



# Memorandum

**TO:** HONORABLE MAYOR

**FROM:** Vice Mayor Chappie Jones

AND CITY COUNCIL

**SUBJECT:** Ellis Act Ordinance Re-Control Provisions

**DATE:** November 5, 2019

Approved

Date 11/5/19

## RECOMMENDATION

Accept staff report and modify the re-control waiver provision to include:

### *Requirement 1*

- a) provides more rent-restricted affordable units in the new project than rent-controlled units in the existing site, using the 15% Inclusionary Housing Ordinance (IHO) minimum requirement; **or**
- b) at least 20% affordable units off-site within the three linear miles of the proposed project site, consistent with the offsite requirements for the IHO.

**and;**

### *Requirement 2*

- a) allow all displaced tenants the right to placement in an equivalent unit or to return after new unit construction
  - i. If the property owner holds property within San José, the tenants have first right of refusal to equivalent units that may become vacant paying their prior rent and an annual rent increase of no more than 5%. Priority for these units shall be placed on displaced tenants with school aged children. No tenant screening shall be done for these displaced individuals.
  - ii. Otherwise, tenants shall have the right to return paying their prior rent plus Consumer Price Index (CPI) for each year the building is under construction, followed by an annual rent increase not to exceed 5%. No tenant screening shall be done for these returning individuals.

**or**

- b) a written, signed agreement is reached with at least 2/3rds of the tenants who are removed due to an Ellis Act Ordinance eviction. Displaced tenants would have the option to form a tenant group and seek to negotiate with the owner through a written, signed agreement by a 2/3 majority. An agreement may include such topics as additional relocation assistance, phased development, or financial incentives. Tenants shall be notified of their right to refuse an agreement and their right to seek legal counsel;

## **BACKGROUND**

This memorandum provides a thoughtful attempt to approach the Ellis Act Ordinance as we strive to balance the needs for preservation, protection, and production. Thank you to staff for their diligent work on producing their report and for incorporating the proposal for re-entry for displaced tenants at a function of prior rent from my office into their recommendation. This memorandum expands on the recommendation staff included for the re-control waiver to allow developers more options while ensuring tenant protection and the production of affordable units. Thank you to the various stakeholders who worked with our office for their input and collaboration throughout the process of developing this memorandum.

This proposal strives to balance the goals of the developers, tenants, and the City of San José through addressing the issue of re-control of new development that falls under the Ellis Act Ordinance. Re-control of new units is not the ideal outcome for the developer, displaced tenants, or the City of San José. For the developer, rent controlled units are revenue restricting and do not provide room for flexibility, regardless of market conditions. This kind of uncertainty will deter developers from investing in properties subject to Ellis requirements which leaves these complexes that may be dilapidated, seismically unsound, and blighted to continue to worsen. Re-control is not the best option for displaced tenants because the new units are coming in at market rate, which is often far higher than the rent paid before demolition. If not ideal to protect displaced tenants, or spur development, the re-control provision is counter to the goals of the City of San José as we face a growing housing crisis and skyrocketing rents.

To meet the first requirement, a new development must either a) replace more rent-controlled units than the number of units being demolished by meeting 15% inclusionary at a minimum, or b) build the same number of units to meet the offsite IHO within three miles of the project site. No in-lieu fee may be paid as an exemption to this requirement as the goal is to localize deed-restricted affordable housing near the site of new construction.

To meet the second requirement, a new development seeking exemption from re-control must either a) allow for re-entry of the tenants, or to offer them an equivalent unit. This option gives a developer the opportunity to allow displaced tenants to return to the newly constructed property at a function of their prior rent with a 5% allowable annual increase, or to provide current tenants with a similar unit at the same rent and not increase the rent by more than 5% annually. This concept is one our office conceptualized and recommended to housing staff, which is now in the

staff recommendation. If the developer does not prefer this option, they may opt for option “b” which requires a written, signed agreement with at least 2/3 of the tenants that currently occupy the space. The agreement is not prescriptive and allows for tenants and developers to reach an agreement on their own terms. This option allows for a hands-off approach for tenants and developers to work together to reach an agreement.

This reasoned adjustment to the re-control provision of the Ellis Act Ordinance will allow for more affordable housing production and protection for displaced tenants while providing a feasible alternative to re-control for developers.