



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Maya Esparza

SUBJECT: SEE BELOW

DATE: 10/31/2019

Approved

Maya Esparza

Date

10/31/2019

SUBJECT: ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS

RECOMMENDATION

1. Accept the staff report.
2. Do not amend the Ellis Act Ordinance's existing re-control provisions.

BACKGROUND

I thank staff for the substantial research, outreach and effort that went into compiling this updated report on the Ellis Act Ordinance. However, I do not believe that staff's findings provide a compelling case to amend the re-control provisions of the Ordinance as they currently stand.

Staff began work on the Ellis Act Ordinance over three years ago, after first receiving direction from Council to develop an Ordinance on May 10, 2016, shortly after the owners of the Reserve Apartments began the process of removing those apartments for redevelopment. Staff developed the initial Ellis Act Ordinance over the next year, utilizing stakeholder input from both tenants and landlords, and from information on other Ellis Act Ordinance jurisdictions. When the Council passed the Ellis Act Ordinance on April 18, 2017, it did so with a 100% re-control provision, consistent with five of the other six municipal Ellis Act Ordinances in the state. The purpose of this action was clear: to protect tenants of rent-stabilized properties throughout San José. Staff received Council direction to conduct additional research on the effects of the re-control provisions, as well as on the other municipal Ellis Act Ordinances in the state.

On April 24, 2018 the Council approved a revision of the re-control provisions, significantly lowering the re-control requirement to the greater of the number of rent-stabilized units removed, or 50% of new units. Council also approved an exemption from re-control for developers who provided 20% on-site affordable housing. These revisions were based on dialogue with developers, and on additional data from other Ellis Act Ordinance jurisdictions. It needs to be

stressed that these revisions, adopted by the Council as our current Ordinance, were the result of two years of outreach and dialogue with a wide variety of stakeholders, and research into other Ellis Act Ordinances throughout the state, almost all of which have stronger re-control provisions than San José. These revisions represent a strong and fair compromise between the Ordinance's principal goal of protecting tenants, and providing landlords and developers flexibility, and a clear process to remove or redevelop existing rent-stabilized units.

Council is now, only a year later, reviewing yet a further watered-down set of revisions to the re-control provisions, and with additional data that simply does not provide a compelling case for weakening the Ordinance further. Staff reports that they did not find a single case in their discussions with developers of being denied financing because of the current re-control provision, nor did they find a lender that would refuse to finance due to the current provisions. Thus weakening the Ordinance attempts to solve a problem which staff has been unable to find after three and a half years of work.

In stark contrast, the proposal before us will worsen a very real problem of which we on the Council are well-aware: the problem of displacement. On October 1, 2019, the Council held a Study Session on this topic, where my colleagues and I were presented with a wealth of information about displacement in our communities. 34% of the neighborhoods in Santa Clara County are at risk of, or already experiencing, displacement. Displacement is an issue in every single one of our Council Districts, with Districts 3,4, 5, and 6 having the highest concentrations of impacted communities. Despite Downtown being the most acutely affected area, staff acknowledges in their report that the revisions as applied to Downtown high rise developments may not preserve affordable units if the proposed in-lieu fee exemption under the Inclusionary Housing Ordinance is passed.

The results of displacement are clear. Data presented in the study session indicated that countywide, only 36% of displaced residents were able to find housing in the same city, while 5% of those displaced became homeless. Furthermore, 20% of those displaced were housed in a precarious housing situation, such as living with friends or family, or in a hotel. When we focus on Ellis Act Ordinance removals in San José, the numbers do not paint a better picture. Of the tenants displaced over the past three years, only 28% remained in San José and only 15% stayed in Santa Clara County. When we fail to preserve existing affordable housing, we tear communities apart.

Additionally, when Council has approved plans to address the increase in homelessness, we have funded prevention programs in order to stem the rising inflow of homelessness. For every homeless person we house, two to three more become homeless. Giving the current Ellis Act a chance to work without watering it down will also help to stem the inflow of homelessness.

The data from both the Study Session and staff's report indicate that the majority of our at-risk tenants are people of color. 47% of the 130,000 renters covered under the Apartment Rent Ordinance are Latino, and 26% are Asian American and Pacific Islanders. In all, people of color make up over 70% of our ARO renters. Staff's report specifically recognizes the disparate

impact that further Ellis Act Ordinance revisions will have on the Latino community. This is neither a coincidence nor simply due to the machinations of market forces, but rather the legacy of decades of redlining and discriminatory housing policies and disinvestment patterns in our low-income communities of color, and in our immigrant communities. And now that there are economic incentives to develop in these areas, the proposal before us asks these same communities to bear the negative externalities of development.

As a City, we talk about the need for equitable development, and we talk about the need to prevent homelessness and protect our low-income communities. We spend so much time and effort developing plans and strategies to try to solve these problems. Now we are presented with a very simple course of action that will help address all of these goals at once: we leave the Ellis Act Ordinance alone. I implore my colleagues to join me in preserving our affordable housing, and preserving our communities, as we continue to work together to solve our housing crisis.