



# Memorandum

**TO:** Honorable Mayor and City Council

**FROM:** Councilmember Jimenez

**SUBJECT:** Amendments to Procedures for Removal  
of Rent Stabilized Units from the Rental Market  
(Ellis Act Ordinance).

**DATE:** April 24, 2018

APPROVED

DATE

4/24/18

## Recommendations

1. Accept the staff report.
2. Approve an ordinance amending Part 11 of Chapter 17.23 of Title 17 of the San José Municipal Code to:
  - a. Preserve the existing provisions requiring re-control of 100% of “replacement” apartment units constructed on the site of apartments removed from the market via the Ellis Act Ordinance; and
  - b. As an alternative to re-controlling the replacement units, provide developers the option to voluntarily elect to build 33% of the total number of units as on-site below market rate (BMR) rental units deed-restricted at 60% of area median income. With this option, developers would not be permitted to pay a fee in lieu of providing the on-site BMR units.
3. Include apartment buildings with three units under the Ellis Act Ordinance.
4. Include apartments built after 1979 under the Ellis Act Ordinance with the following provisions:
  - a. Require 120-day notification to tenants of apartments being removed from the market;
  - b. Provide relocation consultant services to impacted tenants; and
  - c. Require payment of base assistance to impacted tenants.

## Background

Last year, when this item came to Council, we were facing a growing homeless population, a worker shortage because even skilled workers can no longer afford to live in San José, a shortage of affordable housing units, and increasing rents. These concerns have only intensified since our last discussion, and it is no surprise that San José is on a trajectory to become one of the most unaffordable cities in the nation. Last year, the nation’s 10th largest city issued building permits for just 475 affordable units — 20 percent of its target number for the year.

Given our ever-growing housing crisis, it is counter-productive for San José to weaken its current Ellis Act protections, which, as currently adopted, require that 100% of all new apartments constructed as replacement apartments be subject to “re-control” and therefore comply with the Apartment Rent Ordinance (ARO). In fact, we should be doing everything we can to keep residents from being displaced, especially low-income households.

As the need to increase our housing stock intensifies, there is tremendous pressure to redevelop rent-stabilized apartments. When a development removes ARO apartments from the rental market, it is subject to the Inclusionary Housing policy and the Ellis Act Ordinance. Under our current ordinance, developers are opting to pay the in-lieu fee rather than construct the much-needed affordable units - because it is easier and cheaper to do so. This impedes our ability to achieve our goal of increasing affordable units. We can still give developers a choice, which is why I suggest adding the alternative, voluntary option to provide a higher percentage of on-site affordable units instead of re-controlling replacement units. This option reaffirms our commitment to protect our most vulnerable residents and would help us reach the goal of 10,000 new units set by the Mayor’s housing plan.

We should now address units built after 1979. Council should take this opportunity to expand the notification, access to relocation specialists, and Base Assistance relocation payment covered under the Ellis Act Ordinance to tenants living in buildings constructed after 1979. Other cities across California, including Mountain View, Oakland, West Hollywood and other major cities, have already taken this step to protect tenants. It is time for San Jose to do its part to combat the displacement of families, seniors, and all residents equally regardless of when their unit was built. Reserving these benefits only to displaced tenants in ARO units does not address the tremendous problem that our City is facing.