



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 3, 2018

Approved

D. DSYL

Date

4/11/18

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

RECOMMENDATION

- (a) Accept the staff report.
- (b) Approve an ordinance amending Part 11 of Chapter 17.23 of Title 17 of the San José Municipal Code to:
 - (1) Modify the re-control provisions to subject the greater of either the number of apartments removed from the market, *or* 50% of new apartments built to the Apartment Rent Ordinance (ARO).
 - (2) Modify the re-control provisions to subject additional apartments beyond the base units are limited to the current annual general increase of 5%.
 - (3) Allow an exemption from the re-control provisions if at least twenty (20) newly constructed rental units are being created. The re-control requirement under this Section will be waived if the property owner:
 - (i) Develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; and
 - (ii) Develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.
 - (4) Include apartments buildings with three units under the Ellis Act.
 - (5) Allow non-ARO apartments with three units or more built after 1979 to provide 120-day notification to their tenants and the City and to provide relocation consultant services to impacted tenants.

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OUTCOME

City Council approval of the recommended actions will amend San José's Ellis Act Ordinance to require the greater of the number of demolished units or half of newly constructed replacement apartments (rather than all of the newly constructed units, as currently required) to be re-controlled by the Apartment Rent Ordinance. In addition, apartments with three units will be subject to Ellis Act. Owners of apartments with three or more units built after 1979 will be required to provide notification and relocation consulting assistance to tenants, when those properties are withdrawn from the rental market.

EXECUTIVE SUMMARY

The City Council approved the Ellis Act Ordinance on April 18, 2018. This action established a process by which a property owner can remove their apartments from the rental market. Upon approval of the Ellis Act Ordinance, the City Council provided direction to the City Manager to return with additional research regarding the impact of subjecting all "replacement" apartments to re-control by the Apartment Rent Ordinance. Replacement apartments are new apartments constructed on the site of apartments removed from the market via the Ellis Act Ordinance.

The Housing Department reviewed several options pertaining to the number of new apartments that will be subject to the Ellis Act. As currently adopted, 100% of all new apartments constructed as replacement apartments are subject "re-control" and therefore must comply with the Apartment Rent Ordinance (ARO). After evaluating different alternatives, the Housing Department recommends that the re-control provision of the Ellis Act be modified to subject the greater of either the number of apartments removed from the market *or* 50% of new apartments built, to the ARO. The Housing Department further recommends that exemption from the re-control provisions be allowed if 20% of the new apartments are deed-restricted affordable apartments, and are included in the new development (i.e. built on-site). It is the Department's conclusion that this approach helps preserve rent stabilized apartments and provides developers with viable options to meet the Ellis Act requirements and provide new housing opportunities.

Staff is also proposing two additional changes to the Ellis Act Ordinance. When implementing the Ellis Act Ordinance and Tenant Protection Ordinance (TPO), staff identified inconsistencies between the apartments covered by these ordinances. These inconsistencies have created technical challenges for landlords seeking to withdraw triplexes built before 1979 and apartment buildings with three apartments or more built after 1979.

Due to the discrepancy between the units covered by the TPO (three units or more) and the Ellis Act Ordinance (four units or more), developers removing triplexes from the market are not able to site an Ellis Act reason to provide tenants with the required notice to vacate. The Housing Department recommends an amendment to the Ellis Act Ordinance so that it applies to apartment complexes with three units or more. An additional 1,056 triplex apartment units would be

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covered by the local Ellis Act Ordinance if this recommendation is approved. This would align the TPO and Ellis Act Ordinance and provide a practical means for owners to address the displacement of tenants.

Generally, apartments constructed and occupied after September 7, 1979 are not subject to the ARO, but are subject to the TPO. To address the issue where owners want to remove non-ARO apartments from the market, the Housing Department recommends that owners of such apartments be required to provide a 120-day notification and offer relocation consultation to tenants. If adopted, this would provide owners with a practical alternative to remove tenants for properties they wish to redevelop for other uses. Without this option, owners would have to negotiate individual voluntary agreements with tenants or find some other means to legally evict tenants.

BACKGROUND

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

On April 18, 2017, City Council the City Council approved an Ellis Act Ordinance that provides procedures on the control of rents for apartments constructed or returned to the rental market within five years of withdrawal. As a part of this action, City Council provided:

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

Apartment Rent Ordinance

The ARO promotes stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. To protect tenants from excessive and unreasonable rent increases, the ARO limits annual rent increases to 5% per year. It requires notices be provided to the City and regulates how much and what types of costs may be passed through to tenants. In San José, all apartments of three or more units built and occupied prior to September 7, 1979, are subject to the ARO.

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Ellis Act Ordinance

The Ellis Act Ordinance establishes a process by which a property owner can remove their apartments from the rental market. It should be noted that Ellis Act provisions only apply to apartments that are subject to the City's ARO. Adoption of an Ellis Act Ordinance was included as part of the top City Council priority. The City Council adopted the Ellis Act on April 18, 2017. As part of that action, the City Council directed that the Administration 1) Complete additional research regarding the impact of subjecting all replacement units to re-control by the Ellis Act; and (2) Provide the City Council with additional research regarding existing Ellis Act Ordinances throughout California.

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

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

Property owners that remove rent stabilized apartments from the market are subject to these re-control provisions. In addition, all new housing with 20 units or more are subject to the City's Inclusionary Housing Ordinance.

Inclusionary Housing Ordinance

The Inclusionary Housing Ordinance (IHO), Chapter 5.08 of the San José Municipal Code, was adopted on January 12, 2010. The IHO requires all residential developers who create new, additional, or modified for-sale or rental units, to provide 15% of housing on-site and affordable to income qualified buyers/renters. Developers also have other options to meet the inclusionary requirement. These options include building affordable apartments offsite or paying an in-lieu fee. If the residential project is a rental development and the owner chooses to meet this obligation by providing the affordable apartments on-site, 9% of the apartments must be

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restricted at 80% Area Median Income (AMI) and 6% of the apartments must be restricted at 50% AMI.

On November 18, 2014, the City of San José adopted an Affordable Housing Impact Fee (AHIF) that applies to rental developments. The fee was intended to fund new development to help meet the increased affordable housing demand created by new market rate rental housing. On December 19, 2017, the City Council approved a transition from the AHIF to the IHO for projects with 20 units or more. As a result, new market-rate rental developments have a time-limited option to remain under the AHIF program if certain criteria are met. More information on the Inclusionary Housing Ordinance Program can be found on the following webpage: www.sjhousing.org/IHO.

This memorandum complies with the City Council's direction to address the re-control issue and provides property owners with options to meet their Ellis Act obligations.

ANALYSIS

In order to develop recommendations for proposed changes to the Ellis Act Ordinance, the Housing Department completed extensive research and outreach. These efforts include holding individual stakeholder meetings, convening public meetings, engaging a consultant to complete a study on potential impacts to development, and completing research on Ellis Act provisions from other jurisdictions. The results of these efforts are contained in the Department's analysis, which is organized into the following three topic areas.

- 1) **Re-Control of Apartments** – Addresses the re-control issue as currently delineated in the Ellis Act Ordinance and provide options.
- 2) **Apartments with Three Units** – Addresses Ellis Act issues associated with three-unit apartments.
- 3) **Apartments Built After 1979** – Addresses noticing requirements for apartments being removed from the market that were built after September 7, 1979.

1. Re-Control of Apartments

As the demand for housing in San José increases, pressure to redevelop rent stabilized apartments continues to rise. There are approximately 40,000 apartments subject to the Apartment Rent Ordinance (ARO) and the City's Ellis Act Ordinance. Many of these apartments are located in areas that are likely to be redeveloped in the next 20 years. The City's General Plan designates areas of growth by urban village areas. These areas allow for higher densities where redevelopment of existing rent stabilized apartments may occur.

Based on research from the Planning Department, almost 12,000 (30%) of current apartments covered by the Apartment Rent Ordinance are located in urban villages. Staff has experienced an increase in inquiries regarding redevelopment in these areas. This is likely to increase as the

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urban village plans are adopted. Therefore, re-control of some or all the units constructed after ARO units are demolished, is necessary to preserve the limited supply of rent stabilized housing.

Since the adoption of the Ellis Act, staff has received inquiries from developers who are interested in demolishing existing ARO apartments to build new housing. The potential projects are in various stages of the planning process. A list of these inquiries is provided as **Attachment A**.

Existing Re-Control Provisions

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

The Housing Department's analysis of the re-control issue included three components: 1) input from meetings with developers; 2) a report prepared by David Paul Rosen and Associates and; 3) research on re-control provisions in other cities. Based on this analysis, staff drew the following conclusions:

- Developers need certainty in rents to finance new development,
- 5% rent increase limit has no empirical impact on financing new apartments,
- Tenants favor affordable housing over rent controlled apartments,
- Other cities require re-control for all new apartments, and
- Unintended consequence of re-control is the loss of rent stabilized apartments.

The information and analysis that lead to these conclusions is provided below.

Developers Desire Certainty in Rents in Order to Finance New Development

Staff met with developers to discuss the re-control options for the Ellis Act Ordinance. During these meetings, participants spoke of communities in the region that are introducing inclusionary and rent stabilization requirements. Developers stated that deed-restricted affordable housing is predictable and understood by lenders and developers. This is because the deed-restriction ties rents to a predictable scale for an extended period of time. Rent stabilization, however, is perceived as unpredictable because a local governing body could make a decision to tighten the rent stabilization requirements at any time. According to developers, this lack of certainty increases risk for the development of new housing subject to rent stabilized requirements. Developers were generally interested in exploring an option to provide affordable housing apartments in lieu of rent control provisions. This option allows developers to meet the City's Inclusionary Housing Ordinance requirements and Ellis Act Ordinance requirements at the same time. It would also provide the certainty necessary to finance new projects.

Staff presented the proposed changes to the Developers Roundtable. Participants indicated the preferred alternative would be to have the number of apartments subject to re-control by the Ellis Act equal the number of apartments demolished. In other words, replacement we be on a one-

for-one basis. The group also discussed their perspective that the re-control provisions in the Ellis Act may encourage developers to avoid the redevelopment of rent controlled apartments when considering viable sites for new projects.

The 5% Rent Increase Limit Has No Empirical Impact on Financing New Apartments

The City engaged David Paul Rosen and Associates to evaluate the potential impact of ARO obligations, resulting from the demolition of ARO properties, on the development of new market rate housing. The consultant evaluated the difference in cash flows, property valuation, and supportable debt under alternative restrictions to determine the extent to which the financing of the new apartments is affected. The results of this work can be found in the report entitled, *Assessing the Potential Effect of the ARO on New Development*. The report is included as **Attachment B**. The report concludes that first lenders typically underwrite new development assuming 2% - 3% growth rates in rents. The 5% annual general increase in the ARO would not be a limitation to this financing.

When interviewing funders, the study found some second tier debt providers indicated that the 5% limitation would “chill” their interest in these projects due to the limitation on the ability to impose sharp increases in rents in tight rental markets. The Rosen study indicates that there is no 10-year period since 1970 where markets have increased by more than an average of 5% per year, minimizing the statistical significance of this concern. However, there may be a perceived risk to developing under rent control provisions in the second tier lending market.

Tenants Favor Affordable Housing Over Rent Controlled Apartments

Staff hosted public meetings and met with tenant advocates to discuss the proposed revisions to the Ellis Act Ordinance. Generally, the tenant stakeholders did not support changes to the current re-control provisions which require all new apartments be subject to the Apartment Rent Ordinance. When discussing a re-control option to substitute rent control provisions for on-site affordable housing, tenant stakeholders expressed an interest in the affordable housing option. Under the Ellis Act, rents are reset to market rates following demolition of apartments, then limiting annual increases to 5% annually. When these provisions were explained to tenants, they stated rents set by affordability restrictions may be more attainable for residents displaced by Ellis Act withdrawals than rents for apartments under rent control. Tenant stakeholders also expressed an interest in a higher percentage requirement for affordable housing apartments at the lowest levels possible.

Other Cities Require Re-control for All New Apartments

The Housing Department researched the different re-control provisions in cities with Ellis Act ordinances. The ordinances of San Francisco, Berkeley, West Hollywood, Los Angeles, and Santa Monica have provisions requiring that all new housing developments, following an Ellis Act withdrawal, are subject to the rent control provisions of that jurisdiction. This is consistent with the San José’s current requirements. Los Angeles provides an exemption from rent control

provisions to developers who replace the new units with 20% restricted affordable units. Table 1 summarizes these provisions.

Table 1: Summary of Cities with Ellis Act Provisions

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

An Unintended Consequence of Re-control is the Loss of Rent Stabilized Apartments

The Housing Department also looked at the impact of Ellis Act Ordinance provisions in these jurisdictions. The Department found that in some jurisdictions which require all new apartments to be covered by rent control provisions, the overall number of rent stabilized apartments erodes over time. Even if the jurisdiction requires re-control of all new units, the provisions may lead developers to make choices that avoid the local rent ordinance obligations. Santa Monica is a case in point. It has the longest standing Ellis Act in the State. According to the 2016 Santa Monica Rent Control Board Consolidated Annual Report, Santa Monica has lost over 2,000 rent controlled apartments through Ellis Act removals. A summary of the apartments withdrawn from the rental market versus those added under the re-control provisions is provided in Table 2.

Table 2: Santa Monica Apartments and Properties Withdrawn 1986-2016

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

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

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

Re-Control Options

Based on the conclusions previously cited, the Housing Department examined the following options in Table 3 regarding the number of new apartments that should be re-controlled under the Ellis Act.

Table 3: Alternatives for Re-Control Provisions

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

After reviewing these options, staff developed the following recommendations.

Staff Recommends that 50% of New Apartments be Re-controlled

The study by David Paul Rosen and Associates concludes that the 5% annual general increase allowed by the Apartment Rent Ordinance does not significantly impact the potential financing for a new housing development. Conversations with developers and second tier lenders indicated a perceived risk associated with development with these provisions due to limitations on rent increases and the uncertainty of rent control provisions in the future. In order to address the concerns about certainty in future years, staff recommends that all net new apartments built under the current Ellis Act be limited to an annual general increase of 5%, independent of any future change to the annual general increase in the Apartment Rent Ordinance.

Staff also considered the unintended consequences learned from other cities that require all new development to be subject to re-control provisions. In order to address the potential impact of developers avoiding the development of rental housing, staff recommends limiting the re-control provisions to half of the newly developed apartments. As a further clarification, the Housing Department recommends that the re-control provision of the Ellis Act be modified to subject the greater of either the number of apartments removed from the market, *or* 50% of new apartments built, to the Apartment Rent Ordinance. This approach is intended to preserve rent stabilized apartments over time. Additionally, staff is recommending that all rent stabilized apartments be limited to a 5% annual rent increase, addressing developer concerns regarding certainty of future rent increases.

Staff Recommends a Waiver from Re-control Provisions for 20% On-site Affordable Housing

The Housing Department further recommends that an exemption from the re-control provisions be allowed if a developer provides 15% of the newly constructed apartments as on-site affordable rental apartments consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance (i.e. 9% of the apartments restricted at 80% AMI, and 6% at 50% AMI). The staff recommendation also includes a requirement that developers provide an additional 5% of the newly constructed apartments as on-site affordable rental apartments restricted at 100% of area median income. The Department's conclusion is that this approach provides developers with viable options to meet the Ellis Act requirements and provides new affordable housing opportunities for the community.

2) ARO Apartments with Three Units

After the Ellis Act Ordinance came into effect on May 26, 2017, staff immediately received calls from developers interested in redeveloping triplex apartment buildings covered by the ARO. Aside from being covered by the ARO, triplexes are also covered by the Tenant Protection Ordinance (TPO). The TPO eliminates no-cause evictions and gives specific reasons under which landlords can evict tenants. However, due to the discrepancy between the units covered by the TPO (three units or more) and the Ellis Act Ordinance (four units or more), developers removing triplexes from the market are not able to cite an Ellis Act reason to provide tenants with the required notice to vacate. In addition, tenants cannot receive relocation assistance benefits required under the Ellis Act Ordinance.

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

Staff Recommends Including Apartments with Three Units Under the Ellis Act

The Housing Department recommends an amendment to the Ellis Act Ordinance so that it applies to apartment complexes with three units or more. This would align the ARO, TPO, and Ellis Act Ordinance with regards to triplexes. An additional 1,056 apartments will be covered by

the local Ellis Act Ordinance. This modification will provide consistency between the TPO and the Ellis Act for owners, tenants, and staff charged with implementing the ordinance.

3) Apartments Built After 1979

After the Ellis Act Ordinance came into effect on May 26, 2017, staff received an inquiry from a developer who wanted to remove an eight-unit apartment building built in 2005 from the rental market. The purpose of removal was to assemble land for new development. All apartments are subject to the TPO, which limits the causes for eviction. However, apartments built after September 7, 1979 are not subject to the ARO or the Ellis Act Ordinance, so the owner could not use the Ellis Act as a method to remove the tenants. In this case, the property owner did not have a straightforward method to remove all of the tenants living in the eight-unit apartment building based because the Ellis Act Ordinance does not apply to this property.

Staff Recommends Including Apartments Built After 1979 to be Included Under Ellis Act

In order to address this issue, the Housing Department recommends that owners who wish to utilize the Ellis Act Ordinance be required to provide a 120-day notification to tenants of apartments being removed from the market that were built after September 7, 1979. The Housing Department also recommends that the owner be required to offer relocation consultant services to impacted tenants. Since these are market rate apartments, staff is not recommending that owners be required to make relocation payments to tenants of these units.

If adopted, this would provide owners of apartments constructed after 1979 with a practical alternative to removing tenants from properties they wish to remove from the rental market. Without this option, owners would have to negotiate individual voluntary agreements with tenants or find some other means to legally evict them. The requirements for these apartments would be limited to the 120-day noticing requirements and providing access to a relocation specialist.

PUBLIC OUTREACH

As indicated throughout this document, the Housing Department met with a wide range of stakeholders while developing the proposed Ellis Act Ordinance. Staff met with developers, property owners and managers of both small and large properties, as well as a variety of tenants and tenant advocates. **Attachment C** summarizes the public and stakeholder meetings pertaining to this issue. Public comments are included as **Attachment D**.

POLICY ALTERNATIVES

- Alternative #1:** No changes be made to the Ellis Act Ordinance to reduce the requirement that all new apartments be re-controlled.
- Pros:** Be consistent with all other California jurisdictions.
- Cons:** Developers may see this alternative as a disincentive to proceed with the project. For the newly developed apartments, rent increases would be limited and result in financial implications with other comparable apartments that are market rate.
- Reason for not recommending:** The development of additional housing is needed for residents in San José, and this alternative may provide a disincentive to invest in redeveloping ARO older housing stock.
-
- Alternative #2:** Require relocation benefits for apartments built after 1979
- Pros:** Creates consistency between all apartments covered by the Ellis Act Ordinance.
- Cons:** Since these apartments are not subject to provisions in the Apartment Rent Ordinance, they are paying market rents. Findings would need to be made to determine a need for payment to tenants living in apartments built after 1979. This changes the findings previously made for tenants covered by the Apartment Rent Ordinance prior to Ellis Act removal.
- Reason for not recommending:** Findings have not been made. Tenants living in apartments built after 1979 will be provided advanced notice and access to relocation consulting services.

EVALUATION AND FOLLOW-UP

The Ellis Act Ordinance will have a second reading by the City Council two weeks following the first reading of the ordinance. The updated ordinance will be effective 30 days following the second reading of the City Council. Adoption of this recommendation will complete the Administration's work on the City Council's top priority as it pertains to the Ellis Act.

COST IMPLICATIONS

The administration of the Ellis Act Ordinance will be funded through a filing fee required by property owners upon filing a Notice of Intent to Withdraw. This requirement would be extended to owners of three apartments or more. The fee is based on the assessment of work required by staff. It includes relocation specialist costs. Implementation of the Ellis Act Ordinance will be supported by the current staffing levels of the Rent Stabilization Program. The fee will be reviewed on an annual basis as a part of the City's annual Fees and Charges recommendations.

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COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

Pursuant to Section 7.01 of the existing regulations, the proposed amendments to the Ellis Act Ordinance were presented to the Housing and Community Development Commission (HCDC) at their regularly scheduled meeting on March 22, 2018. These reports and attachments is available at the following link: <http://www.sanjoseca.gov/index.aspx?NID=1265> The HCDC supported the staff recommendation, while expressing a desire to increase the affordable housing option to a 25% requirement and deepening the affordability of the additional affordable housing apartments to 80% AMI. The revised recommendation from HCDC is summarized below:

Amend the Ellis Act Ordinance re-control provisions to:

- A. Subject the greater of either 50% of new apartments built *or* the number of apartments removed from the market, to the Apartment Rent Ordinance (ARO);
- B. Allow an exemption from the re-control provisions if at least twenty-five (25) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:
 - i. develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; and
 - ii. develops an additional ten percent (10%) of the newly constructed units as on-site affordable rental units restricted at 80% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.
2. Include apartments buildings with three units under the Ellis Act.
3. Require apartments with three units or more built after 1979 to provide 120-day notification to their tenants and the City and to provide relocation consultant services to impacted tenants.

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CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND

Director of Housing

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

ATTACHMENTS:

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

Attachment B – David Paul Rosen and Associates Report “Assessing the Potential Effect of the ARO on New Development”

Attachment C – Ellis Act Ordinance Community and Stakeholder Meetings

Attachment D – Ellis Act Ordinance Public Comments