



Memorandum

TO: THE HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Lan Diep

SUBJECT: AMENDMENTS TO THE
ELLIS ACT ORDINANCE

DATE: 4/23/2018

Approved

Lan Diep

Date

4/23/18

RECOMMENDATION

Adopt staff recommendations with the following amendment:

1. Do not expand the Ellis Act Ordinance to include apartments built after 1979; and
2. Eliminate the "right to return" from the ordinance.

BACKGROUND

This council formally adopted an Ellis Act Ordinance on April 18, 2017. That ordinance requires that property owners of apartments built after September 7, 1979 who withdraw their apartments from the rental market to: 1) provide 120 days of notice to residents; 2) provide relocation benefits to displaced residents; 3) grant a right-to-return to a new unit if the property owner returns to the rental market with new units within 10 years; and 4) subject all new apartments built within five years to rent control, if the previous complex on that land was subject to rent control.

The City's Apartment Rent Ordinance (ARO) and the Tenant Protection Ordinance (TPO) work in conjunction with the Ellis Act Ordinance to protect renters in San José. The ARO subjects apartments built and occupied prior to September 7, 1979 to rent control, limiting allowable annual rent increases to 5%. The City's recently enacted TPO requires landlords of multifamily dwellings, guesthouses, and unpermitted units to perpetually renew lease agreements with existing tenants except under one of twelve allowed circumstances. As written, one of the permitted reasons to remove a tenant from an apartment is "Removal of Apartments from the Rental Market Under Ellis Act".

Staff has realized that the nature of the ARO (which applies only to apartments existing prior to September 7, 1979) and the TPO (which applies to all apartments regardless any arbitrary date in time) creates a regulatory problem. Landlords of apartments built after 1979 do not have the legal authority to remove tenants from apartments when the landowner intends to extract the apartment complex from the rental market, because the only legal grounds for this under the TPO is "Removal of Apartments from the Rental Market Under Ellis Act" and apartments built after 1979 are not subject to the Ellis Act Ordinance.

To remedy this, staff proposes expanding the Ellis Act Ordinance to also regulate apartments built after September 7, 1979, but only partially. Instead of imposing the full

force of the Ellis Act Ordinance on the post-1979 units, staff suggests only requiring these apartments be required to provide 120-day notification and offer relocation consultation to tenants. The other provisions of the Ellis Act would not apply to post-1979 units.

One of those other Ellis Act provisions ensures displaced tenants the right-to-return to an apartment if a new unit becomes available within ten years. This is in contrast to another provision of the Ellis Act that will subject a removed unit to re-control if it becomes available again within five years.

ARGUMENT

There is much happening in San José as of late on the housing front. A patchwork of new laws have been implemented and altered in recent years, creating an increasingly vast and complex body of laws for developers, landlords, and tenants alike to navigate. Despite the shifting ground, there has consistently been one north star in our growing constellation of housing laws by which interested parties may guide themselves: Apartments of three or more units existing and occupied prior to September 7, 1979 are subject to more regulations than apartments built after that date. All apartments built in the city are subject to the Tenant Protection Ordinance (TPO) but only those built prior to September 7, 1979 are bound by the Apartment Rent Ordinance (ARO) and the Ellis Act Ordinance. Staff's suggestion to expand the Ellis Act Ordinance to also govern apartments built after 1979 violates this handy rule of thumb by unnecessarily muddying the waters.

It is important to remember that the problem that owners of post-1979 units having no legal grounds to remove tenants when they want to withdraw units from the market is a problem of our own creation. The Council created this problem by drafting laws in an imprecise manner. The solution then is not expansion of regulation to shore up imprecise laws – the solution is cleaning up the laws on the books to address the issue. Put differently, the Council should amend the TPO rather than expand the Ellis Act Ordinance as staff suggests, to solve the problem staff identifies. (See the companion memo on TPO).

Additionally, considering the extent to which the City relies on apartment owners of pre-1979 complexes to shoulder the burden of addressing the affordable housing crisis by restricting their rents, limiting landlords' ability to remove tenants, and a host of other ways, we should do what we can to provide some relief of the pressures and obligations that we pile upon landlords. One possibility to relieve landlords of the Ellis Act Ordinance requirement that they grant a right to return to tenants if they return a unit to the rental market within ten years of removing it. Such a requirement is onerous and impractical. Much can happen in one year, let alone ten. If a tenant lives in a rent-controlled unit and is asked to leave, that individual needs a home right away, not a year later, five years later, or 10 years later. The option to return ten years later to a non-rent-controlled unit is probably not helpful to the displaced tenant. But having the legal obligation to keep track of past renters as they live their lives for up to ten years is much hassle for very little return.

CONCLUSION

The Council should not expand the Ellis Act Ordinance to include apartments built after 1979 and it should remove the right-of-return to alleviate the burden on landlords.