



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Raul Perez

**SUBJECT: ELLIS ACT ORDINANCE  
RECONTROL PROVISIONS**

**DATE:** November 4, 2019

Approved by:

Date:

11/4/19

## **RECOMMENDATION**

Accept staff recommendations for the Ellis Act Ordinance with the following changes:

1. Maintain current 50% re-control requirement and remove the cap at 7x the number of old apartments demolished.

## **BACKGROUND**

Over the last few years, San José has become one of the most expensive housing markets in the United States and the demand in both market rate and affordable housing grows. Since the last Housing Element Annual Progress report, we have only met 13% of our affordable housing goal, while nearing our market-rate goal at 83% as we pass the halfway mark for the Regional Housing Need Allocation (RHNA) period. This lag in affordable housing production combined with policies to chip away at our rent controlled housing stock will only continue to cause more overcrowding, homelessness, and drive more households into becoming rent burdened. Capping the limit of re-controlled apartments at 7x the number of withdrawn apartments will only further facilitate the displacement of our low income families and communities of color and hurt our goals of housing preservation in the City.

Passed in 1985, the Ellis Act allows landlords the right to “go out of business,” and pull their rental units off the housing market. However this act has been abused to evict tenants from rent controlled units to make way for larger market rate developments. Many municipalities have strengthened their local Ellis Act to mitigate the impacts on

tenants, but we are still seeing the gouging of rent controlled units across major cities. Just last year, we amended our Ellis Act provisions to be one of the most lax ordinances. Compared to San Francisco, Santa Monica, and Los Angeles whose units must return at 100% recontrol, our ordinance subjects demolished rent controlled apartments to return at 50% recontrol. Housing staff found that this struck a balance between preserving rent *stabilized apartments over time and not impacting financing and profitability* of a new development. Alternatively, if the 50% recontrol proves not to be feasible for developers, there is the opportunity to dedicate 15% of new units as affordable housing. Re-controlled units return at market rate, which will be unaffordable for tenants if they were to return. However, electing the 15% waiver will allow units to actually come back as rent restricted and add to our lacking affordable housing stock.

We must not lose sight of the impact the Ellis Act can have. While we work to facilitate development in San José, our priority should remain on protecting our tenants, those who are the first to suffer from the impacts of the housing crisis. We should not be exacerbating displacement and gentrification but should be looking at all efforts that expand protections to our most vulnerable and preserve the very limited amount of rent controlled stock we do have.