



# Memorandum

**TO:** THE HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Councilmember Lan Diep

**SUBJECT:** AMENDMENTS TO THE TENANT  
PROTECTION ORDINANCE

**DATE:** 4/23/2018

Approved

*Lan Diep*

Date

*4/23/18*

## RECOMMENDATION

Adopt staff recommendations with the following amendments:

1. Instead of including a provision "consistent with Civil Code 1940.35(a)", incorporate California Civil Code 1940.35(a) exactly as written by the State Legislature and include language to indicate that future amended versions of the provision shall be automatically adopted by the TPO;
2. Amend the TPO to include the current language of California Civil Code 1940.35(a) in its entirety, along with penalties for violation, rather than incorporating Civil Code 1940.35(a) by reference;
3. Change "Removal of apartments from the rental market under the Ellis Act" to "Removal of apartments from the rental market";
4. Amend the TPO to require those who invoke "Removal of apartments from the rental market" as grounds for removing a tenant to give at least 120 days notice.

## BACKGROUND

This council formally adopted a Tenant Protection Ordinance (TPO) on May 9, 2017. As enacted, the ordinance does not contemplate the immigration status of tenants, or protect them from potential disclosure of immigration status to officials as a means of gaining an unfair advantage by the landlord. The TPO mandates that apartments renew leases with existing tenants in perpetuity, unless one of twelve predefined circumstances arise.

One of the enumerated legal grounds upon which a landlord may repossess a unit is "Removal of Apartments from the Rental Market Under Ellis Act". Because the City's Tenant Protection Ordinance applies to all apartment complexes with three units or more, whereas the Ellis Act Ordinance only applies to apartment complexes of four units or more, built and occupied before September 7, 1979, this creates a problem wherein apartment complexes built after 1979 do not have legal cause to remove units from the rental market, because they cannot utilize the Ellis Act Ordinance.

Staff has suggested resolving this problem by expanding the Ellis Act Ordinance to include apartments built after 1979, but only partially. Rather than being subjected to all the requirements under the Ellis Act Ordinance, staff's proposal would only require apartments built after 1979 to 1) provide 120-day notice to tenants; and 2) landlords offer consulting services to tenants in the event that apartment units are removed from the rental market.

## ARGUMENT

Staff's proposed change on this point unnecessarily complicate matters. This problem was created by the Council when we passed the TPO with a provision that limited landlords' reasons for repossessing a unit to, among other grounds, "Removal of Apartments from the Rental Market Under Ellis Act". The addition of the words "under Ellis Act" too narrowly defined the process by which apartments could be removed from the rental market, and left apartment complexes with legitimate reasons to repossess their units, but that are not subject to the Ellis Act, without an appropriate legal remedy.

This problem can easily be fixed by amending "Removal of Apartments from the Rental Market Under Ellis Act" to "Removal of Apartments from the Rental Market", period. Whereas the purpose of the Ellis Act is to protect against the loss of a rent-controlled unit, such protection is not needed where the units are market-rate, as in the case of apartment complexes built after 1979 and not subject to the Ellis Act Ordinance.

Removing mention of the Ellis Act from the TPO does not invalidate the Ellis Act – its provisions will still bind apartment complexes built before September 7, 1979. Yet, deleting those three words will allow market-rate apartment complexes to redevelop as necessary without having to expand the provisions of the Ellis Act.

Tenants will be protected by the lease in the case of tenancies that are terminated early, as the landlord will owe the tenant the value of rent for the remainder of the lease term. A notice requirement can be added to the TPO as a subsection to Just Cause reason number 8 without expanding the Ellis Act Ordinance.

Regarding the lack of protections for immigration status, the City should adopt the law as written by the State and not draft something similar. The State's law is controlling, and unless the City wants to add additional requirements, the City should not rephrase what has already been adopted by the State.

## CONCLUSION

The City should amend the TPO to resolve the problem staff has identified rather than expand the Ellis Act Ordinance.

