project Sentinel @ The Salvation Army Family Services 5/17/2019
- Project Sentinel @ Sobrato Center 5/16/2019
- Project Sentinel @ Sobrato Center 5/14/2019
- Project Sentinel @ Office of Supportive Housing 5/1/2019
- Project Sentinel @ First Five & Catholic Charities 4/23/2019
- Project Sentinel @ Sobrato Center 4/18/2019
- Project Sentinel @ Sobrato Center 4/16/2019
- Project Sentinel @ Lowell Elementary School 4/5/2019



Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Theresa Ramos

SUBJECT: SEE BELOW

DATE: August 1, 2019

Approved

Date

**SUBJECT: 2018-2019 Rent Stabilization Program Fourth Quarterly Report for the
Mobilehome Rent Ordinance**

PURPOSE

The Rent Stabilization Program (Program) is providing a summary of Program activity, including reports and mobilehome call log inquiries, for the fourth Quarterly Report, FY 2018-19, April 1, 2019 to June 30, 2019, regarding mobilehome issues and trends impacting San José mobilehome park communities. Please refer to **Attachment A**, copy of Call Log Report.

This report also covers current issues in mobilehome community living. The Rent Stabilization Program provides education and information to protect the rights and improve relations between residents and park owners/managers. The Housing and Community Development Commission (HCDC) has requested periodic data from the Program.

PROGRAM HIGHLIGHTS

Major actions taken during the fourth quarter of FY 2018-19 include community engagement, via public outreach and presentations about the Mobilehome Rent Ordinance. Program staff continues to engage the mobilehome community through e-mail, in-person, and telephone assistance, referrals to legal and social services.

On June 1, 2019, Program staff mailed out the Maximum Annual Percentage Increase letter and required posting. The posting for this fiscal year features a new approach, the notice includes a summary of the Ordinance, the percentage, of 3.01%, and communicates the allowable increase in English, Spanish, and Vietnamese. For the first time in a decade, mobilehome property owners will be allowed to increase space rents higher than the 3% minimum because of a steady increase in the Consumer Price Index for the San Francisco- Oakland- San Jose area. Please refer to **Attachment B**, copy of Maximum Annual Increase Notice.

Mobilehome Inquiries

During this third quarter, the Rent Stabilization Program received 68 mobilehome park inquiries (**Attachment A**).

Types of inquiries during this fourth quarter include:

- Residents' Rights
- Referral Advice
- Mobilehome Evictions

Chateau La Salle (443 Spaces)

On June 5th, the Home Owner's Association invited Program staff to be a guest speaker and to offer referrals and resources to the community. The residents raised concerns about the lack of fire exits at the park. Currently, the park has a single entrance and exit, and in case of an emergency, which is a resident concern in exiting the park safely. Program staff referred resident concerns to the State Department of Housing and Community Development for assistance. The members of the Home Owner's Association filed a complaint with the State's Housing and Community Development Department communicating their concerns and suggestions. In addition, during thus past year, the surrounding area has experienced several small fires due to an alleged active homeless encampment of which the Housing Department's homeless division is aware of such activity.

Magic Sands (541 Spaces)

A resident contacted the Program concerned about a power outage due to a recent heat wave. Program staff connected the park owner and the supervisor of the Southside Community Center together to establish an emergency location. Due to the aging infrastructure of the park, when the outside temperature becomes hot, the park experiences brown-outs, and therefore, leaving park residents without air conditioning. The park is located 0.3 miles away from the local community center, which may provide an emergency cooling off location for families who experience electrical outages. Program staff continues to encourage emergency preparedness at the park.

Southbay Mobilehome Park (214 Spaces)

On June 18th, approximately 170 residents circulated and signed a petition about a safety concern related to frequent break-ins and insufficient security measures at their park. The residents notified the park manager, City Council, the Police Department, and the Housing Department of their concerns. The residents asked that the park take security measures, such as providing onsite cameras and a security guard service, to decrease crime activity so that residents may continue to enjoy their community. Programs staff reached out to park management to support them in their effort to address the resident's concerns. Program staff is waiting to connect with the manager to offer referrals and resources.

Westwinds Mobilehome Park (723 Spaces)

Over the course of the months of April and June, park residents and park management expressed concerns to the Rent Stabilization Program about a possible mobilehome conversion. In a letter to the residents, the park landowner disclosed their decision to not renew the current park operator/management company's lease which ends in 2022. Program staff provided resources of both City and State protections, for residents to distribute amongst each other. Program staff offered to provide a presentation, along with the City's Planning Department, on the Mobilehome Conversion Ordinance. Program staff also reminded the residents of the importance of establishing a formal resident organization for the City and other service providers to share information in an effective manner.

Mobilehome Manor Mobilehome Park (81 Spaces)

Residents have recently formed a Golden State Manufactured Homeowner's League chapter at their park instead of a Home Owner's Association. The residents of the park requested staff's assistance in locating a meeting location for their monthly meetings because they do not have access to a clubhouse. Program staff connected the resident organization with their Council District representative for sponsorship to reserve a meeting room at their local community center. The residents are also in communication with a representative from the resident advocacy organization for further assistance with ongoing issues at the park, such as access to a community space for meetings and social gatherings, and concerns about affordability.

Winchester Ranch Mobilehome Park (111 Spaces)

A project consultant notified Program staff that as of June 25, 2019, the Winchester Ranch Mobilehome Park Resident Association and Pulte Homes have executed an agreement addressing the relocation package. Pulte Homes will move forward with filing their General Plan Amendment during fall of this year.

Assembly Bill No. 3066

Program staff received mobilehome resident inquiries regarding Assembly Bill No. 3066, the Mobilehome Residency Law Protection Act, which imposes an annual charge of \$10.00 per mobilehome space. The purpose of the program is to refer residents with civil complaints to State contracted non-profit legal agencies. The program will also oversee a citation process for mobilehome park owners that fail to comply with State's mobilehome health and safety codes. Mobilehome resident fees are collected as of January 2019, but the program start date is set for July 2020. Please refer to **Attachment C**, copy of Assembly Bill, Number 3066.

Evictions

The City's Housing and Community Development Commission was concerned with mobilehome anti-displacement and requested from Program staff, data about mobilehome evictions. Program staff informed the Commission that the City's Mobilehome Rent Ordinance does not have authority over evictions but does track mobilehome inquiries from residents who self-report

evictions. During this quarter, Program staff noted three (3) self-reported evictions. Below is a summary of each eviction.

Village of the Four Seasons

An unapproved tenant household renting from the homeowner was recently served with two evictions notices, one from the homeowner and one from the park. The tenant household claims that they paid the park rent to the park manager and had a rent-for-ownership agreement with the homeowner which was in effect for eight years. The homeowner terminated the rent-for-ownership arrangement and pursue an eviction lawsuit against the tenant household in Superior Court of Santa Clara which was dismissed due to improper noticing. Following the dismissal, the park manager refused to accept the tenant household's rent and noticed the tenants with a three-day and sixty-day notice. Program staff referred the tenant household to legal services for assistance.

Mobilehome Manor

The resident received a 60-day eviction notice for a state health and safety code violation. In the letter addressed to the resident, the park expressed its willingness to rescind the eviction notice contingent to state compliance. The resident contests the violations and argues that one of the violations is the responsibility of the park and not the resident. Program staff referred the resident to legal services for assistance, but the resident refused to accept an appointment. Program staff has offer additional referrals to the resident.

Oakcrest Mobilehome Park

Park management served a resident and park advocate with a seven-day notice for alleged nuisance behavior. The resident claims that the park is falsely reporting incidents in the notice and thus, the resident has contacted a private attorney for assistance.

/s/

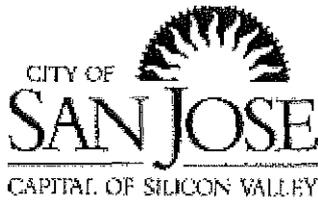
Theresa Ramos
Senior Analyst, Department of Housing
Rent Stabilization Program

ATTACHMENTS:

Attachment A – Call Log Report

Attachment B – Maximum Annual Percentage Increase Notice

Attachment C – Assembly Bill No. 3066



Memorandum

TO: HOUSING & COMMUNITY DEVELOPMENT COMMISSION (HCDC)

FROM: Theresa Ramos

SUBJECT: CALL LOG REPORT

DATE: 7/1/2019

Total Calls=68

	Date	Requestor	Mobilehome Park	Topic	Resolution Suggested
April	4/2/2019	RESIDENT	MOBILEHOME MANOR MOBILEHOME PARK	Harrasment;Rights	Information
April	4/2/2019	RESIDENT	ACE TRAILER INN VILLAGE	Referral Advice	Referral
April	4/2/2019	RESIDENT	HOMETOWN EASTRIDGE ESTATES	Service	Information
April	4/3/2019	RESIDENT	CASA ALCNDRA MOBILEHOME PARK	Referral Advice	Referral
April	4/5/2019	RESIDENT	WINCHESTER RANCH MOBILEHOME COMMUNITY	Referral Advice;Rights	Referral
April	4/5/2019	RESIDENT	MOBILEHOME MANOR MOBILEHOME PARK	Code Issue;Discrimination;Eviction;Harrasment	Information
April	4/8/2019	RESIDENT	FOOTHILLS MOBILELODGE	Rights;Office Information	Information
April	4/8/2019	RESIDENT	FOOTHILLS MOBILELODGE	Allowable Rent Increase	Information
April	4/9/2019	RESIDENT	ACE TRAILER INN VILLAGE	Allowable Rent Increase	Information
April	4/10/2019	RESIDENT	COLONIAL MOBILE MANOR MOBILEHOME PARK	Rights	Referral
April	4/10/2019	RESIDENT	CHATEAU LA SALLE MOBILEHOME PARK	Ordinance	Information
April	4/10/2019	RESIDENT	SAN JOSE VERDE MOBILEHOME	Referral Advice	Referral

			PARK		
April	4/10/2019	RESIDENT	PEPPERTREE MOBILEHOME ESTATES	Referral Advice	Referral
April	4/12/2019	RESIDENT	CASA DEL LAGO	Utility Overcharges	Referral
April	4/16/2019	Real Estate Professional	Unavailable	Allowable Rent Increase	Ordinance
April	4/16/2019	RESIDENT	CASA DEL LAGO	Allowable Rent Increase	Information
April	4/16/2019	RESIDENT	CASA ALONDRA MOBILEHOME PARK	Code Issue	Outreach
April	4/16/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME PARK	Deposit	Referral
April	4/23/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME PARK	Deposit	Referral
April	4/26/2019	RESIDENT	Unavailable	Referral Advice;Fees	Referral
April	4/29/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Eviction;Rights	Referral
April	4/29/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME PARK	Utility Overcharges	Information
April	4/29/2019	RESIDENT	COYOTE CREEK MOBILEHOME COMMUNITY	Referral Advice	Referral
May	5/2/2019	RESIDENT	CASA DEL LAGO	Mobilehome Eviction	Referral
May	5/2/2019	Property Manager	HOMETOWN AMERICA COMMUNITIES	Referral Advice	Referral
May	5/2/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Fees	Other
May	5/2/2019	RESIDENT	Unavailable	Allowable Rent Increase	Ordinance
May	5/2/2019	RESIDENT	VILLAGE OF THE FOUR SEASONS	Mobilehome Eviction	Information
May	5/6/2019	CBO	GOLDEN WHEEL PARK	Service	Information
May	5/10/2019	OTHER	Unavailable	Service	Information
May	5/13/2019	RESIDENT	CASA ALONDRA MOBILEHOME PARK	Code Issue	Referral

May	5/14/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Referral Advice;Rights	Information
May	5/14/2019	RESIDENT	COLONIAL MOBILE MANOR MOBILEHOME PARK	Rights	Referral
May	5/14/2019	RESIDENT	MOBILEHOME MANOR MOBILEHOME PARK	Discrimination;Eviction;Harrasment	Site Visit
May	5/17/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Mobilehome Park Conversion	Information
May	5/17/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Mobilehome Park Conversion	Information
May	5/20/2019	Property Manager	WESTWINDS MANUFACTURED HOME COMMUNITY	Mobilehome Park Conversion	Information
May	5/21/2019	Property Manager	SUNSHADOW MOBILEHOME PARK	Allowable Rent Increase	Other
May	5/22/2019	RESIDENT	SUNSHADOW MOBILEHOME PARK	Allowable Rent Increase;Service	Information
May	5/24/2019	Property Manager	WESTWINDS MANUFACTURED HOME COMMUNITY	Allowable Rent Increase	Information
May	5/24/2019	RESIDENT	COLONIAL MOBILE MANOR MOBILEHOME PARK	Office Information	Other
May	5/29/2019	RESIDENT	COLONIAL MOBILE MANOR MOBILEHOME PARK	Rights	Other
June	6/3/2019	Property Manager	HOMETOWN EASTRIDGE ESTATES	Allowable Rent Increase	Information
June	6/4/2019	RESIDENT	COLONIAL MOBILE MANOR MOBILEHOME PARK	Allowable Rent Increase;Rights	Other
June	6/5/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME	Deposit	Other

			PARK		
June	6/6/2019	LANDLORD	VILLA TERESA MOBILEHOME PARK	Allowable Rent Increase	
June	6/6/2019	RESIDENT	CHATEAU LA SALLE MOBILEHOME PARK	Code Issue; Mobilehome State Inspection	Referral
June	6/6/2019	RESIDENT	CHATEAU LA SALLE MOBILEHOME PARK	Referral Advice	Outreach
June	6/10/2019	RESIDENT	CASA DEL LAGO	Referral Advice	Referral
June	6/10/2019	OTHER	LAMPLIGHTER MOBILEHOME PARK	Rights	Referral
June	6/10/2019	RESIDENT	SUNSHADOW MOBILEHOME PARK	Allowable Rent Increase	Outreach
June	6/10/2019	LANDLORD	MAGIC SANDS	Ordinance	Information
June	6/12/2019	Property Manager	RANCHO SANTA TERESA MOBILEHOME PARK	Ordinance	Ordinance
June	6/12/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Mobilehome Park Conversion	Ordinance
June	6/13/2019	RESIDENT	MOBILEHOME MANOR MOBILEHOME PARK		Referral
June	6/13/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Harrasment; Maintenance	Referral
June	6/13/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME PARK	Allowable Rent Increase	Ordinance
June	6/13/2019	RESIDENT	Unavailable	Rights	Referral
June	6/13/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME PARK	Utility Overcharges	Information
June	6/13/2019	RESIDENT	OAKCREST ESTATES MOBILEHOME PARK	Eviction; Harrasment	Referral
		Property	RIVERBEND		

June	6/14/2019	Manager	MOBILEHOME PARK	Office Information	Information
June	6/14/2019	RESIDENT	MOBILEHOME MANOR MOBILEHOME PARK	Referral Advice	Referral
June	6/14/2019	RESIDENT	HOMETOWN EASTRIDGE ESTATES	Allowable Rent Increase; Ordinance	Ordinance
June	6/17/2019	TENANT	RIVERBEND MOBILEHOME PARK	Allowable Rent Increase	Information
June	6/18/2019	RESIDENT	WESTWINDS MANUFACTURED HOME COMMUNITY	Mobilehome Park Conversion	Ordinance
June	6/24/2019	RESIDENT	VILLAGE OF THE FOUR SEASONS	Mobilehome Eviction	Referral
June	6/24/2019	Property Manager	MAGIC SANDS	Fees	Information
June	6/26/2019	Property Manager	SOUTH BAY MOBILEHOME PARK	Referral Advice	Information

Brief Synopsis on Disposition of Calls

4/2/2019 - MOBILEHOME MANOR MOBILEHOME PARK

Resident's Issue: Resident inquired about their rights in situations where they experience harassment from management. Program staff referred the issue to legal services.

4/2/2019 - ACE TRAILER INN VILLAGE

Resident's Issue: Resident has concerns about recent changes to their park rules and evictions occurring in their community. Program staff referred the resident to legal services for further assistance.

4/2/2019 - HOMETOWN EASTRIDGE ESTATES

Other: Resident notified staff with the outcome of an ongoing tree dispute on their lot. The park owners have paid for its removal.

4/3/2019 - CASA ALONDRA MOBILEHOME PARK

Other: Program staff conducted a site visit to assist the resident with scheduling an appointment with Habitat for Humanity for proposed home repairs.

4/5/2019 - WINCHESTER RANCH MOBILEHOME COMMUNITY

Resident's Issue: Management has asked the resident to permanently remove their padlock to allow ownership to access the utilities. The resident has concerns about how the legality and noticing requirements for accessing a resident's property.

4/5/2019 - MOBILEHOME MANOR MOBILEHOME PARK

Other: Residents invited Program staff to visit the park to learn about ongoing alleged harassment at the park. Program staff met with several residents and noted their concerns. Program staff will host a workshop with service providers that can further assist the residents.

4/8/2019 - FOOTHILLS MOBILELODGE

Resident's Issue: Resident claims to have been overcharged and feels threatened by property manager. Program staff referred the resident to legal services for further assistance.

4/8/2019 - FOOTHILLS MOBILELODGE

Resident's issue: Resident is concerned about a rent increase. Program staff explained to the resident the 3% allowable rent increase and referred the resident to speak with the park manager to adjust his rent increase.

4/9/2019 - ACE TRAILER INN VILLAGE

Resident's Issue: The resident wrote to Program staff requesting assistance with a rent increase they believe is over the allowable 3%. Program staff will investigate the claim and assist the residents.

4/10/2019 - COLONIAL MOBILE MANOR MOBILEHOME PARK

Other: A resident advocate contacted Program staff with concerns about a new rule implemented at a mobilehome park regarding payment methods. The park is requiring all residents to pay their rent via an online portal or to pay their rent at a local retailer. Staff investigated the issue, referred the resident to the Civil Codes that apply, and also referred the advocate to legal services.

4/10/2019 - CHATEAU LA SALLE MOBILEHOME PARK

Other: A resident representative from the park would like to schedule a workshop where Program staff can speak to the Mobilehome Rent Ordinance and offer resources for ongoing park issues. Program staff is working with the representative to schedule a meeting.

4/10/2019 - SAN JOSE VERDE MOBILEHOME PARK

Resident's Issue: Resident needs a copy of their mobilehome title. Program staff referred the resident to the State's website and contact information.

4/10/2019 - PEPPERTREE MOBILEHOME ESTATES

Resident's Issue: Resident followed up with City staff on a complaint regarding an encampment near the mobilehome park. City staff is made aware and is working with service providers to address the issue.

4/12/2019 - CASA DEL LAGO

Resident's Issue: Resident called to ask for assistance in reviewing his utility bill. The resident alleges utility overcharges for water and gas. Program staff recommended that the resident track the meter readings and then file a complaint with the California Public Utilities Commission and Weights and Measures.

4/16/2019 - Unavailable

Other: Real estate agent called to inquire about vacancy decontrol. Program staff referred the agent to the Mobilehome Rent Ordinance, Section 17.22.450.

4/16/2019 - CASA DEL LAGO

Resident's Concern: Potential buyer inquired about the Mobilehome Rent Ordinance.

4/16/2019 - CASA ALONDRA MOBILEHOME PARK

Other: Inspector from Habitat for Humanity called on behalf of the resident to summarize his findings. The resident's home will require major plumbing and electrical work. The Program will begin repairs within a 4-6 month time frame.

4/16/2019 - OAKCREST ESTATES MOBILEHOME PARK

Resident's Issue: Resident called regarding a security deposit complaint. The resident would like to contest the park's claims without going through small claims. Program staff referred the resident to legal and community services.

4/23/2019 - OAKCREST ESTATES MOBILEHOME PARK

Resident's Concern: The resident is in dispute with park management about the amount of security deposit returned to him. Program staff offered the resident referrals to legal services.

4/26/2019 - Unavailable

Resident's Concern: Resident contacted program staff regarding an additional charge to have an additional resident approved by the park. Park management claims that in order to approve the additional resident, they must be married and are required to provide documentation. Program staff referred the resident to legal services for further assistance.

4/29/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Other: Program staff learned about a potential mobilehome eviction lawsuit due to non-compliance with park rules. Program staff shared a list of legal resources with the resident.

4/29/2019 - OAKCREST ESTATES MOBILEHOME PARK

Resident's Concern: Mobilehome resident advocate submitted utility bills for several residents at the park for Program staff's review. Program staff was unable to make a determination, but provided some thoughts and suggestions. Staff also provided the City's resolutions for trash and sewer rates as they apply to mobilehome residents. Program staff also provided referrals to enforcement agencies.

4/29/2019 - COYOTE CREEK MOBILEHOME COMMUNITY

Resident's Request: Resident requested assistance with renewing their mobilehome registration. Program staff contacted the State on the resident's behalf and learned that the mobilehome registration was under Local Property Taxation. Program staff referred the resident to the County of Santa Clara to pay their registration fee.

5/2/2019 - CASA DEL LAGO

Other: Resident left a message asking for more information on mobilehome evictions. Program staff returned the residents call and learned that they are an unapproved tenant in the park and are being threatened with an eviction from the homeowner. The tenant requested information on their rights and referrals to legal agencies.

5/2/2019 - HOMETOWN AMERICA COMMUNITIES

Manager's Concern: Park manager requested information about State permits to alter a mobilehome. Program staff referred the resident to the State's website.

5/2/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: Resident discovered a new \$10 fee on his bill for the Mobilehome Residency Law Protection Act. Resident requested information about the State's program. Program staff contacted park management requesting that residents be properly noticed and informed about the program and associated fees.

5/2/2019 - Unavailable

Resident's Concern: The resident is concerned about a charge on their bill. Program staff returned the resident's call

and left a voicemail asking that the resident call Program staff back.

5/2/2019 - VILLAGE OF THE FOUR SEASONS

Resident's Concern: Resident asked for more information about the unlawful detainer process for mobilehomes. Program staff referred the resident to legal services.

5/6/2019 - GOLDEN WHEEL PARK

Other: Caller inquired about case management assistance. Program staff referred the resident to social services.

5/10/2019 - Unavailable

Other: Caller inquired about purchasing a mobilehome. Program staff explained the Mobilehome Rent Ordinance and referred the state for additional information.

5/13/2019 - CASA ALONDRA MOBILEHOME PARK

Other: A representative from Habitat for Humanity are currently processing a mobilehome resident's request for home repairs. The representative from Habitat would like the resident's up-to-date contact information. Program staff received consent from the resident and shared their contact information.

5/14/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: Mobilehome resident would like Program staff to mail him a copy of Assembly Bill No. 3066, and to confirm that the associated fee is only an annual charge.

5/14/2019 - COLONIAL MOBILE MANOR MOBILEHOME PARK

Other: Program staff shared Assembly Bill No. 3066- Mobilehome Residency Law Protection Act with the mobilehome resident advocate.

5/14/2019 - MOBILEHOME MANOR MOBILEHOME PARK

Other: Program staff conducted a site visit at the resident's park due to ongoing claims of harassment and discrimination at the park. Program staff spoke to several residents and documented several complaints.

5/17/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: Mobilehome resident contacted Program staff with concerns about her mobilehome park converting. The management company's lease is set to expire in 2020, therefore the resident is concerned that the landlord will chose to sell the land and will displace the residents. Program staff explained the Mobilehome Conversion Ordinance, City Council Policy 6-33, and State-wide protections. Program staff also mailed a copy of all documents to the resident for future reference.

5/17/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: Resident contacted Program staff with concerns about a park closure. The management company's lease is set to expire in 2020, and the residents are unsure of what the landlords are going to decide. Program staff shared local and state law protections for mobilehome resident's whose parks choose to convert.

5/20/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Manager's Concern: Community manager is concerned about the future of the park and whether the owners will renew their lease with the management company. Program staff shared with the manager Council Policy Number 6-33 that supports the Mobilehome Conversion Ordinance, the Conversion Ordinance, the City memorandum that summarizes potential zoning protections for mobilehome parks, and lastly, the proposed Assembly Bill Number 705.

5/21/2019 - SUNSHADOW MOBILEHOME PARK

Manager's Concern: Property manager contacted Program staff to share electronic files of park rent increase notices.

5/22/2019 - SUNSHADOW MOBILEHOME PARK

Resident's issue: Resident requested information regarding cable charge. Program staff requested from resident a copy of rental agreement for review.

5/24/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Other: Program staff received copies of all rent increase notices distributed at the park from park management.

5/24/2019 - COLONIAL MOBILE MANOR MOBILEHOME PARK

Other: Mobilehome advocate contacted Program staff with news about the sale of a mobilehome park in the City. Program staff notified the Housing Department director.

5/29/2019 - COLONIAL MOBILE MANOR MOBILEHOME PARK

Other: Resident advocate included Program staff in a letter addressed to park management requesting that a storage space be converted back to a clubhouse for the community to utilize. Resident advocate also requested for a resident lease agreement of their behalf.

6/3/2019 - HOMETOWN EASTRIDGE ESTATES

Other: Property Manager contacted the Program to request the Maximum Annual Percentage Increase notice. Program staff shared an electronic copy of the notice to the manager.

6/4/2019 - COLONIAL MOBILE MANOR MOBILEHOME PARK

Resident's Concern: Resident shared a letter addressed to park ownership in regards to vacant lots on the property. According to the letter, the owner has claimed a lack of fair return for their investments. According to the letter, the owners have not rented out the two new homes on the property, which could yield income. Resident of the park have decided to form a "Rent Adjustment Committee" to document park expenses and lost revenue.

6/5/2019 - OAKCREST ESTATES MOBILEHOME PARK

Other: Resident contact Program staff to share the outcome of the security deposit dispute. After writing a formal letter to the owner's, the resident was granted the full security deposit amount.

6/6/2019 - VILLA TERESA MOBILEHOME PARK

Landlord's Concern: The landlord of Villa Teresa Mobilehome Park is changing their meter reading company from Meter Man to Yes Energy. Yes Energy wants to charge individual residents a fee of \$4.00/month. The park is arguing that it's not allowed because it would result in a rent increase, but the company's attorneys argue that it would be legal. Program staff referred the issue to legal services.

6/6/2019 - CHATEAU LA SALLE MOBILEHOME PARK

Resident's Concern: HOA board member included Program staff in an email to the State's Department of Housing and Community Development for concerns about fire safety at the park. Park residents argue that for the size of their park (approximately 400 units) a one-way entrance and exit is not enough in case of an emergency. Park resident are requesting that the State come out to the park to inspect and determine whether another exit is necessary.

6/6/2019 - CHATEAU LA SALLE MOBILEHOME PARK

Other: Program staff was invited to an HOA meeting in which staff was asked to share general information about City and State laws. Program staff also shared referrals and resources. Staff will also reach out to park management to

share the same resources.

6/10/2019 - CASA DEL LAGO

Resident's Concern: Resident requested an application for Habitat for Humanity's Home Repair Program. Program staff offered the referral.

6/10/2019 - LAMPLIGHTER MOBILEHOME PARK

Resident's Concern: Residents believe they are being retaliated against because they have been served with a 7-day notice for noncompliance. Program staff referred the residents to legal assistance.

6/10/2019 - SUNSHADOW MOBILEHOME PARK

Other: Program staff mailed the resident a letter explaining to them that cable service is a part of their lease agreement with the park, which they agreed to pay upon signing the contract. Program staff let the resident know that the charge cannot be waived.

6/10/2019 - MAGIC SANDS

Manager's Concern: Manager contacted Program staff to request a copy of the City's Maximum Annual Percentage Increase Notice. Program staff faxed a copy of the notice to the main office.

6/12/2019 - RANCHO SANTA TERESA MOBILEHOME PARK

Other: Assistant manager of the park contacted Program staff to request an electronic copy of the Mobilehome Rent Ordinance for their future reference.

6/12/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: Resident is concerned about the future of their park, because the land owners do not want to renew the current management company's lease. Program staff explained that it is likely that the land owners will contract with a new management company, or manage the park themselves. Program staff also shared with the resident the Conversion Ordinance, City Council Policy, and State protections.

6/13/2019 - MOBILEHOME MANOR MOBILEHOME PARK

Other: Mobilehome residents are in search of a meeting location for future HOA meetings. Program staff contacted the Council office representative to assist residents with the costs associated with reserving a space at the local community center.

6/13/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: A mobilehome resident has been given three separate notices for park maintenance violations. The mobilehome resident has complied with all requests, but has not satisfied the requirements up the management's standards. The park resident feels that they are being targeted. Program staff referred the resident to legal services for further assistance.

6/13/2019 - OAKCREST ESTATES MOBILEHOME PARK

Resident's Concern: Program staff was contacted by a mobilehome resident with concerns about allowable rent increases. Program staff shared an electronic copy of the landlord and resident guidebook.

6/13/2019 - Unavailable

Other: The resident inherited the mobilehome from his father and changed the title and registration under his name. However, the resident never notified the Park of the change in ownership, and so when he applied to become an approved resident at the park, he was rejected (multiple times). The resident questions whether it is legal to do that.

Program staff referred the issue to legal services.

6/13/2019 - OAKCREST ESTATES MOBILEHOME PARK

Resident's Concern: Mobilehome resident is concerned about their utility charges. Program staff offered the resident resources for making an overcharge claim with the California Public Utilities Commission.

6/13/2019 - OAKCREST ESTATES MOBILEHOME PARK

Resident's Concern: According to the resident, park management has threatened to move forward with an eviction lawsuit for reporting service reductions and referring complaints to management. Program staff referred the mobilehome resident to legal services for further assistance.

6/14/2019 - RIVERBEND MOBILEHOME PARK

Manager's Concern: Park manager is concerned for their community's safety due to the homeless encampment present at the neighboring mobilehome park. Over the course of the year, the individuals residing at the encampment have started multiple fires, which were contained. However, management is concerned that they may not be as fortunate next time. Program staff shared the Homelessness Concerns Line and the State's Housing and Community Development Department.

6/14/2019 - MOBILEHOME MANOR MOBILEHOME PARK

Resident's Issue: Resident requested referrals to case management services.

6/14/2019 - HOMETOWN EASTRIDGE ESTATES

Resident's Concern: Perspective buyer inquired with the Program about the space's coverage under the Mobilehome Rent Ordinance.

6/17/2019 - RIVERBEND MOBILEHOME PARK

Resident's issue: Resident requested legal advice regarding notice to make repairs. Program staff reviewed the notice and referred the resident to legal service and the state's Mobilehome Title Registry for assistance.

6/18/2019 - WESTWINDS MANUFACTURED HOME COMMUNITY

Resident's Concern: The resident received a letter from the management company at the park notifying the community of the owner's decision to not renew their lease. The resident is concerned about the future of the park. Program staff shared City and State protections with the resident.

6/24/2019 - VILLAGE OF THE FOUR SEASONS

Resident's Concern: The resident has been served with a 3-day notice to pay-or-quit and a 60-day notice to vacate. The tenant has attempted to pay his rent but the park has refused to accept the payment. Program staff referred to legal services.

6/24/2019 - MAGIC SANDS

Property Manager's Concern: The park manager has requested that staff help prepare a list of all allowable pass-through fees throughout the City as they apply to mobilehome parks. Staff shared information about Program fees of which half of the fee may be passed through to mobilehome residents.

6/26/2019 - SOUTH BAY MOBILEHOME PARK

Property Manager's Concern: Property manager agreed to work with Program staff to brainstorm solutions to address the resident's safety concerns.

Theresa Ramos
Rental Rights & Referrals Program
Analyst II, Policy and Special Projects



HOUSING DEPARTMENT

REQUIRED POSTING

MOBILEHOME RENT ORDINANCE

Effective October 1, 2019 - September 30, 2020

Notice of Maximum Annual Percentage Increase for Mobilehome Lots Covered by the Mobilehome Rent Ordinance.

Pursuant to San Jose Municipal Code Section 17.22.155, Section 17.22.1010, and Section 17.22.1070, the Maximum Annual Percentage Increased Allowed without review is **three percent (3.01%)** for the period of October 1, 2019-September 30, 2020.

3.01%

**Maximum Annual
Percentage Increase**

Español

El aumento anual para residentes de casas móviles con rentas controladas ha sido establecido al tres por ciento (3.01%) durante el primero de octubre 2019 hasta el treinta de septiembre 2020.

Tiếng Việt

Mức tăng tiền thuê hàng năm cho cư dân ở nhà di động là ba phần trăm (3.01%) từ ngày 1 tháng 10 năm 2019 cho đến ngày 30 tháng 9 năm 2020.

To learn more about your rights and responsibilities, contact the Housing Department at 408-975-4480.



City of San José Housing Department • Rent Stabilization Program
200 East Santa Clara St, 12th Floor, San José, CA 95113 • 408-975-4480
www.sanjoseca.gov/rent • RSP@sanjoseca.gov

**Assembly Bill No. 3066**

CHAPTER 774

An act to amend Sections 18021.7 and 18502 of, and to add and repeal Part 2.2 (commencing with Section 18800) of Division 13 of, the Health and Safety Code, relating to mobilehomes.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3066, Mark Stone. Mobilehome Residency Law Protection Act.

The Mobilehome Residency Law governs the terms and conditions of residency in mobilehome parks. That law, among other things, requires the rental agreement between the management of a mobilehome park and the homeowner to be in writing and to contain specified terms and provisions, requires the management to meet and consult with homeowners, either individually, collectively, or with representatives of a group of homeowners, on specified matters within 30 days of a written request to do so, and prohibits management from terminating or refusing to renew tenancy within a park, except for specified reasons and upon giving written notice to the homeowner.

This bill would enact the Mobilehome Residency Law Protection Act. Beginning July 1, 2020, the bill would establish the Mobilehome Residency Law Protection Program within the Department of Housing and Community Development, pursuant to which the bill would require the department to provide assistance in resolving and coordinating the resolution of complaints from homeowners relating to the Mobilehome Residency Law, as provided. The bill would require the department to refer matters within its jurisdiction to its Division of Codes and Standards and authorize it to refer matters not within its jurisdiction to the appropriate enforcement agency. The bill would require the department to select complaints for evaluation under the program, as provided. The bill would require the department to contract with one or more qualified and experienced nonprofit legal services providers and, if a complaint submitted to the program is not resolved during a 25-day period for negotiation between management and the complaining party, the bill would require the referral of complaints selected for evaluation to an appropriate enforcement agency or one of those nonprofit legal services providers, as provided. The bill would require management to provide specified information to the department within 15 business days from the postmark date or electronic transmission of a request for that information and require the imposition of a noncompliance citation of \$250 for each failure to comply.

correction of substantial defects pursuant to Section 1797.7 of the Civil Code has expired.

(3) Each citation and related civil penalty assessment shall be issued no later than one year after discovery of the violation.

(4) A violation of paragraph (2) of subdivision (f) of Section 18802 shall result in a civil penalty in the amount of two hundred fifty dollars (\$250) for each violation.

(b) (1) Except as provided in paragraph (2), the amount of any civil penalty assessed pursuant to subdivision (a) shall be one hundred dollars (\$100) for each violation, but shall be increased to two hundred fifty dollars (\$250) for each subsequent violation of the same prohibition for which a citation for the subsequent violation is issued within one year of the citation for the previous violation. The violation or violations giving cause for the citation shall be corrected if applicable, and payment of the civil penalty shall be remitted to the department within 45 days of the date of issuance of the citation. Civil penalties received by the department pursuant to this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund.

(2) (A) For violations of subdivision (d) of Section 18020, or Section 18026, the department shall assess the civil penalties in a range between two hundred fifty dollars (\$250) and two thousand dollars (\$2,000). When determining the amount of the assessed civil penalty, the department shall take into consideration whether one or more of the following or similar circumstances apply:

(i) The citation includes multiple violations.

(ii) The cited person has a history of violations of the same or similar provisions of this division and the regulations promulgated under this division.

(iii) In the judgment of the department, the person has exhibited bad faith or a conflict of interest.

(iv) In the judgment of the department, the violation is serious or harmful.

(v) The citation involves a violation perpetrated against a senior citizen, veteran, or person with disabilities.

(B) If a citation lists more than one violation and each of the violations relates to the same manufacturing facility or client, the total penalty assessment in each citation shall not exceed ten thousand dollars (\$10,000).

(C) If a citation lists more than one violation, the amount of assessed civil penalty shall be stated separately for each section violated.

(c) Any person or entity served a citation pursuant to this section may petition for, and shall be granted, an informal hearing before the director or his or her designee. The petition shall be a written request briefly stating the grounds for the request. Any petition to be considered shall be received by the department within 30 days of the date of issuance of the citation.

(d) Upon receipt of a timely and complying petition, the department shall suspend enforcement of the citation and set a time and place for the informal hearing and shall give the licensee written notice thereof. The hearing shall commence no later than 30 days following receipt of the petition or at another

(3) The additional annual fee authorized by subdivision (b) of Section 18804 shall be paid to the department at the time of payment of the annual operating fee to the department or local enforcement agency, as appropriate.

(d) Change in name fee or transfer of ownership or possession fee of ten dollars (\$10).

(e) Duplicate permit fee or amended permit fee of ten dollars (\$10).

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 2.5. Section 18502 of the Health and Safety Code, as amended by Section 4 of Chapter 314 of the Statutes of 2010, is amended to read:

18502. Fees as applicable shall be submitted for permits, as follows:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars (\$10).

(c) (1) An annual operating permit fee of one hundred forty dollars (\$140) and an additional seven dollars (\$7) per lot.

(2) (A) An additional annual fee of four dollars (\$4) per lot shall be paid to the department or the local enforcement agency, as appropriate, at the time of payment of the annual operating fee. All revenues derived from this fee shall be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)) and any regulations adopted pursuant to the act.

(B) The Legislature hereby finds and declares that the health and safety of mobilehome park occupants are matters of public interest and concern and that the fee paid pursuant to subparagraph (A) shall be used exclusively for the inspection of mobilehome parks and mobilehomes to ensure that the living conditions of mobilehome park occupants meet the health and safety standards of this part and the regulations adopted pursuant thereto. Therefore, notwithstanding any other law or local ordinance, rule, regulation, or initiative measure to the contrary, the holder of the permit to operate the mobilehome park shall be entitled to directly charge one-half of the per lot additional annual fee specified herein to each homeowner, as defined in Section 798.9 of the Civil Code. In that event, the holder of the permit to operate the mobilehome park shall be entitled to directly charge each homeowner for one-half of the per lot additional annual fee at the next billing for the rent and other charges immediately following the payment of the additional fee to the department or local enforcement agency.

(3) The additional annual fee authorized by subdivision (b) of Section 18804 shall be paid to the department at the time of payment of the annual operating fee to the department or local enforcement agency, as appropriate.

(d) Change in name fee or transfer of ownership or possession fee of ten dollars (\$10).

(e) Duplicate permit fee or amended permit fee of ten dollars (\$10).

may provide information on these issues to the complaining party, management, or other responsible party.

(d) (1) The department shall refer any alleged violations of law or regulations within the department's jurisdiction to the Division of Codes and Standards within the department.

(2) The department may refer any alleged violations of law or regulations that are not within the jurisdiction of the department, including, but not limited to, rent disputes, criminal activity, or alleged discrimination, to the appropriate enforcement agency.

(e) (1) Upon receipt of a complaint, the department shall send the complaining party a letter confirming receipt and referencing those provisions of the Mobilehome Residency Law, if applicable, that may pertain to the complaint. If the department refers the complaint to an appropriate enforcement agency, pursuant to paragraph (2) of subdivision (d), the letter shall communicate that referral.

(2) A letter issued pursuant to this subdivision shall be in the same medium as the complaint to which the letter is in response.

(f) (1) The department shall use good faith efforts to select the most severe, deleterious, and materially and economically impactful alleged violations of the Mobilehome Residency Law. The department shall select a sample of these complaints that satisfy geographic representation of the state for evaluation.

(2) In evaluating a complaint, the department may request a copy of the lease, park rules, or any other relevant written documents applicable to a complaint from management. Management shall provide the information requested pursuant to this paragraph within 15 business days from the postmark date or the electronic transmission of the request. The department shall establish a mechanism for management to provide the documents electronically. Failure to comply with this requirement shall result in a noncompliance citation of two hundred fifty dollars (\$250) for each failure to comply. The department shall not provide the documents it receives pursuant to this paragraph to any person or entity other than the nonprofit legal services provider, an appropriate enforcement agency, or the complainant.

(g) If the department selects a complaint for referral to and evaluation by a nonprofit legal services provider pursuant to Section 18803, it shall send a notice to the complaining party and the management or mobilehome park owner. The notice shall advise the parties that they are required to negotiate the matter in good faith to resolve the matter in 25 days. If after 25 days either party responds to a department inquiry that the matter is not resolved, the department may refer the complaint to an appropriate enforcement agency or a nonprofit legal services provider. The department may combine this notice with the letter described in paragraph (e).

(h) The department may aggregate multiple complaints submitted to the program into a single investigation. Multiple complaints may be aggregated within a single mobilehome park, or within multiple mobilehome parks where there is either:

(b) (1) Beginning January 1, 2019, and each subsequent year thereafter, the department shall assess upon, and collect from, the management of a mobilehome park subject to the Mobilehome Residency Law an annual registration fee of ten dollars (\$10) for each permitted mobilehome lot within the mobilehome park. The department shall collect the registration fee at the same time as the annual operating permit fee imposed under the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)).

(2) The Legislature finds and declares that the purpose of the fee imposed by this section is to cover the costs of the department incident to the investigation of mobilehome parks for purposes of enforcing the Mobilehome Residency Law.

(c) Notwithstanding any other law or local ordinance, rule, regulation, or initiative measure to the contrary, within 90 days from payment of the registration fee to the department, management may pass on all or a portion of the amount of the annual registration fee assessed under this section to the homeowners within the mobilehome park and may collect the amount or portion thereof from the homeowner with the rent payment and other charges due, except that management shall not aggregate or include the fee in the rent nor shall the amount exceed ten dollars (\$10) per mobilehome space annually. The annual registration fee shall appear as a separate line item in the bill and shall be accompanied by a clear written description of the purpose of the charge to homeowners, along with contact information for the department.

18805. (a) On January 1, 2023, the department shall submit a written report to the Legislature outlining data collected from the program and make that report available on its Internet Web site. The data collected shall include, but not be limited to, all of the following:

(1) The amount of registration fees collected pursuant to Section 18804 and the amount expended on the program.

(2) The total number of complaint allegations received, the total number of complaint allegations processed, and the total number of complaint allegations referred to another enforcement agency or to a nonprofit legal services provider.

(3) The type of complaint allegations received.

(4) To the extent possible, the outcome of each complaint received by the program.

(5) Activities completed by a nonprofit legal services provider contracted with pursuant to the program.

(6) The most common complaint allegations.

(7) Recommendations for any statutory or administrative changes to the program.

(b) The report required to be submitted to the Legislature by this section shall be submitted in compliance with Section 9795 of the Government Code.

(c) The department shall additionally report the information required pursuant to paragraphs (1) to (3), inclusive, of subdivision (a) to the task force convened pursuant to Section 18400.3.