

March 28, 2019

Mayor Sam Liccardo
Members of the City Council
200 E. Santa Clara St, 18th Floor
San José, CA 95113

RE: Recommended City Council Amendments to the Ellis Act Ordinance

Members of the City Council,

We, the members of the Housing and Community Development Commission, strongly urge you to vote against any changes to the Ellis Act Ordinance at this time.

The Ellis Act Ordinance in its current form was enacted only ten months ago, and only after extensive community engagement and public comment was conducted. The process for crafting the current Ellis Act Ordinance took two years and gathered input from hundreds of stakeholders, including developers, lenders, residents and owners of rent-stabilized units. When contrasted with the rushed push by the City Council to amend the Ellis Act Ordinance now, the Commission is left questioning whether the Council truly wants a deliberative process.

The Ellis Act Ordinance, as it stands, was enacted on April 24, 2018 as a means of ensuring that housing units governed by the Apartment Rent Ordinance (ARO) would not undergo conversion to get around the rent-stabilization program that was adopted therein. The simple premise behind the Ellis Act Ordinance is to ensure that affordable housing rental units could not be torn down without being rebuilt if more rental units were to be created. The way this works is that buildings with rent-stabilized apartments could not be taken off the market and replaced by newer apartments unless fifty percent (50%) of the rental units of the new building, or an equal number of rental units that were lost, whichever is greater, were rent-stabilized. Alternatively, the developer could choose to dedicate twenty percent (20%) of the new units to income restrictions, meaning that those units could only be rented to those who met the lower-income requirements.

The current Ordinance provides developers with some flexibility in building high-density housing while contributing to the supply of affordable housing in San Jose. It was also a compromise from the original Ellis Act Ordinance, which required 100% of new rental units to be rent-stabilized if they were built to replace buildings that were subject to rent stabilization. The long and transparent process that produced this compromise was the culmination of a vast

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amount of effort invested by the Housing Department and by this Commission, including twenty separate community engagement sessions with stakeholders and four HCDC meetings.

The present direction to re-evaluate the Ordinance was prompted by purely anecdotal incidents, as acknowledged in Mayor Lickardo's Feb 1, 2019 memo. At the March 7, 2019 HCDC meeting, the Housing Department presented two redevelopments which have proceeded under the current Ordinance, and no evidence of developments which have stalled because of the Ordinance. Furthermore, the 2019 report on the Housing Element of San Jose's General Plan makes clear that the City of San Jose is ahead of its market-rate development goals while falling further behind in meeting its affordable housing goals.

The public engagement process for the Google/Diridon Station Area made very clear that the people of San Jose are actively concerned about displacement in San Jose. In voting to re-examine the Ellis Act Ordinance has given the Housing Department less than two months and this Commission only one week to review. This hasty push by the Council to weaken the tenant protections of the Ellis Act Ordinance is particularly troubling in light of the stated goals of Mayor Lickardo to improve transparency around development in San Jose.

We as the HCDC cannot endorse any changes to the Ellis Act Ordinance under these circumstances. This process is rushed and flawed. The care and study that went into creating the current ordinance is being tossed out by the hastiness displayed in the Council's current decision. If this policy is to be revisited, HCDC needs more than anecdotal evidence to support changes. Adequate data, including third-party data, cannot be gathered by the Housing Department without adequate time and preparation.

We thank you for the opportunity to serve our city as citizen commissioners and we appreciate you hearing our concerns. We care deeply about housing issues and are fortunate to have the opportunity to work on them with you and city staff. If you have any follow up questions about our position, we are happy to hear them. Please feel free to contact me at HCDC6@sanjoseca.gov.

Sincerely,

/s/

Andrea Wheeler
Commission Chair