

From: [REDACTED]

Sent: Tuesday, April 3, 2018 4:02 PM

To: The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10

Cc: City Clerk; VanderVeen, Rachel; Morales-Ferrand, Jacky

Subject: Recommendations on Rent Control To Be Voted On April 24

Dear Mayor and Councilmembers,

Attached please note the recommendations of the Silicon Valley Renters Rights Coalition on the various rent control-related items coming to City Council on April 24. We have already been in contact with many of your offices about these questions. Please contact us if you have any further questions. Thank you!

Sandy Perry
Silicon Valley Renters Rights Coalition



SILICON VALLEY RENTERS RIGHTS COALITION PROTECT OUR PEOPLE PLAN APRIL 2018

RECOMMENDATIONS

- A) **Stop Unfair Utility Charges.** Continue the RUBS exclusion (Section 17.23.315): No charges may be passed through to tenants through RUBS or any similar unmetered allocations. Existing rental agreements for pass throughs of RUBS payments are void.
- B) **Protect Immigrant Tenants.** The Tenant Protection Ordinance will reference Civil Code Section 1940.35(a) (AB 291). Landlords will be required to post a notice in English, Spanish, and Vietnamese in all TPO properties, informing tenants that it is illegal for landlords to threaten to call immigration authorities because of their immigration status or share information regarding their immigration status. The City will assist enforcement of AB 291 by taking landlords who violate it to court.
- C) **Stop Unfair Evictions.** A new criminal activity clause is unnecessary because the existing TPO already allows landlords to evict tenants for criminal activity. The nuisance provision of the TPO specifically permits eviction for “violations of state and federal law that destroy the peace, quiet, comfort or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit.”
- D) **Stop Displacement.** The Ellis Act Ordinance will include one of the two following provisions in cases of demolition, depending on which can be shown to provide the lowest rents for the largest number of tenants: 1) All new replacement units will be re-controlled, or 2) In addition to the affordable units required by the inclusionary ordinance, a substantial additional number of deed restricted units affordable to the displaced tenants will be required. The Ellis Act Ordinance should be extended to triplexes, and should require apartments with three or more units built after 1979 to provide 120 day notice and offer relocation consulting services to tenants.
- E) **Stop Discrimination.** The proposed ordinance disallowing source of income discrimination will ban discrimination at every stage of the rental process and include appropriate enforcement measures to assure compliance.

Fw: LFSV Letter to City Council re: Ellis Act Ordinance - 4/24 Council Meeting Agenda 4.3

City Clerk

Thu 4/19/2018 2:30 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>;

📎 1 attachments (159 KB)

LFSV Comments to SJ CC re. Ellis Act_4.3 on 4.24.2018 Agenda.pdf;

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How is our service? [Please take our short survey.](#)

From: Matthew Warren <

Sent: Thursday, April 19, 2018 2:28 PM

To: The Office of Mayor Sam Liccardo; District1; District3; District5; District7; District9; District2; District4; District 6; District8; District 10

Cc: Chapman, Helen; Ramos, Christina M; Herbert, Frances; Castro, Huascar; Joanino, Jacklyn; Groen, Mary Anne; City Clerk; Morales-Ferrand, Jacky; Webmaster Manager; Kazantzis, Kyra; Nadia Aziz; Matthew Warren

Subject: LFSV Letter to City Council re: Ellis Act Ordinance - 4/24 Council Meeting Agenda 4.3

Honorable Mayor, Vice Mayor, and Members of Council:

Attached please find the Law Foundation of Silicon Valley's comment letter regarding April 24, 2018 Council Meeting Agenda Item 4.3, Amendments to the Ellis Act Ordinance.

Please contact me at
comments. Thank you for your attention and consideration.

if you have questions regarding our

Sincerely,

Matthew Warren | Staff Attorney
Fair Housing Law Project | Public Interest Law Firm

Law Foundation  OF SILICON VALLEY
Advancing Justice in Silicon Valley

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LAW FOUNDATION of Silicon Valley

Fax _____ San José, California 95112
• Telephone (_____) • TDD _____

By EMAIL

April 18, 2018

Honorable Mayor Sam Liccardo, Vice Mayor, and City Council
San José City Hall
200 East Santa Clara Street
San José, CA 95113

**Re: Amendments to Ellis Act Ordinance, Agenda Item 4.3
San José City Council Meeting, April 24, 2018**

Dear Mayor, Vice Mayor, and Council Members:

We support some of Staff's recommendations to improve the Ellis Act Ordinance because we believe that they will strengthen our community by expanding our affordable housing stock. However, the proposed amendments to the Ellis Act Ordinance do not go far enough in mitigating displacement to keep members of our community here in the neighborhoods they call home. Our recommendations are as follows:

- Preserve the Ellis Act Ordinance's existing re-control provisions to require 100 percent re-control (as currently required);
- Should an alternative to 100 percent re-control be offered to developers, require 33 percent of the total units in the new development to be deed-restricted affordable;
- When developers opt to include greater numbers of affordable housing instead of re-control, the Ellis Act Ordinance must require deeper affordability than the current standard, and displaced tenants should be prioritized for the affordable units of the new development;
- Include apartment buildings with three units under the Ellis Act Ordinance; and
- Expand the notice, relocation consultant service, and relocation payment requirements of the Ellis Act Ordinance to tenants in buildings constructed after 1979.

First, the City should **maintain its current standard of 100 percent re-control** of the units offered for rent at properties covered by the Ellis Act Ordinance. No other jurisdiction with a local Ellis Act ordinance allows for less than full re-control. Rent control is an important policy device that enhances housing stability for low-income and less-educated households,¹ and

¹ Freeman and Braconi, "Gentrification and Displacement New York City in the 1990s"; Vigdor, "Does Gentrification Harm the Poor?"; Ellen, and O'Flaherty, "Chapter 4. How New York and Los Angeles Housing Policies Are Different--and Maybe Why."

the City should maximize every tool possible in a multi-pronged approach to addressing our housing crisis and the challenge of displacement.

This Council adopted the Ellis Act Ordinance with the stated intent “to provide tenants with the maximum protections under the Ellis Act and to support the City’s Apartment Rent Ordinance.”² The amendments under consideration fly in the face of that intent and substantially weaken the protections the Ordinance provides. By reducing the percentage of re-control so drastically and offering insufficient affordable units as an alternative, the proposal incentivizes the displacement of stable tenants and facilitates gentrification. There exists no authentic policy purpose for so significantly weakening the protections of the Ordinance except to hasten the demolition of rent-stabilized units, to reduce the total number of ARO-covered units, and to increase the profits of developers.

Contrary to the argument that requiring re-control will discourage development, housing production numbers from 2007 to 2014 show that the six cities that had rent control in the Bay Area actually produced more housing units per capita than cities without rent control.³ Further, there is no practical purpose for so weakening the Ordinance’s disincentives for displacement given that the report from David Paul Rosen and Associates shows that 100 percent re-control “has no empirical impact on financing new apartments.”⁴ This renders any developer claim that re-control prevents them from securing financing to be inauthentic at best. Weakening the Ellis Act Ordinance in order to incentivize more development of market-rate housing seems particularly disingenuous given the anticipated boon that the Google Village development will bring.

The City should allow waiver of the 100 percent re-control requirement **only if the developer commits to include 33 percent of the total units in the new development as affordable** under the City’s Inclusionary Housing Ordinance (IHO). This would pose a significant deterrent to developer avoidance of rent-control and to displacement of long-standing San José residents, which are the overarching intents of introducing an Ellis Act Ordinance. The affordability obligation of 20 percent already exists where a developer does not provide on-site inclusionary units—developers should not be rewarded with an exemption from re-control for fulfilling their existing obligations. A requirement of 33 percent on-site inclusionary affordable housing would more substantially demonstrate the Council’s commitment to protecting tenants from displacement. Such a requirement would additionally help the City to both reach its Housing Element obligations and to more realistically reach the Mayor’s stated goal of developing 10,000 affordable units by 2022.⁵

² San José Municipal Code 17.23.1110.

³ Miriam Zuk, “Rent Control: The Key to Neighborhood Stabilization?” Urban Displacement Project. Available at: <http://www.urbandisplacement.org/blog/rent-control-key-neighborhood-stabilization>.

⁴ Staff Memo: “Amendments to Procedures for Removal of Rent Stabilized Apartments from the Market (Ellis Act)” April 3, 2018, page 7.

⁵ See Mayor Sam Liccardo, Memorandum to Rules and Open Government Committee: “Responding to the Housing Crisis” September 28, 2017, available at: http://sanjose.granicus.com/MetaViewer.php?meta_id=667033.

Second, the Ellis Act Ordinance must **require deeper affordability** than the current IHO standard because of the displacement of low-income households that will happen as a result of the development. Staff recommends that the percentage of newly constructed apartments made affordable beyond the IHO requirements be restricted to 100 percent area median income. While we recognize the need to make more units affordable to the “missing middle” of wage-earners, there is a much greater need to increase the stock of rental housing made available to low income households. In 2017, San José fell far behind in meeting its affordable RHNA goals, *adding fewer than 12 percent of its annual goal for units available to low-income (LI), very low income (VLI), and extremely low income (ELI) households even when 49 percent of area workers earn wages that qualify as low-income.*⁶ Households displaced from previously ARO-covered units and exercising their right of return should be specifically prioritized to return to these affordable units made available in the new development. We encourage Council to take this opportunity to strengthen our community by disincentivizing displacement and requiring that our progress includes low-income households.⁷

Third, we support Staff’s additional recommendation to **include apartment buildings with three units under the Ellis Act Ordinance**, which would increase the number of apartments covered by 1,035. This is a substantial and easy way for the Council to expand protections for tenants and reduce their displacement.

Fourth, we strongly support Staff’s recommendation to **extend protections of the Ellis Act Ordinance to buildings not covered by the Apartment Rent Ordinance**. The 120-day notice period represents the bare minimum for a tenant to find a new residence, even given the assistance of Relocation Specialist Services. The extended notice period and the assistance of a Relocation Specialist are easy ways of recognizing that displacement pressures do not only impact tenants in ARO-covered units, and they are meaningful ways to help families transition to alternative housing within their communities.

These are not the only protections from the Ordinance that should apply to non-ARO-covered units. The Ellis Act itself specifies that it does not diminish the local government’s authority “to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations.”⁸ The Council can and should take this opportunity to require payment of relocation benefits to *all* tenants displaced by a withdrawal from rent or lease regardless of how old their building is.⁹ This action would not be intended to unjustly enrich the few displaced tenants who may not need the relocation benefit; rather, it would serve to

⁶ See San José Housing Element 2017 Annual Progress Report, available at <http://www.sanjoseca.gov/DocumentCenter/View/76095>. It should be noted that *zero* units available to low-income (LI) households were added in 2017.

⁷ See also, Mayor Sam Liccardo, “Mayor’s 15-Point Housing Plan,” available at: <http://www.sanjoseca.gov/DocumentCenter/View/72265>. “(9) Protect Residents from Displacement: Focusing on expanding housing where it doesn’t currently exist with affordability requirements can ensure that new housing doesn’t push out vulnerable current tenants.”

⁸ California Government Code Section 7060.1(c).

⁹ Other jurisdictions with local Ellis Act Ordinances require relocation payments for all displaced tenants, not only those displaced from rent-controlled units. See, e.g., San Francisco Administrative Code § 37.9A(e), West Hollywood Municipal Code § 17.52.020, Berkeley Municipal Code § 13.77.055.

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disincentivize and mitigate the adverse impact of displacement. In practice, developers already typically use the City's payment chart to compensate tenants being displaced from non-ARO buildings, so this would not create an unfair or unrealistic burden.

Thank you for your attention and consideration. I welcome the opportunity to discuss the Law Foundation's letter with Council Members. I may be reached at 4 or

Sincerely,

Matthew Warren
Staff Attorney