



# Memorandum

**TO:** HOUSING AND COMMUNITY  
DEVELOPMENT COMMISSION

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** August 1, 2019

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Approved

Date

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## REPLACEMENT MEMO

**SUBJECT: ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS**

### RECOMMENDATION

It is recommended that the Commission

1. Review the staff report on:

- a. Research on Ellis Act Ordinance's existing re-control provisions including conversations with developers and lenders,
- b. Updated research from other communities regarding the re-control provisions in other Ellis Act ordinances in order to assess the extent they may make new residential projects more difficult to build, as requested from the February 5, 2019 City Council meeting, and

2. Make recommendations to the City Council on potential changes to the Ellis Act Ordinance including:

- a. Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished, and
- b. Consideration of new options to meet requirements for re-control:
  - i. Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
  - ii. Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

### EXECUTIVE SUMMARY

For the requested analysis of the impact of the current Ellis Act Ordinance re-control provisions, staff reviewed six areas of research: 1) interviews with developers and lenders, 2) interviews with tenants living at properties that received Ellis Act Ordinance and profile summary of ARO tenants, 3) review of current Ellis Act Ordinance re-control provisions, 4) additional research on

other cities' experience with the Ellis Act ordinance re-control provisions, 5) analysis on density and market rents, and 6) proposal of modifications to the re-control provision of the Ellis Act Ordinance.

Staff is recommending potential changes to the Ellis Act Ordinance including modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished. In addition, other modifications proposed are consideration of new options to meet requirements for re-control:

- Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
- Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

## **BACKGROUND**

On February 5, 2019, the City Council directed staff to return with additional research regarding the impact of the Ellis Act Ordinance re-control provisions on new developments. The areas of research directed include:

- Information from interviews with developers and lenders regarding the impact of Ellis Act Ordinance re-control provisions on new developments,
- Additional research on other cities' experience with the Ellis Act Ordinance re-control provisions,
- An analysis determining the threshold of new apartments that result in net positive affordable housing following demolition of existing rent stabilized apartments, and
- Other formulations, that would still maintain a minimum 1-for-1 replacement of rent controlled or rent-restricted units, that can improve feasibility of housing development.

A summary of past City Actions is in **Table 1**.

*Table 1: Previous City Actions Pertaining to Ellis Act Ordinance*

<b>Date</b>	<b>Source</b>	<b>Actions</b>
<a href="#">May 10, 2016</a>	City Council	Directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market. The City Council gave this direction as part of the policies adopted to strengthen the Apartment Rent Ordinance (ARO).
<a href="#">April 18, 2017</a>	City Council	Approved the Ellis Act Ordinance on April 18, 2017, and included re-control provisions on all new apartments.
<a href="#">April 24, 2018</a>	City Council	Amended the Ellis Act Ordinance to reduce the number of replacement apartments subject to re-control to the greater of: (a) the number of demolished

		rent stabilized units, or (b) half of newly constructed replacement apartments (rather than all the replacement units). In addition, non-ARO apartments with three or more units became subject to the Ellis Act Ordinance’s notice requirements and relocation specialist fee. The City Council also approved an exemption from the re-control provisions if 20% of the new replacement apartments are deed-restricted affordable apartments (i.e. Inclusionary Housing Ordinance built on-site plus 5% of units at 100% of area median income).
<a href="#">March 7, 2019</a>	Housing and Community Development Commission	Recommended against any amendments to the Ellis Act Ordinance and approved an Ad Hoc Subcommittee to draft a letter to the City Council ( <b>Attachment A</b> ).

**Current Ellis Act Ordinance Requirements and Provisions**

The Ellis Act Ordinance establishes a process by which an owner can permanently remove their apartment buildings from the rental market. A summary of the Ellis Act Ordinance requirements is provided below:

For tenants of both ARO and non-ARO apartments:

- **Noticing** – All households must be provided with a minimum of 120 days’ notice prior to the removal of the property from the rental market. Upon request, special populations including residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children must be given up to one-year notice to vacate.
- **Relocation Specialist Services** – All tenant households are entitled to relocation services through a specialist who assists tenants in the procedures, obtaining assistance, and developing a relocation plan.

For tenants of ARO apartments:

- **Relocation Benefits** – All tenant households are eligible to receive relocation benefits. Qualifying households include low-income residents, residents over the age of 62, disabled, terminally/catastrophically ill, and residents with school-aged children are eligible for additional relocation benefits.
- **Relocation Specialist Services** – All tenant households are entitled to relocation services through a specialist who assists tenants in the procedures, obtaining assistance, and developing a relocation plan.
- **Right to Return** – If the removed apartments return to the rental market within ten years, tenants have a right to return to their apartments.

- **Re-control** – If an owner demolishes existing rent stabilized apartments and rebuilds apartments at the same location within five years, the greater of 50% of all new apartments or the number demolished will be subject to the City’s Apartment Rent Ordinance. The owner sets the initial rent for these re-controlled replacement apartments.

## ANALYSIS

For this analysis, staff examined six areas of research:

- **Interviews with developers and lenders** – Examines staff insights from developers and lenders.
- **Interviews with tenants who lived at properties that received Ellis Act Ordinance notices** – Examines the tenant interviews, analysis of demographics and displacement impacts, and demographics of tenants and owners subject to ARO.
- **Review of current Ellis Act Ordinance re-control provisions** – Summary of the rent control options and exemptions for on-site affordable housing.
- **Additional research on other cities’ experience with the Ellis Act Ordinance Re-control Provisions** – Examines that a majority of cities’ Ellis Act Ordinance requires 100% re-control, review of development activity of other cities.
- **Density and market rents analysis** – Analyzes the ratio needed to replace lost units with low income restricted affordable housing, impacts of re-control with new development has a higher density than existing apartments, and compares rent levels across different types of apartments.
- **Other policy modifications for re-control** – Proposal of modifications to the re-control provision of the Ellis Act Ordinance.

After conducting density and market rents analysis, staff recommends the following proposed modifications to the re-control provisions:

- Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished, and
- Consideration of new options to meet requirements for re-control:
  - Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index, and
  - Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

## **I. RESULTS OF THE INTERVIEWS WITH DEVELOPERS AND LENDERS**

Interviews were conducted with developers and lenders to better understand if the current Ellis Act provisions are preventing market rate housing from being constructed in San José. Staff from the Housing Department and the Office of Economic Development interviewed developers who submitted preliminary planning applications on sites with rent stabilized apartments located on

the proposed development site. A total of 12 proposed developments were identified as affected by the Ellis Act re-control provisions. Developers moving forward with projects not subject to re-control provisions, such as an affordable housing development and a development built on a property with a demolished building built after 1979, were not included in the interviews. Of the 12 proposed projects, 10 developers represented the projects (two developers had more than one project). Three of the 10 developers did not respond to our request. Seven interviews were conducted with developers and consultants who are working on residential projects affected by the Ellis Ordinance re-control provision. The interviews covered a range of topics, including:

- Review of the proposed projects,
- Reasons developers gave as to why a development was or was not moving forward,
- Developer's statements regarding the potential impact of the Ellis Act re-control provisions on proposed developments,
- Developer familiarity with the Ellis Act re-control provisions, including the Affordable Housing Waiver, and
- Impact of potential affordability requirements on proposed developments.

**Attachment B** provides a summary of the comments made by developers and lenders.

### ***A. Developer Feedback***

Developers reported multiple factors that have influenced them to reconsider or not move forward with their development proposals both in and outside of San José. Of the seven developers contacted, three indicated that they would not move forward with their proposed developments for reasons unrelated to the Ellis re-control provisions. Additional feedback include:

- Developers cited a range of issues that make moving forward with their projects challenging, including dealing with historic buildings, high land costs, the time it takes to get through the development process, softening rents and City fees including housing and parks. None of the three developers stated they were not proceeding with their development due to the re-control provision.
- The remaining developers expressed some concerns regarding the Ellis Act Ordinance re-control provision. Some developers indicated that their business model is to offer rent concessions in the first year in order to have a successful lease-up period and then increase rents in year two by as much as 10-20%. Therefore, they believed that restricting annual rent increases to 5% for potentially half of the apartments, as required under the current Ellis Act Ordinance, will make their project not viable.
- Developers also expressed concern that they would be unable to benefit when future market rent increases could exceed 5%, but they will be exposed to the risks when rents are flat or may need to be decreased. While developers expressed concerns about the Ellis re-control provisions, no one has been rejected for financing because of the Ellis re-control provision.
- When talking with developers, it became clear some developers are making long-term investments while others intend to sell their buildings one or two years after lease-up. The short-term investors are highly concerned with capturing the maximum rent potential from the building within the first two years to maximize the value of the building. The value of the building is a function of the rents--therefore the higher the rents, the higher

the value of the building when it is sold to a long-term investor. According to developers interviewed, the 5% limitation on half of the new units from the Ellis Act provisions may reduce the anticipated profit for short-term investors.

### ***B. Lender Feedback***

The Housing Department had limited success in interviewing lenders and investors, given the lack of referrals from developers and lenders' restrictive policies on disclosing lending practices. Staff interviewed three lenders and investors who work in the San José market and found the following:

- None of the lenders understood San José's specific requirements before talking to staff.
- Based on the three interviews, staff learned that a typical financing structure for a development's construction is up to 30-40% equity, both from the developers and from third-party equity investors, and 60-70% from commercial bank loans. Investors try to limit their risks and increase their financial returns. Commercial bank loans are secured by the value of the property and are typically senior over the equity debt. Therefore, they would be the first to be repaid in the event of liquidation. Equity debt is usually last in the capital stack and faces the highest risk. Lenders indicated that loans are generally underwritten assuming growth rates tracking the Consumer Price Index. As noted in the [David Rosen's report](#), "typical underwriting standards use a 2% escalation on revenues and 3% on costs for the purpose of refinancing." The annual rent increase of 5% therefore should be adequate to meet their proforma projections.
- Short-term equity providers and lenders generally participate in the development for only five years, so they are most concerned about risks regarding construction timeline, short-term market conditions such as market rents, and how quickly the apartments lease-up. These equity investment transactions are designed to maximize the rents in order to sell the building quickly at the highest sale price. Long-term lenders generally split 30-40% equity and 60-70% commercial bank loans and typically purchase the building at year five or six for a longer term investment. While some lenders expressed a negative perception of the Ellis re-control provision, it is unclear if they would actually refuse to loan on a development or offer less competitive rates because of the re-control provision.

### ***C. Staff Insight from Developers and Lenders***

This section summarizes the staff insights gathered from talking with developers and lenders.

- **Lack of knowledge and understanding of San José's Ellis Act provisions** – Both developers and lenders had misconceptions regarding the Ellis Act and the Apartment Rent Ordinance provisions. All of the lenders interviewed assumed that the allowable rent increases in San José were a factor of the Consumer Price Index, consistent with most rent stabilization programs throughout the State. More education is necessary to inform developers and lenders regarding local rent control and Ellis Act provisions. Rents set following demolition of rent stabilized apartments may initially be set at market rates and rents are limited to 5% annual rent increases thereafter. Rents are set again at market when a tenant voluntarily leaves the apartment. Given the high turnover of Class A apartments (according to RealPage, the average annual turnover for Class A apartments is

44.6%), it is anticipated that ARO rents will be reset frequently. Additionally, developers and lenders must be educated regarding the option under the Ellis Act Ordinance to provide on-site affordable housing as an alternative to implementing re-control provisions.

- **Limitations on rent increases during the lease-up period** – Developers expressed a concern that they would not be able to provide rent concessions during the initial lease up period. The Apartment Rent Ordinance states the annual rent increase of 5% is based on the rent paid in the prior year. The initial rent is defined as the actual rent paid by the tenant at commencement of the tenancy. As noted above, one developer stated they depress the initial rents in order to lease-up the building and a concern is that the 5% cap would not allow them to catch up after the first year. An alternative to the developer’s practice of initially depressing the rents at lease-up (as is common in many business models) is to offer a rent reduction, such as one-month free rent, in the second month following payment of the first months’ rent. Both the monthly discount method and this method can result in the same discount but the latter option resolves the developer’s concerns about a 5% cap on a discounted rent. Therefore, the developer can rent the apartment at the rate they desire and generate interest with the free rent concession. Allowing increases greater than 5% after the end of the lease would be inconsistent with the policy goal of the Apartment Rent Ordinance which is to prohibit rent spikes.
- **Limitations on rent increases following a recession and/or during a strong market** – Developers are concerned about the amount of time it takes to “catch up” on rents after a recession and/or the inability to increase rents rapidly when the market is hot. As stated in the David Rosen study, average rent increases in San José have rarely approached the 5% limitation. During the last recession, average rents declined by 8.7% and were followed by two years of growth at 4.4% and 3.3%. The 5% rent limitation will allow for the growth in rents following a recession. However, it should be noted, that while the average rent increases have not typically exceeded 5%, some developments may be able to achieve higher rent increases. To the extent that residential development in San José is predominately being built on the higher end of the market, it may be the least resilient during a recession. The purpose of the 5% rent limitation is to provide stability for renters during periods of spiking rents. Allowing increases in order to “catch up” with the market is inconsistent with the Rent Stabilization program and the policy goal of providing stability to renters.
- **Loans to developments with rent stabilized apartments** – Developers were concerned that they would not be able to finance their developments with Ellis re-controls. Both debt and equity lenders underwrite loans using industry-standard growth rates of 2-3% on future rents. Interviews with both debt and equity lenders indicated that a 5% rent limitation is reasonable and would not impact their decision to move forward with an investment in new development. One lender stated that although the 5% rent limitation is reasonable, the concept of rent stabilization is not attractive. The ability to generate higher level of returns that exceed average growth rates is what attracts capital to markets

like San José that are undergoing transformation. This perception of rent stabilization may or may not impact a lenders decision to invest in San José.

- **Limitations on rent increases could reduce the value of new buildings** – Developers were concerned that Ellis re-control provisions would not allow them to maximize their profit. Short-term investors and developers are typically anticipating a sale or refinancing of a new building in the first or second year following lease-up. Developers want to maximize the rents received prior to the sale as higher rents justify a higher sales price. The 5% rent limitation may reduce the potential for sharp rent increases leading up to a sale or refinancing event, however this will only impact the amount of profit made on the sale, not on the ability to pay the debt incurred to complete the development. This limitation on profit may or may not impact a lenders decision to invest in San José.

#### ***D. Summary on Interviews with Developers and Lenders***

Overall, developers and lenders expressed concerns about the Ellis Act re-control provision but initially did not fully understand how it is implemented in San José. One of the primary concerns expressed is the inability to rapidly increase rents. Developers also expressed concerns that given the current market cycle and investor choice, any perceived limitation on rents may negatively impact their developments. However, developers were optimistic that their developments would perform better than historical rent increases given the significant projected changes in the downtown and surrounding neighborhoods.

## **II. RESULTS OF TENANT INTERVIEWS IMPACTED BY ELLIS NOTICING AND PROFILE OF TENANTS LIVING IN ARO UNITS**

### ***A. Interviews with tenants that Received Ellis Act Ordinance Noticing***

Staff conducted site visits and door-to-door interviews with 57 tenants living in four properties where the owner indicated interest in withdrawing the apartments from the rental market. This represents 35% of the total units in the four properties. The purpose of the interviews was to determine if tenants could afford to live in the new development to learn about their current rents they are paying, and their occupation. The findings include:

- The occupants of these rent stabilized buildings generally represented three profiles for the larger complexes: recent immigrants, working class families, and very-low income households who often doubled up to afford the apartments.
- Each building represents a different sub-population based on the location and condition of the building.
- Tenants who would be displaced from their rent stabilized apartments reported they would not be able to afford Class A market rents if faced with their owner removing their apartment from the rental market. It is unknown whether tenants would qualify for an affordable housing apartment if the developer choose to provide the Inclusionary Housing option. It is possible tenants would be displaced by the redevelopment regardless of the option chosen by the developer.

**Attachment C** provides a summary of the tenant interviews.



### ***B. Tenants and Owners of Apartments Subject to the Apartment Rent Ordinance and impacted by Ellis Act Ordinance***

The Ellis Act Ordinance particularly impacts tenants and owners of rent stabilized apartments under the Apartment Rent Ordinance. The Apartment Rent Ordinance applies to 39,009 apartments built and occupied prior to September 7, 1979. This is a significant portion of the rental housing stock in San José. ARO apartments make up 49% of all market rate rental housing in San José. The “[San José ARO Study](#)” by Economic Roundtable Report includes a summary of the profile.

#### **Ownership Characteristics**

- 66% of ARO owners owned three- or four-unit rent stabilized buildings. The statistic only reflects owners’ ARO buildings located in San José that are subject to the ARO. For example, an owner may own rental properties outside of the city or apartments in San José that were built after 1979 and are not subject to the ARO.
- 50% of ARO owners (1,501) lived outside of San José. Half of ARO owners (1,479) lived in San José.

#### **Tenant Demographics**

- There are approximately 140,000 people living in ARO units in San José, making up nearly half of the tenants in market-rate rental housing. This calculation is based on an average size of 3.1 persons per household.
- In 2016, ARO tenants by ethnicity include 49% Hispanic or Latino, 34% Asian American, 20% White, and 5% African American.
- ARO tenants by education attainment include 9% graduate degree, 16% Bachelor’s Degree, 26% Associate Degree and some college, and 49% High School Diploma or less than High School Diploma.

### **III. CURRENT RE-CONTROL PROVISIONS OF THE ELLIS ACT ORDINANCE**

The Ellis Act Ordinance impacts re-control provisions for apartments rent stabilized under the ARO as follows:

- **Re-control to the greater of: (a) the number of demolished rent stabilized units, or (b) half of newly constructed replacement apartments (rather than all the replacement units)** – In this instance, the owner sets the initial rent to the current market rate and then any subsequent rent increase is subject to the ARO’s annual maximum of 5%. All of the other provisions of the ARO would also apply to these units.
- **A re-control amendment by the City Council allows an option for developer to build affordable apartments on-site instead of re-control** – In April 2018, City Council approved an exemption from the re-control provisions if 20% of the new replacement apartments are deed-restricted affordable apartments (i.e., meet Inclusionary Housing Ordinance built on-site requirements plus 5% of units at 100% of area median income).

This means that instead of being subject to rent control, projects building twenty or more units and 20% of the rental units are dedicated as affordable to households in the following Area Median Income (AMI) categories of 9% affordable to 80% AMI, 6% affordable to 50% AMI, and 5% affordable to 100% AMI. For example, if there are currently four apartments and there are 100 apartments being proposed for building, the following new units would be subject to the following re-control provisions: 9 apartments at 9% affordable to 80% AMI; 6 apartments at 6% affordable to 50% AMI; and 5 apartments at 5% affordable to 100% AMI. As a result, of the 100 new apartments built, 20 apartments would be deemed affordable.

For apartments three units or more that are non-ARO, the re-control provisions would not apply. However, tenants would still be subject to the Ellis Act Ordinance's noticing requirements and relocation specialist assistance.

#### **IV. ADDITIONAL RESEARCH ON OTHER CITIES' EXPERIENCE WITH THE ELLIS ACT ORDINANCE RE-CONTROL PROVISIONS**

Staff also researched the different re-control provisions in other cities. Depending on the rental market, the Ellis Act Ordinance has had various impacts on the developments of new housing in the jurisdictions.

##### ***A. The majority of cities' Ellis Act Ordinances require 100% re-control***

There are six cities that have enacted local Ellis Act Ordinances. The ordinances of San Francisco, Berkeley, West Hollywood, and Santa Monica have provisions requiring that all new rental housing development, following an Ellis Act withdrawal, are subject to the rent control provisions of that jurisdiction. Los Angeles also requires 100% re-control but provides an exemption from rent control provisions to developers who replace the new units with 20% restricted affordable units. This provision is similar to the exemption in the San José Ordinance except the required target incomes are different. In Los Angeles, the target income is set at 80% of the AMI. In San José, the income targets are set at 50%, 80% and 100% of the AMI. **Table 2** summarizes these provisions. Mountain View provides a right to return to tenants impacted by an Ellis Act withdrawal, but re-control provisions are not currently in place. Mountain View is exploring whether to add a re-control provision.

*Table 2 – Summary of Cities with Ellis Act Provisions*

	San Francisco	Berkeley	West Hollywood	Santa Monica	Los Angeles	Mountain View
<b>What is covered by Ellis?</b>	3 units or more	All	2 units or more & single family homes when tenant occupied	4 units or more & single family homes	2 units or more	3 units or more
<b>How many replacement units will be subject to re-control?</b>	All	All	All	All	All	None
<b>Are there exemptions to re-control?</b>	N/A	N/A	N/A	N/A	Yes	N/A

***B. Development Activity in Other Cities***

Many jurisdictions are not seeing demolition following Ellis Act removals. The six cities with Ellis Act Ordinance have experienced a range of outcomes with respect to actions taken following removal of apartments from the rental market. Cities such as Berkeley and San Francisco have adopted policies discouraging the demolition of current rent stabilized housing through strict review processes and permitting restrictions. Other cities such as Santa Monica and West Hollywood are experiencing limited new construction following Ellis Act removals due to developers choosing to build condominiums or waiting five years before bringing new rental housing onto the market (avoiding re-control requirements).

- **City of Mountain View** – While Mountain View is experiencing high levels of Ellis Act removals followed by demolition and new construction activity, the Mountain View Ellis Act does not currently include a re-control provision (**Table 3**).

*Table 3 – Ellis Act Activity in City of Mountain View from 2016 to 2018*

	Number of Ellis Projects	# of New Units in Ellis Projects	% of Total Projects (1,627)	Redeveloped As
	224	941	58%	Rental
	380	456	28%	Rowhouses
	9	9	9%	Demolition
	56	138	8%	Condominiums
	68	68	4%	Undecided
	20	15	1%	Residential
<b>Total:</b>	<b>757</b>	<b>1,627</b>		<i>*Note demolition of 9 units is included</i>

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- City of Los Angeles** – Los Angeles also has a high level of Ellis Act removals followed by redevelopment activity. The Ellis Act in Los Angeles includes an exemption from re-control provisions when affordable housing units are provided on-site, so theirs is the best case example for the City of San José. In the City of Los Angeles, the Ellis Act Ordinance was adopted in 2006 impacting approximately 630,000 apartments. An owner may apply for re-control exemption if: 1) replacement of the number of demolished rental units with a number of affordable housing units (80% AMI) at least equal to the number of withdrawn rental units subject to the Rent Stabilization Ordinance on a one-for-one basis, or 2) at least 20% of the total number of newly constructed rental units, whichever is greater. The affordable housing units must be located in the newly constructed developments. Since the adoption of the Ellis Act Ordinance in Los Angeles, the new projects were typically replacing the number of apartments demolished by 2.5 times that original number of units with 100% re-control. According to the data provided by Los Angeles, from July 2014 to March 2019, Los Angeles has received a total of 1,735 project applications and 6,773 units withdrawn, with the following breakdown in **Table 4**:

*Table 4 – Ellis Act Activity in City of Los Angeles from July 2014 to March 2019*

	Number of Ellis Projects	# of New Units in Ellis Projects	% of Total Projects (6,773)	Redeveloped As
	748	2,967	43%	Rental Housing
	300	1,260	17%	Undecided
	214	504	12%	Single Family
	104	180	6%	Commercial
	65	299	4%	Condominiums
	304	1,563	18%	Other conversions including: Co-op ownership, hotel, housing for vets, elder care facility
<b>Total:</b>	<b>1,735</b>	<b>6,773</b>		

Many of the new rental developments assembled land parcels after the Ellis Act requirements and the 100% re-control provision was applied on the entire new development. It is not clear from the information provided if the average densities in Los Angeles approach those desired in San José. While the majority of developments were redeveloped as rental housing, it is not clear how many developers choose other redevelopment options in order to avoid the Ellis re-control provisions. Regardless, Los Angeles staff do not believe that the Ellis Act has stopped the redevelopment of residential apartments in Los Angeles.

## V. DENSITY AND MARKET RENTS ANALYSIS

Staff was directed to consider additional analysis that maintain a minimum one-to-one replacement of rent stabilized apartments with either rent stabilized or affordable apartments that would encourage construction of new housing.

### *A. 7:1 Increase in Market Rate Needed to Replace Lost Units with Low Income-Restricted Affordable Housing*

Staff calculated the increase in density needed in market rate development that would result in a replacement of the lost units with income-restricted affordable apartments. Staff has determined that significant increases in density would result in the replacement of the rent stabilized apartments that are demolished with the application of the Inclusionary Housing requirement. The community benefit of high-density housing coupled with the Inclusionary Housing Ordinance requirement results in an overall positive outcome when the units are provided on-site.

- **Increase in Density by x7 (15% requirement)** – The calculation shows that when the number of total apartments demolished is replaced by seven times the number of original apartments, the loss of the rent stabilized apartments can be replaced with new income-restricted housing built on-site. An increase of density of eight times or more will result in a new positive number of affordable housing units.
- **Increase in Density by x5 (20% requirement)** – Should the developer choose an option other than the onsite dispersed delivery of affordable units, the density required to replace the rent-controlled units with affordable units is 5:1. If the in-lieu fee option is selected, there will be a delay in the creation of new affordable housing units.

**Table 5** below demonstrates how the original number of units demolished is replaced through the 15% on-site inclusionary build on-site requirement when seven times the original number of units are produced and five times when the 20% off-site requirement is applied.

*Table 5 – Density Increase Necessary to Replace Demolished Units*

Number of Units Demolished	Increase in Density	Number of New Units	15% of New Units	20% of New Units (off-site or in-lieu)
5	x2	10	2	2
5	x3	15	2	3
5	x4	20	3	4
5	<b>x5</b>	25	4	<b>5</b>
5	x6	30	4	6
5	<b>x7</b>	35	<b>5</b>	7
5	x8	40	6	8

***B. Impact of Re-Control when New Development has a Significantly Higher Density than Existing Apartments***

Staff examined the impact of re-control when new development is proposed at a density level significantly higher than the existing building. When projects increase the density significantly, there are greater numbers of apartments subject to re-control that may act as a disincentive for developers to increase the density of the development. One potential modification to re-control is decreasing the replacement requirement if certain levels of density are achieved as a way to avoid disincentivizing density. **Table 6** illustrates how density impacts the number of re-control under the current Ellis Act provisions.

*Table 6 – Examples of Re-control Provisions Based on Density of Proposed Projects*

Number of Units Demolished	Number of New Units in the Proposed Development	Re-control (Greater of 1:1 or 50% of new)	20% Affordable
5	249	125	50
16	22	16	4
20	85	43	17
30	218	109	44
124	710	355	142

***C. Comparison of Average Rents of Class A Market Rents, Rent Stabilized Apartment Rents And Affordable Rents at Levels Required by the Inclusionary Housing Ordinance***

Staff analyzed the average rents of Class A, B, and C market rate apartment rents, as well as rent stabilized and restricted affordable apartment rents to provide a comparison of the potential income levels of tenants in each apartment type (**Table 7**). Assumed income levels were calculated for each market rate example by applying minimum income standards that market rate property managers use to qualify households to rent their apartments. Typically, the owner requires that the gross monthly income of the household must be at least 2.5 to 3 times the monthly rent. The income calculations for the restricted affordable apartments are based on the provisions of the Inclusionary Housing Ordinance, which assumes that the household cannot pay more than 30% of their income for the apartment. The one-bedroom assumes a two-person household and the two-bedroom assumes a three-person household. It should be noted, for market-rate apartments, the incomes listed are minimums needed to qualify. For the affordable apartments, incomes listed are maximum incomes allowed for qualifying households.

*Table 7 – Average Effective Rents in San José and Incomes*

	1 Bedroom Rents	1 Bedroom Income at 2.5 Factor	2 Bedroom Rents	2 Bedroom Income at 3.0 Factor
Class A	\$2,752	\$82,560	\$3,292	\$118,512
Class B	\$2,383	\$71,490	\$2,846	\$102,456
Class C	\$1,794	\$53,820	\$2,279	\$82,044
<b>Rent Stabilized Apartments</b>	<b>\$1,644</b>	<b>\$49,320</b>	<b>\$1,957</b>	<b>\$70,452</b>
Affordable Rent: 80% of the AMI	\$1,890	\$75,600	\$2,126	\$85,050
Affordable Rent: 60% of the AMI	\$1,596	\$63,840	\$1,796	\$71,820
Affordable Rent: 50% of the AMI	\$1,330	\$53,200	\$1,496	\$59,850

*Sources: CoStar, February 27, 2019 and City of San José Housing Department and Rent Registry April 2, 2019*  
*Costar Definitions for Building Class:*

**Class A:** In general, a class A building is an extremely desirable investment-grade property with the highest quality construction. It may have been built within the last 5-10 years, but if it is older, it has been renovated to maintain its status and provide it many amenities.

**Class B:** In general, a class B building offers more utilitarian space without special attractions. It will typically not have the abundant amenities and location that a class A building will have.

**Class C:** In general, a class C building is a no-frills, older building that offers basic space. The property has below-average maintenance and management, a mixed or low tenant prestige, and inferior elevators and mechanical/electrical systems.

The rental data from the Rent Stabilization Program Rent Registry, which currently represents 73% of total rent stabilized apartments, indicate that the average rent for a one-bedroom apartment is \$1,644, and a two-bedroom apartments is \$1,957. For a two-bedroom rent stabilized apartment, a family needs to earn a minimum of \$70,452 to afford rent (assuming an owner requires a tenant earn income that is three times the amount of rent). These assumed income levels are comparable to households qualifying for restricted affordable apartment rents at 60% of area median income.

## VI. OTHER POLICY MODIFICATIONS FOR RE-CONTROL

Given the information collected through this process, staff developed policy modifications for the City Council to consider regarding Ellis Act provisions. These modification options provide incentive to build affordable housing on-site. A summary of the potential impacts by example developments is summarized in **Table 8**.

### A. Modifications to the Base Requirement for 50% Re-control

**Modification #1: Re-control of new units capped to seven times apartments demolished** – This modification would cap the number of re-control units to seven times the number demolished (**Table 8**). The Ellis Act Ordinance will continue to require 50% of the total proposed apartments to be built be subject to the Apartment Rent Ordinance:

- If the number of apartments demolished multiplied by seven is less than the 50% requirement, the number of apartments re-controlled would be capped.

- If a development increases density more than seven times, developers will benefit from this provision. Overall, the increase in density to the community provides a benefit along with a significant increase in the number of rent stabilized units.

Table 8 – Example of Modification #1

Current # of Rent Stabilized Apartments	# of New Units in the Proposed Development	Modification #1: <i>50% re-control of new units capped to seven times apartments demolished</i>		Number of re-controlled Apartments
(A)	(B)	50% of New (B)	7 Times # Demolished (A)	# Re-controlled
3	249	125	vs. 21	21
16	22	11	vs. 112	11
20	85	43	vs. 140	43
30	218	109	vs. 210	109
124	710	355	vs. 868	355
<b>193</b>	<b>1,284</b>			<b>539</b>

**B. Consideration of New Options to Meet Requirements for Re-control**

**Modification #2: Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index** – The Ellis Act would allow a waiver of the re-control provisions if two provisions were met (Table 9):

- 15% of the new units were restricted at affordable rents onsite (consistent with Inclusionary Ordinance standards), and
- Tenants with income of 80% Area Median Income or below displaced by the development were offered a right to return to the new development at the rent paid at the time of displacement (increased annually by Consumer Price Index during the construction period) with a subsequent maximum 5% annual rent increase for the duration of their tenancy.

The obligation terminates once the tenant vacates, the apartment returns to full market rate or restricted rent. This alternative will allow low-income displaced tenants to have an option to return to their communities following the development of new housing.



*Table 9 – Example of Modification #2*

<b>Current # of Rent Stabilized Apartments</b>	<b># of New Units in the Proposed Development</b>	<b>Modification #2: Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index</b>
<b>(A)</b>	<b>(B)</b>	<b># Affordable (15% of B)</b>
3	249	37
16	22	3
20	85	13
30	218	33
124	710	107
<b>193</b>	<b>1,284</b>	<b>193</b>

**Modification #3: Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis** – The Ellis Act Ordinance would be modified to allow developers to receive “credit” towards their 50% re-control requirement by providing onsite affordable housing (**Table 10**). For each unit of onsite affordable housing created, the developer would receive three units of “credit” towards the re-control requirement. For example, in a 249-unit development, the developer may choose to provide 42 onsite affordable units and receive a three to one credit of 126 units towards the 125 requirement of 50% of re-control requirements.

*Table 10 – Example of Modification #3*

<b>Current # of Rent Stabilized Apartments</b>	<b># of New Units in the Proposed Development</b>	<b>Modification #3: Onsite Affordable Housing Incentive</b>		
<b>(A)</b>	<b>(B)</b>	<b># of Onsite Affordable Built</b>	<b>Affordable Credit for 3</b>	<b>50% of New (B)</b>
3	249	42	42 * 3 = 126	125
16	22	4	4 * 3 = 12	11
20	85	14	14 * 3 = 42	43
30	218	36	36 * 3 = 108	109
124	710	118	118 * 3 = 354	355
<b>193</b>	<b>1,284</b>	<b>214</b>		

### C. Summary of Modifications

A summary of all three modifications is summarized in **Table 11**.

*Table 11 – Examples of Re-control Provisions with the Three Different Modifications*

<b>Current # of Rent Stabilized Apartments</b>	<b># of New Units in the Proposed Development</b>	<b>Modification #1: <i>50% re-control of new units capped to seven times apartments demolished</i></b>	<b>Modification #2: <i>Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index</i></b>	<b>Modification #3: <i>Onsite Affordable Housing Incentive</i></b>
		<b>Re-control</b>	<b>Onsite Affordable</b>	<b># Onsite Affordable to meet 50% Re-control Requirement</b>
3	249	21	37	42
16	22	11	3	4
20	85	43	13	14
30	218	109	33	36
124	710	355	107	118
<b>193</b>	<b>1,284</b>	<b>539</b>	<b>193</b>	<b>214</b>

### RECOMMENDATION

Staff recommends the underlying requirement for 50% of all units developed following the removal of apartments from the rental market under the Ellis Act remain re-controlled. This requirement may serve as a deterrent for sites with existing rent-stabilized housing for future development. However, in light of the conversations with developers and lenders, additional modifications as options for developers would allow for a variety of outcomes for new development.

After studying this issue, staff is recommending all three of the proposed modifications to the Ellis Act Ordinance, providing additional options to developers and creating new options for long-term affordable housing throughout the City.

Staff recommends the following modifications to the Ellis Act Ordinance:

- **Modification #1** – Modifications to the base requirement for 50% re-control of new units capped to seven times apartments demolished

August 1, 2019

**Subject: Ellis Act Ordinance Re-control Provisions**

Page 19

- **Modification #2** – Re-control waiver if 15% of new units are affordable onsite and displaced low-income tenants are offered a right to return at prior rents escalated by the Consumer Price Index
- **Modification #3** – Onsite Affordable Housing Incentive where developers receive credit towards their 50% re-control requirement by providing onsite affordable housing on a three to one basis.

## **PUBLIC OUTREACH**

The Housing Department conducted community outreach and met with stakeholders while developing the revisions to the Ellis Act Ordinance. Staff also interviewed developers, lenders, owners, and tenants for feedback on re-control impacts and modifications to the current provisions. Additional public comments are included as **Attachment D**.

/s/

JACKY MORALES-FERRAND

Director, Housing Department

For questions, please contact Rachel VanderVeen, Deputy Director of Housing, at (408) 535-8231.

## **ATTACHMENTS:**

- **Attachment A** – Letter from the Housing and Community Development Commission
- **Attachment B** – Summary of Lender and Developer Feedback
- **Attachment C** – Summary of Tenant Feedback
- **Attachment D** – Additional Public Comments



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*Housing and Community Development Commission*

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March 28, 2019

Mayor Sam Liccardo  
Members of the City Council  
200 E. Santa Clara St, 18<sup>th</sup> 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

**MAYOR AND CITY COUNCIL**

RE: Recommended City Council Amendments to Ellis Act Ordinance

March 28, 2019

Page 2

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 Liccardo'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 Liccardo 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](mailto:HCDC6@sanjoseca.gov).

Sincerely,

/s/

Andrea Wheeler  
Commission Chair

## SUMMARY OF DEVELOPER AND LENDER FEEDBACK

### *Summary of Interviews with Developers*

#### **Developer Interviews**

##### **Factors to Consider when Determining if the Development will Move Forward**

- Financial feasibility – price difference between the current sale price and the redevelopment resale value.
- Historic structures on adjacent parcels are presenting a challenge.
- Challenges negotiating land price.
- Park fees are challenging for the development.
- Housing type is challenging; wanting to explore options such as co-living to make the development move forward.
- The developer's lender needs to see \$4,000 monthly rent for the new apartments to make the investment.
- Developer is looking for a 10% return; narrow margin considering all of the variables that may shift during the development process.
- Ellis requirements represent another item in a long list of requirements by the City that make developing residential difficult.
- Developing in an opportunity zone – rushed timeline means the Developer needs the development process to move forward quickly to maintain investment.
- Developers are making investments in areas where they think the market will develop and improve over time – speculating on the opportunity to make a larger return in areas as they become more desirable. Ellis potentially limits the opportunity (and therefore the attractiveness) of these areas.
- Land costs already reflect future investment in San José including Bay Area Rapid Transit (BART) and Diridon expansions. Returns must be made on the development to recapture the initial funding of the land purchase.
- High rise housing developments face unique challenges due to the cost of development and difficulty building to the heights necessary to cover the costs.
- While the cost of steel, glass and labor are always a concern, the cost of land in San José is the greatest concern.
- Softening rents are making new developments difficult to move forward.

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##### **Familiarity with Affordable Housing Programs**

- No direct experience with affordable housing.
  - Familiar – interested in producing the 20% affordable option rather than having 50% of the new apartments subject to the Rent Stabilization program.
  - Very interested in affordable housing – if the requirement to replace the demolished apartments on a one-for-one basis with affordable apartments restricted at 80% to 100% Area Median Income (AMI), the development could move forward. This option would be preferred over the 50% re-control provision.
-

*Summary of Interviews with Lenders***Lender Interviews****Current Market**

- Developments are moving forward with approximately 30% from equity investors and 70% from typical bank loans. Equity investors are assuming greater risk on the development.
- Equity investors are concerned about the first five years of a development – construction and lease up are the most critical points in the process.
- Long-term investors purchase the property once construction is complete and the building is stabilized – meaning it is leased up for one to two years.

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**Impact of Ellis Act on Development**

- In general, equity investors and bank underwriters are projecting conservative growth rates on rents generally tracking the Consumer Price Index (CPI). The 5% annual increases under the re-control provisions are generous and reasonable.
- Debt providers will be comfortable with a 5% growth rate; equity investors may feel a little tighter with the 5% limitation; overall, both types of lenders will find a 5% rent increase reasonable.
- Approximately 70% of the developers partnered with use rent discounting as a business model to ensure an expedited lease up period. If the re-control provisions would not allow the rents to “catch up” to market in the first two years, this may be a challenge.

---

**Familiarity with affordable housing programs**

- Familiar – affordable rents work at the 80% to 100% AMI levels when included in a market-rate development.
  - Familiar – for sale is challenging to make work due to the high sale prices; rental at lower income levels is also challenging. Generally, affordable housing works best when concentrated in a separate building.
  - Deed restrictions are predictable and the programs are clearly defined.
-

**SUMMARY OF TENANT FEEDBACK***Summary of Interviews with Tenants***Tenant Interviews****Current Rent Levels**

- \$1,900
- \$1,992
- \$2,042
- \$2,100
- \$2,300

**Aspects of living in this Neighborhood or Complex**

- Access to transportation, such as light rail, is critical to some residents.
- Lack of maintenance or dilapidated buildings, but rents are still high.
- Immigrants of India - work for tech companies but are contracted out and do not make a six figure salary, or they make a six figure salary, but support their families back home. Cost of day care and school is also expensive and eats away at what appears to be a larger salary.
- Transportation and amenities attract lower income families to certain neighborhoods, and also attract tech workers traveling to neighboring cities.
- Majority are seniors with fixed incomes, that live pay-check to pay-check. Can't imagine moving to another apartment because of market-rate rents. Residents would most likely have to leave the State or would be forced to move in with family members.
- Long-term tenants who have established a community and raised their families feel uncertain and uneasy about pressures of displacement. Questions such as, "Where will I move to?"; "What will happen to my neighbors?"; and "How will I afford market-rate rents?"

**Occupation and Work Location**

- Hospital – City of Santa Clara
- Software engineer – City of Palo Alto
- Teacher – City of San José
- Real estate – City of San José
- Driver – City of San José
- Engineer – City of San José
- Consultant – City of San José
- Custodian and truck driver – City of San José
- Construction – City of San José
- Retired and on fixed-income
- Domestic worker- City of San Jose





April 4, 2019

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

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 Matthew R. Mahood  
 The silicon valley organization

**Re: Ellis Act Re-Control Provisions**

Dear Mayor Liccardo and City Council:

On behalf of The Silicon Valley Organization (The SVO), I am writing to urge the Council to adopt a 1-for-1 replacement policy of rent-controlled units for new residential projects under the Ellis Act. By way of background, The SVO is the Silicon Valley's premier business advocacy organization representing nearly 1,200 companies that employ over 300,000 workers, and we represent our membership as the region's largest Chamber of Commerce.

Any revisions to the Ellis Act re-control rules should preserve the existing supply of rent-controlled housing units, while avoiding unnecessary policies that would make residential projects infeasible for redevelopment opportunities. The city's existing 50% re-control rules on new construction projects makes it extremely difficult for housing developers to obtain adequate financing to increase the city's housing stock. The key to solving the housing crisis is to significantly accelerate housing production at all income levels – we must do everything we can to remove impediments to housing and the Council must not impose a 50% re-control rule that would be counterproductive to the city's housing production goals.

According to a recent staff report on the Housing Crisis Work Plan, an average of 2,800 residential units were built between 2010 and 2017. There simply is not enough housing production to tackle the housing affordability crisis head-on. Furthermore, we are aware that the Housing Department is floating a proposal to exempt the 50% re-control provisions, but only for new residential projects that generate at least 7 times the number of original units on the existing site. Many small sites will be unable to meet this density requirement and this policy proposal essentially supports the status quo by denying redevelopment opportunities. By amending the Ellis Act re-control provisions to strictly a 1-for-1 replacement rule, we can remove obstacles to construction and start encouraging residential development that will address housing affordability in the region.

In closing, we strongly urge the Council to exempt new residential construction from the Ellis Act 50% re-control provisions. If you have any questions about The SVO's position on this issue, please contact Eddie Truong, Director of Government and Community Relations, at

[REDACTED]

Sincerely,

[REDACTED]

Matthew R. Mahood  
 President & CEO



April 5, 2019

Mayor Sam Liccardo  
San Jose City Council  
Via email submittal

**RE: San Jose CC Meeting 4.9.19 Ellis Act Recontrol Provisions**

Dear Mayor Liccardo and San Jose City Council,

BIA Bay Area urges the City Council to eliminate the 50% re-control provisions under the Ellis Act and adopt a 1-for-1 replacement policy of rent-controlled units for new residential projects. Any revisions to the Ellis Act re-control rules must eschew counterproductive policies from current housing law that make residential redevelopment opportunities infeasible.

The city's existing 50% re-control rules on new construction projects effectively kills the potential of any redevelopment project on older rent controlled properties. The City should be working to achieve housing goals by removing impediments to new development. The Ellis Act 50% re-control rule is yet another obstacle to achieving the city's housing production goals vital to improving housing availability at all income levels.

According to a recent staff report on the Housing Crisis Work Plan, an average of 2,800 residential units were built between 2010 and 2017. There simply is not enough housing production to tackle the housing affordability crisis head-on. By amending the Ellis Act re-control provisions to strictly a 1-for-1 replacement rule, we can remove obstacles to construction and start encouraging residential development that will address housing affordability in the region.

California's high housing cost and lack of housing supply compromise the ability to access opportunity (jobs, health, stability) for families and individuals, including working families. Homeownership rates are the lowest since the 1940s and the State has not met its projected need for housing in the last 15 years. Housing supply needs are of vital importance and the highest priority.

In conclusion, BIA Bay Area strongly urges the Council to eliminate the Ellis Act 50% re-control provisions on new residential construction. BIA remains ready to work with the City to assist in any way we are able. Please feel free to contact me at [dmartin@biabayarea.org](mailto:dmartin@biabayarea.org).

Yours truly,

Dennis Martin  
BIA BAY AREA



Honorable Mayor Sam Liccardo and City Council  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113  
**Re: Ellis Act RE-Control Provisions**

Dear Mayor Liccardo and City Council:

On behalf of the Santa Clara County Association of REALTORS® (SCCAOR), and the 6,500 Real Estate Professionals we represent, I am writing to you to express support for revising the existing Ellis Act ordinance to reduce the re-control requirement to a 1-to-1 ratio.

SCCAOR is committed to the defense of private property rights and to taking action on policy issues that support the expansion of our housing supply at all levels. A reduction in the re-control requirement of the Ellis Act is a step in the right direction – and indicates a commitment to expedient action as is necessary when addressing a crisis.

As is evident by the stagnation of applications for redevelopment projects being done under the Ellis Act, it is clear that the Ellis Act is not supporting the Mayor’s vision to build 25,000 units of housing. According to the Housing Department’s memorandum dated February 28, 2019 and submitted to HCDC on March 3, 2019, “to date, two properties have issued a notice to withdraw” under the Ellis Act. This is clear indication that investment confidence in these type of redevelopment projects is low under the status-quo of the Ellis Act.

Lowering the re-control provision to 1-to-1 is a necessary step to reduce the reluctance of investors. Redevelopment of properties under the Ellis Act have so many net-benefits to our community that are being prevented under the existing ordinance: Dramatically increased supply (two projects have set to build 529 units, imagine how many more that could be), safety (new units will be up to code), higher quality units, and stronger communities.

It is our hope that you will act with a crisis mindset in the best interest of affordability and housing supply and amend the Ellis Act re-control provision to be 1-to-1.

Thank you for your service to our community and for considering SCCAOR’s position on this issue.

Regards,



Gustavo Gonzalez, President  
Santa Clara County Association of REALTORS®

**CALIFORNIA’S FIRST REAL ESTATE BOARD**

*SCCAOR exists to meet the business, professional and political needs of its members  
and to promote and protect home ownership and private property rights.*

## ELLIS ACT ORDINANCE COMMUNITY MEETING

**WHEN:** March 20, 2019

**WHERE:** Seven Trees Community Center

### **NOTES:**

#### **Rent Control vs. Affordable**

- I think that the 100%-50% subject to re-control was a move to encourage new developments. Too many restrictions will deter development.
- Rent Stabilization is preferable to an income-restricted property because AMI may grow rapidly with new developments/changing composition of region.
- 1 Re-control
- Must replace existing units or meet 15% inclusionary standard
- If a rent-controlled complex is removed from the market and processed as Ellis, we are essentially losing affordable housing, because the re-control aspect doesn't matter when rents are reset to market rates.
- Can we income-restrict properties for longer than 55 years?

#### **Rent Control Solutions**

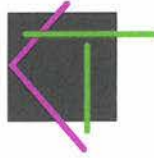
- Idea, poll developers to understand why they are not moving forward.
- Should be tied to AMI/CPI
- Fair Housing Act concerns with allowing off-site affordable option (or in lieu fee) (disproportionate impact on POC). On-site requirements for all re-control or those that qualify for 7Xs exemption would help.
- 1:1 with new unit being affordable rather than rent stabilized
- Affordable period be limited to 10 years creating an incentive

#### **Smaller Development Considerations:**

- Allow projects replacing same # of units some flexibility

#### **Barriers to Development**

- Ellis Act Ordinance is about preventing displacement, not promoting development. We don't know if last change (April 2018) has made an impact
- Concern regarding displacement of low income people in the Diridon Area. In this case the affordable option is better
- Concerns about displacement and its disproportionate effects on low-income minority populations.
- 55 years of income-restrictions are too long, should be 10 years plus % increase allowed



KT URBAN

March 28, 2019

Jacky Morales-Ferrand  
Director, Housing Department  
City of San Jose  
200 E Santa Clara Street  
San Jose, CA 95113

Dear Jacky,

I am currently the CFO for KT Urban. I have been a Chief Financial Officer for the past 16 years for several real estate companies including a publicly traded company (NYSE: UCP) based in San Jose, which completed an IPO in 2013 and raised approximately \$200 MM in construction financing, as well as over \$275 MM of other debt and equity proceeds in the capital markets. Prior to my experience in the real estate industry, I spent many years working at international banks such as BNP and Deutsche Bank that provided various forms of financing for several technology companies here in the Bay Area (Sun Microsystems, 3Com, Informix, Sybase) totaling some \$2 billion.

I understand that you are considering matters pertaining to the City San Jose's Ellis Act Ordinance and its re-control provisions impact on the ability of projects to obtain equity and construction financing in the capital markets. I would like to, respectfully, offer a few observations for your consideration:

1. **Rent controlled projects increase risk** as rent controlled projects recover more slowly from market downturns. In Table 1 of the David Paul Rosen & Associates report, the market rents for that sampling of projects declined 8.7% in 2009 and it took over 2 years for the market to recover. If a 5% rent cap were in place, it would have taken the markets rents nearly 4 years to recover. The capital markets (institutional investors and the debt market) study long term cycles carefully and the reduced ability to recover from inevitable market downturns increases risk. Projects with higher risk require higher returns which, in turn, reduces the number of viable projects and investors while at the same time increasing the need for equity investment as higher risk projects are not able to borrow as much.
2. **Rent controlled projects are less valuable**, of course, because of reduced revenue and cash flow. Again, using the Dave Paul Rosen data and applying the 5% cap, the 11-year average annual rent growth would have been less than 2.5%. Separate but in addition to the risk issue discussed above, less valuable projects attract fewer investors and require




more equity as the borrowing capacity of the project is reduced. If we factor in reduced annual growth rate and the increased risk and apply this data to a large multifamily project we are currently working on located in San Jose, we estimate the pretax profit of the project would be reduced by approximately \$50 MM.

3. From a capital markets standpoint, ***addressing the housing crisis in the Bay Area requires large scale institutional investors and debt.*** For the reasons cited above, institutional investors will shy away from and in some cases be precluded, as a matter of policy, from investing projects that have rent control or other limitations.
4. Over \$30 billion was invested in US in value-add multifamily projects in 2018. In this category of investment ***private equity and debt funds specifically target under-utilized, neglected or under-performing urban, infill properties with the primary goal of redeveloping the property at higher densities and increasing rents at above market rates.*** By definition, this type of significant investment, while usually being welcomed in the community, would be significantly diminished under the proposed Ellis Act ordinance.
5. ***It is widely understood by economists that rent control often results in having the opposite effect than intended.*** In a recent study from Stanford University on this topic, which I am sure you are aware, the authors concluded that rent control reduces housing supply and drives up rent.

Having lived my whole life in the Bay Area, most of which living or working in Santa Clara Valley, I am very excited to see the development of Downtown San Jose over the past 10+ years. Downtown San Jose is emerging as the social and cultural hub of Silicon Valley. Very significant large-scale investment seems to be on the near-term horizon, but the Ellis Act's re-control provision will discourage investment activity. I am very hopeful that the City of San Jose will continue to work hard to encourage this continued investment.

Sincerely,



William J. La Herran  
Chief Financial Officer  
KT Urban

## Nguyen, Viviane

---

**From:** VanderVeen, Rachel  
**Sent:** Thursday, April 11, 2019 7:03 PM  
**To:** Nguyen, Viviane  
**Subject:** FW: Ellis Act  
**Attachments:** ARO-Ellis 4.9.19 Reflections.docx

Public comment

### Rachel VanderVeen

Deputy Director  
Housing Department  
[REDACTED]

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**From:** David Eisbach [REDACTED]  
**Sent:** Thursday, April 11, 2019 10:08 AM  
**To:** VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>  
**Subject:** Fw: Ellis Act

**Sent:** Thursday, April 11, 2019, 9:54:03 AM PDT  
**Subject:** Ellis Act

Hi Rachel

I believe that the Ellis Act, works so far as protecting and relocating tenants, but it serves as a stumbling block for owners, who are considering expanding their properties. I make some suggestions, that may be helpful in expanding the affordable and the market rents in San Jose.

I hope you will read the attached and put it on the record.

Regards

David Eisbach

## ARO-Ellis Act, 4.9.10 Reflections

A February 7, 2019 article in the San Jose Mercury News, “San Jose to Review Rent Control” quoted Housing Director, Jacky Morales-Ferrand The Ellis Act... “is designed to make developers think Twice.”

If she is referring to protecting tenants by charging up to \$15,000 per family to relocate them and allowing up to a year notice, then I would say I understand the intent even though both are excessive.

If she is referring to an owner who wishes to expand his five unit apartment to ten but realizes that once the units are ready five of the new units must be placed under the ARO, he decides that the numbers do not work. He Thought Twice!

I have read some lines that stated that negotiations could allow 20% be placed under the ARO, i.e. 2 units. I also read that the new empty units would allow the owner to set rents and then be bound to the annual 5%. I fear that the original thought is new units would reflect the original rents plus 5% for each year passed.

I think there are current owners who might have contiguous plots large enough to physically expand their units by two to three times. These are owners, not developers, who are into large properties. They are not financial giants.

It is clear that the City must build housing. What we see is a black and white non-negotiable piece of legislation. We wonder why owners are not building? Do we not see that all the costs of expanding rental stock is borne by the owner along with the promise of reduced income in the end product. Here are some suggestions:

1. If the owner's old units were under market, and the new units would reduce the annual income by a considerable amount, Independent Agents could adjust the new rates.
2. The Planning, Permits, Code Enforcement costs be reduced by 15%; the projects should be given assistance and priority.
3. The property will be reassessed; the City could waive 10% and convince the County to do the same. (Make the adjustment in the property assessment).



4. The Ellis eviction timing is a mine field; If there are seniors, or school age tenants then the timing could be extended up to a year. If the owner just says in one year you all must be out, and three leave right away that leaves two, that's a lot of lost rent because of this notice period. If there is an unforeseen loss, it should be considered in costs somewhere else.
5. The owner is responsible for construction and labor. Delays cost money, the City should be accommodating.
6. If the City can pay \$600,000 to develop one Cargo Bin into a living unit, it can certainly apply a lot less in the expansion of more existing housing.

Instead of using the Ellis Act to dissuade owners, steps could be taken to aid in the process. If we could stop viewing owners as greedy, lawless trolls and listen to each other, we might find room for negotiation. Who knows if some or all of the above suggestions were followed, the City could gain five lower cost units under ARO and Five market properties.

David Eisbach, Broker, Property Manager, Owner

[REDACTED]

[REDACTED]



Advancing Justice  
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April 16, 2019

City of San José Housing Department  
200 E. Santa Clara St.  
San José, CA 95113

**RE: Item 4.2 – Ellis Act Ordinance Re-Control Provisions**

Dear Director Morales-Ferrand:

We write to strongly urge the Housing Department to recommend no changes to the current Ellis Act Ordinance. The Ellis Act Ordinance (the “Ordinance”) was originally passed in April of 2017 as part of a package of protections against displacement for San José tenants and measures to preserve San José’s supply of affordable housing, including San José’s Apartment Rent Ordinance. These protections were passed as hundreds of tenants were losing their rent-controlled units, including over 670 tenants at the Reserve Apartments, and with broad community support following extended public comment highlighting the need to better preserve San José’s stock of affordable housing and prevent the displacement of low-income tenants.

Despite this need, the Ellis Act Ordinance was rolled back just last year to allow developers to recontrol fewer of the affordable units they demolish and to seek exemption from the recontrol requirement altogether under certain circumstances. In the midst of an unprecedented housing crisis causing massive dispossession of homes and displacement of people, it would be reckless and pernicious to further weaken this important tool for preserving affordable housing. Furthermore, such an action would likely have a disparate impact on people of color and perpetuate segregation in violation of the federal Fair Housing Act (FHA) and California Fair Housing and Employment Act (FEHA) as the City has utterly failed to evaluate the effect of such a rollback on low-income communities of color.

Efforts to prioritize the production of affordable housing that undoubtedly will lead to the displacement of low-income families of color, including rolling back the Ellis Act Ordinance, ignore the long history of discriminatory housing policy in San José and the vulnerability of the city’s existing affordable housing stock. While we agree that we need to develop more affordable housing, such development should not be to the detriment of our low-income communities of color, who disproportionately live in rent-stabilized units. Anecdotal evidence from developers regarding their motivations should not, as a matter of sound and equitable



policy making, outweigh tangible community needs especially given the failure to evaluate the effect of the loss of rent-controlled buildings both before and after the passage of the Ellis Act.

The City should instead ask the Housing Department to track how the demolishing of rent-controlled buildings have affected the displacement of low-income families out of San Jose. Why has the City not pushed the Housing Department to find out the fates of the more than 670 tenants displaced from the Reserve Apartments? Such data, rather than anecdotal data from developers, will be telling of the importance and necessity of the Ellis Act to keep low-income families in San Jose.

### **1. The Failure to Preserve Naturally Occurring Affordable Housing Units Has Driven Displacement and the Affordable Housing Crisis in San José**

Recent studies on the scale and scope of displacement in the Bay Area have found that San José residents have been hit particularly hard by displacement and gentrification in the past ten years. The Urban Displacement Project found that every census tract within and surrounding downtown San José has seen or is currently experiencing either ongoing gentrification and displacement or advanced gentrification and displacement.<sup>1</sup>

Efforts to produce new affordable units have not kept up with the community's needs for affordability and created a massive gap in San José's housing supply. The City of San José's General Plan Housing Element found that the City issued permits to build less than 22% of needed low-, very low-, and extremely low-income deed-restricted affordable housing units from 2007 to 2013.<sup>2</sup>

Meanwhile, the need for affordable units is only expected to grow. The City's need for housing units affordable to renters with very low incomes alone is nearly 20% greater, an increase of over 1400 units, for the 2014–2022 planning period.<sup>3</sup> The 2018 Annual Element Plan Update reports that San José is already falling behind in meeting this goal, even while exceeding its needs for market rate housing.<sup>4</sup> As the Housing and Community Development Commission emphasizes in their letter, **the City has presented no evidence that this shortfall in production is linked to incentives under the Ellis Act Ordinance.**

**In light of this massive shortfall in the production of new affordable units, the failure to preserve existing affordable housing has been a key driver of displacement.** This failure compounds a long history of racially discriminatory residential policy that has denied fair

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<sup>1</sup> See *Mapping Displacement and Gentrification in the San Francisco Bay Area*, URBAN DISPLACEMENT PROJ. (2018), <http://www.urbandisplacement.org/map/sf>.

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housing choice and made it difficult for people of color to remain stably housed in decent, affordable homes.

Beginning in the 1930's and continuing until 1976, the federal government engaged in a practice known as "redlining," whereby the federal government assigned ratings to neighborhoods to guide public and private investment. As a rule, neighborhoods where people of color lived received the lowest possible investment grade, often merely because people of color lived there.<sup>5</sup> These explicitly discriminatory investment grades precluded private investment in these redlined areas, prevented residents from securing federally-insured loans to buy homes, and all but guaranteed that these neighborhoods would fall into disrepair and dilapidation.

Redlined neighborhoods, because of the economic depression and urban blight that years of *de jure* discrimination and total disinvestment created, were then targeted for redevelopment by the San José Redevelopment Authority (SJRA) in the 1980's, and '90's. Unfortunately, the SJRA's efforts to create "a thriving urban center, offering an amalgamation of cultural, professional, and residential amenities,"<sup>6</sup> displaced many of the people of color that had been forced to settle in these redlined areas.

In a case study of the Diridon Station Area, for example, the U.C. Berkeley Center for Community Innovation found that "development activities, including a significant loss of housing units in the 1980s, may have primed this area for the gentrification it is experiencing today."<sup>7</sup> During this period, the SJRA merged redevelopment revenues generated from neighborhoods across the city to focus development downtown.<sup>8</sup> This strategy allowed the SJRA to carry out massive projects such as the Guadalupe corridor transportation project, a widening of the Guadalupe River channel, and the construction of what is now the SAP Center. Together, these projects directly displaced a significant number of Hispanic households and spurred gentrification that has driven continued home loss.<sup>9</sup>

Indeed, the National Community Reinvestment Coalition found that between 2000 and 2013, census tract 5003 (which covers the Diridon Station Area and the tract of land bordering Guadalupe Creek to the west between Interstate 880 and Park Ave), saw significant displacement of Hispanic residents.<sup>10</sup> Perhaps unsurprisingly, census tract 5003 includes two sizeable

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<sup>6</sup> *Downtown San José*, SAN JOSÉ REDEVELOPMENT ASSOC., <http://www.sjredevelopment.org/downtown.htm> (last visited April 3, 2019).

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neighborhoods that were redlined by the federal government throughout most of the twentieth century.<sup>11</sup>

By specifically targeting communities of color for disinvestment, redlining created severe poverty in these neighborhoods that has incentivized developers to demolish and replace them with more profitable properties. The economic impact of redlining also has created obstacles for the residents of these ostracized neighborhoods in resisting changes to their community.

The result is that the low-income people of color who were cut-off and denied investment for much of the last century because they were told their very presence made these neighborhoods undesirable are now being pushed out so that their neighborhoods can be redeveloped to be desirable to other, richer, and perhaps newer, residents of San José.

This history demands a renewed emphasis on preserving affordable housing units, like rent-stabilized units, because, unlike production, preservation maintains existing tenancies and conserves the cultural identity of the neighborhoods in which it takes place. Focusing only on production of new units through redevelopment will perpetuate a long history of inequity in housing policy in San José, and all but guarantee that low-income tenants will once again be excluded from the economic growth that City policy seeks to stimulate.

## **2. The Ellis Act Ordinance Must be Retained in its Current Form in Order to Fulfill its Purpose to Preserve Naturally Occurring Rent-Stabilized Units**

In addition to being counter-productive to promoting equitable housing policy, efforts to prioritize the production of affordable housing that inhibit the City's ability to preserve affordable units are also self-defeating. Strong measures to preserve San José's existing affordable housing stock are needed to mitigate economic pressures that have already caused severe displacement in our community. Although not all ARO-covered units remain affordable due the vacancy decontrol requirement of the Costa Hawkins Rental Housing Act, rent-stabilized units remain an important and significant source of naturally-occurring affordable housing. The legislative history of the Ellis Act Ordinance shows that its primary purpose is to preserve rent-controlled units and prevent the displacement of low-income tenants.

City Council initially directed Housing Department staff to formulate the ordinance in May 2016 in order to address concerns about the demolition of affordable apartments covered by San José's Apartment Rent Ordinance (ARO) and displacement of tenants residing in ARO-covered properties.<sup>12</sup> Following extended public outreach, Housing Staff returned in April of 2017 with an ordinance that sought to prevent displacement by requiring landlords who want to remove a building from the rental market to provide to tenants certain notices, relocation services

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<sup>11</sup> See *Redlining and Gentrification*, *supra*, note 5.

<sup>12</sup> See Synopsis of May 10, 2016 City Council Meeting at 8, SAN JOSÉ CITY COUNCIL (2016), <http://www.sanjoseca.gov/DocumentCenter/View/56624>.



and benefits, and a right to return and/or reconrol of new units under certain circumstances. The ordinance was passed after several hours of public comments, many of which focused on the need to preserve San José's supply of affordable housing units.

Indeed, San José needs its Ellis Act Ordinance to remain as strong as possible in order to preserve its stock of affordable housing. As the Housing Department's memorandum explains, there are many reasons why rent-controlled units never return to the rental market following an Ellis Act conversion, but the most common are that building is replaced with a commercial use or for-sale housing instead of rental housing and that developers fail to return to the building within five years as required under the Ellis Act's reconrol provisions.<sup>13</sup>

Thus, even in jurisdictions that require 100% of new rental units to be reconrolled, the demolition of buildings with rent-controlled units under the Ellis Act consistently results in an overall loss of affordable units. San Francisco, for example, requires 100% reconrol, but still suffered a loss of 1,257 affordable units due to Ellis Act conversions alone between 2008 and 2018.<sup>14</sup> San José can count on similar losses to its affordable housing stock, and allowing developers who do not find a way to skirt the Ellis Act Ordinance's reconrol requirement to reconrol fewer units will only make these losses more severe.

Strong measures to preserve San José's affordable housing stock are urgently needed, particularly given that "nearly 14% of the City's deed-restricted housing stock is at risk of conversion within the next ten years."<sup>15</sup> Specifically, the Ellis Act Ordinance's protection for rent-controlled units in buildings with a potential for redevelopment must remain in place because of San José's affordable housing units, over 40% "are owned by profit-motivated companies and are thus at greater risk of conversion in the next ten years."<sup>16</sup>

### **3. Further Limiting the Reconrol Requirements of the Ellis Act Ordinance Without Studying the Effects Such Policies May Have on Communities of Color Likely Violates the Fair Housing Act and California Fair Housing and Employment Act and the City's Responsibility to Affirmatively Further Fair Housing**

Further rolling back the reconrol requirements of the Ellis Act Ordinance would likely have a disparate impact on people of color in violation of the Federal Fair Housing Act<sup>17</sup> and

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<sup>13</sup> See Memorandum from San José Housing Department to City Council RE: Item 4.2 – Ellis Act Ordinance Reconrol Provisions, at 5 (Apr. 9, 2019).

<sup>14</sup> S.F. PLANNING DEP'T, HOUSING BALANCE REPORT NO. 7, at 10 (2018), [http://default.sfplanning.org/publications\\_reports/20180920\\_HousingBalance7CPC.pdf](http://default.sfplanning.org/publications_reports/20180920_HousingBalance7CPC.pdf).

<sup>15</sup> CITY OF SAN JOSÉ, HOUSING ELEMENT VI-6 (2015).

<sup>16</sup> *Id.* at VII-4.

<sup>17</sup> See *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

California FEHA,<sup>18</sup> as well as the City’s Obligation to Affirmatively Further Fair Housing.<sup>19</sup> As explained above, modifying the Ellis Act Ordinance to allow developers to recontrol fewer of the rent-stabilized units they demolish or more easily seek exemption from the ordinance altogether will cause the loss of affordable units. This loss will have a disparate impact on tenants who are people of color and female heads of households because these residents are the most highly-rent-burdened and frequently-evicted for not being able to afford the rent or for no cause.<sup>20</sup>

While the City absolutely has an ethical obligation to mitigate the impact of displacement by providing alternative housing, it is unlikely that providing housing elsewhere would absolve the City of all liability under the FHA and FEHA if it were to weaken the recontrol provision of the Ellis Act Ordinance. This is because alternative housing must be “truly comparable” to the housing denied, which “is not simply a question of price and model, but also of the factors that determine the desirability of particular locations—factors such as similarly or better performing schools, comparable infrastructure, convenience of public transportation, availability of amenities such as public parks and community athletic facilities, access to grocery or drug stores, as well as equal or lower crime levels.”<sup>21</sup>

The Ellis Act Ordinance already provides a compliance option for developers to meet their recontrol obligation through payment of a fee to the City to develop affordable housing offsite.<sup>22</sup> Expanding the offsite compliance option will make it particularly difficult for the City to show that its policy provides for truly comparable housing to displaced tenants because throughout the Bay Area, tenants who are forced to move consistently end up in more highly rent-burdened units.<sup>23</sup>

It is also unlikely that any affordable units actually produced through the off-site options are truly comparable to those demolished because so many of the factors affecting whether the units are truly comparable to those denied rely on the neighborhood in which the units are located. Moreover, those tenants displaced during construction may never be financially able to remain and return to San Jose. Therefore, even under the convenient and misleading fiction that the people whose rent-controlled units are demolished for redevelopment are the people who are

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<sup>18</sup> See *Yazdinin v. Las Virgenes Vill. Cmty. Ass'n*, 2012 U.S. Dist. LEXIS 191221, \*14 (C.D. Cal. 2012) (“Plaintiffs must demonstrate that the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole.” (citing *Charleston Hous. Auth. v. USDA*, 419 F.3d 729, 740-741 (8th Cir. 2005))).

<sup>19</sup> See Cal. Gov’t Code § 65583.

<sup>20</sup> SILICON VALLEY RISING, CASHING IN ON RENTERS 1, 2 (Apr. 2017), <https://www.siliconvalleyrising.org/files/CashingInOnRenters.pdf>.

<sup>21</sup> *Ave. 6E Invs., Ltd. Liab. Co. v. City of Yuma*, 818 F.3d 493, 512 (9th Cir. 2016).

<sup>22</sup> See

<sup>23</sup> U.C. BERKELEY URBAN DISPLACEMENT PROJ. AND THE CAL. HOUS. P’SHIP, RISING HOUSING COSTS AND RE-SEGREGATION IN THE SAN FRANCISCO BAY AREA 16 (2019), [http://www.urbandisplacement.org/sites/default/files/images/bay\\_area\\_re-segregation\\_rising\\_housing\\_costs\\_report\\_2019.pdf](http://www.urbandisplacement.org/sites/default/files/images/bay_area_re-segregation_rising_housing_costs_report_2019.pdf).

actually able to occupy newly-developed units,<sup>24</sup> off-site compliance options still create barriers to fair housing choice. This is especially true in an era of transit-oriented and mixed-use development that add neighborhood amenities and enhance community livability while increasing the number of residential units.

Although renters of all racial backgrounds typically see a rent hike when moving, low-income renters who are people of color frequently end up in highly segregated, high-poverty regions while low-income white renters are able to access more resource-rich areas.<sup>25</sup> Therefore, weakening the Ellis Act Ordinance’s reconrol provisions will perpetuate residential segregation in San José, which is already highly divided by race and income.

The City of San José’s Housing Element for 2014–2023 observes that “certain race/ethnic groups tend to concentrate in specific parts of the City.”<sup>26</sup> Hispanic residents live in higher numbers “on the east side of San José (Central, Alum Rock, and Alviso areas) where traditionally lower income neighborhoods exist, while Asians and Whites are the majority group in the northern, southern, and western parts (Berryessa, Evergreen, Willow Glen, West Valley, Cambrian, and Almaden areas) where traditionally higher income neighborhoods are found.”<sup>27</sup>

As explained above, this distribution originated in the explicitly discriminatory and intentionally segregative practice of redlining that existed for much of the twentieth century. Not surprisingly, the majority of aging properties with rent-controlled units that are being considered for Ellis Act conversion are located in these predominately Hispanic, low-income neighborhoods.<sup>28</sup> Thus, redevelopment of these buildings and surrounding neighborhoods will not only disproportionately displace Hispanic tenants, it will do so just before these neighborhoods become some of the City’s newest, most desirable places to live. The City should be studying the segregative effects of the loss of such rent-controlled units, not accelerating their redevelopment.

After decades of targeted and intentional disinvestment of communities of color followed by a concerted effort to gentrify the same neighborhoods through redevelopment, the City has an obligation to invest in preserving and improving the affordable units that still exist in these

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<sup>24</sup> Displaced tenants typically cannot access affordable units constructed off-site because tenants in rent-controlled apartments are displaced prior to their building’s demolition, but fees for off-site affordable housing development are not collected until the certificate of occupancy is issued.

<sup>25</sup> *Id.* at 15.

<sup>26</sup> CITY OF SAN JOSÉ, HOUSING ELEMENT II-9 (2015).

<sup>27</sup> *Id.* at II-9.

<sup>28</sup> See Attachment A to Memorandum from San José Housing Department to City Council RE: Item 4.2 – Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance) (Mar. 15, 2018), <https://sanjose.legistar.com/View.ashx?M=F&ID=6190894&GUID=12094E01-AB81-4478-B7BD-7759773FE62B> (providing the location of properties up for conversion under the Ellis Act).



neighborhoods. The notion that a policy change that will make it more profitable for developers to flip ARO-covered buildings will somehow lead to a net benefit for low-income renters sometime after the actual occupants of those buildings are displaced is totally backwards. This logic shows a callous disregard for the history of oppression that San José's people of color have suffered due to housing policy and promises to reproduce the existing segregation that such policy created.

#### **4. Conclusion**

Reflecting on the long history of discriminatory housing policy in San José and those of our neighbors who have been forced out of their homes following the demolition of their building under the Ellis Act, we urge you to recommend that City Council abstain from further rolling back the Ellis Act Ordinance for the second time within a year. We would be happy to meet with you to discuss this matter further. You can reach me at

[REDACTED]

Sincerely,

[REDACTED]

Nadia Aziz, Supervising Attorney  
Michael Trujillo, Staff Attorney

CC:  
San José City Council  
Rick Doyle, City Attorney  
David Sykes, City Manager

[REDACTED]



**Advancing Justice**  
Housing | Health | Children & Youth

April 16, 2019

City of San José Housing Department  
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<sup>10</sup> *Shifting Neighborhoods*, NAT'L COMM. REINVESTMENT COALITION (2019), <http://maps.ncrc.org/gentrificationreport/index.html?bookmark=Map>.

neighborhoods that were redlined by the federal government throughout most of the twentieth century.<sup>11</sup>

By specifically targeting communities of color for disinvestment, redlining created severe poverty in these neighborhoods that has incentivized developers to demolish and replace them with more profitable properties. The economic impact of redlining also has created obstacles for the residents of these ostracized neighborhoods in resisting changes to their community.

The result is that the low-income people of color who were cut-off and denied investment for much of the last century because they were told their very presence made these neighborhoods undesirable are now being pushed out so that their neighborhoods can be redeveloped to be desirable to other, richer, and perhaps newer, residents of San José.

This history demands a renewed emphasis on preserving affordable housing units, like rent-stabilized units, because, unlike production, preservation maintains existing tenancies and conserves the cultural identity of the neighborhoods in which it takes place. Focusing only on production of new units through redevelopment will perpetuate a long history of inequity in housing policy in San José, and all but guarantee that low-income tenants will once again be excluded from the economic growth that City policy seeks to stimulate.

## **2. The Ellis Act Ordinance Must be Retained in its Current Form in Order to Fulfill its Purpose to Preserve Naturally Occurring Rent-Stabilized Units**

In addition to being counter-productive to promoting equitable housing policy, efforts to prioritize the production of affordable housing that inhibit the City's ability to preserve affordable units are also self-defeating. Strong measures to preserve San José's existing affordable housing stock are needed to mitigate economic pressures that have already caused severe displacement in our community. Although not all ARO-covered units remain affordable due the vacancy decontrol requirement of the Costa Hawkins Rental Housing Act, rent-stabilized units remain an important and significant source of naturally-occurring affordable housing. The legislative history of the Ellis Act Ordinance shows that its primary purpose is to preserve rent-controlled units and prevent the displacement of low-income tenants.

City Council initially directed Housing Department staff to formulate the ordinance in May 2016 in order to address concerns about the demolition of affordable apartments covered by San José's Apartment Rent Ordinance (ARO) and displacement of tenants residing in ARO-covered properties.<sup>12</sup> Following extended public outreach, Housing Staff returned in April of 2017 with an ordinance that sought to prevent displacement by requiring landlords who want to remove a building from the rental market to provide to tenants certain notices, relocation services

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<sup>11</sup> See *Redlining and Gentrification*, *supra*, note 5.

<sup>12</sup> See Synopsis of May 10, 2016 City Council Meeting at 8, SAN JOSÉ CITY COUNCIL (2016), <http://www.sanjoseca.gov/DocumentCenter/View/56624>.

and benefits, and a right to return and/or reconrol of new units under certain circumstances. The ordinance was passed after several hours of public comments, many of which focused on the need to preserve San José’s supply of affordable housing units.

Indeed, San José needs its Ellis Act Ordinance to remain as strong as possible in order to preserve its stock of affordable housing. As the Housing Department’s memorandum explains, there are many reasons why rent-controlled units never return to the rental market following an Ellis Act conversion, but the most common are that building is replaced with a commercial use or for-sale housing instead of rental housing and that developers fail to return to the building within five years as required under the Ellis Act’s reconrol provisions.<sup>13</sup>

Thus, even in jurisdictions that require 100% of new rental units to be reconrolled, the demolition of buildings with rent-controlled units under the Ellis Act consistently results in an overall loss of affordable units. San Francisco, for example, requires 100% reconrol, but still suffered a loss of 1,257 affordable units due to Ellis Act conversions alone between 2008 and 2018.<sup>14</sup> San José can count on similar losses to its affordable housing stock, and allowing developers who do not find a way to skirt the Ellis Act Ordinance’s reconrol requirement to reconrol fewer units will only make these losses more severe.

Strong measures to preserve San José’s affordable housing stock are urgently needed, particularly given that “nearly 14% of the City’s deed-restricted housing stock is at risk of conversion within the next ten years.”<sup>15</sup> Specifically, the Ellis Act Ordinance’s protection for rent-controlled units in buildings with a potential for redevelopment must remain in place because of San José’s affordable housing units, over 40% “are owned by profit-motivated companies and are thus at greater risk of conversion in the next ten years.”<sup>16</sup>

### **3. Further Limiting the Reconrol Requirements of the Ellis Act Ordinance Without Studying the Effects Such Policies May Have on Communities of Color Likely Violates the Fair Housing Act and California Fair Housing and Employment Act and the City’s Responsibility to Affirmatively Further Fair Housing**

Further rolling back the reconrol requirements of the Ellis Act Ordinance would likely have a disparate impact on people of color in violation of the Federal Fair Housing Act<sup>17</sup> and

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<sup>13</sup> See Memorandum from San José Housing Department to City Council RE: Item 4.2 – Ellis Act Ordinance Reconrol Provisions, at 5 (Apr. 9, 2019).

<sup>14</sup> S.F. PLANNING DEP’T, HOUSING BALANCE REPORT NO. 7, at 10 (2018), [http://default.sfplanning.org/publications\\_reports/20180920\\_HousingBalance7CPC.pdf](http://default.sfplanning.org/publications_reports/20180920_HousingBalance7CPC.pdf).

<sup>15</sup> CITY OF SAN JOSÉ, HOUSING ELEMENT VI-6 (2015).

<sup>16</sup> *Id.* at VII-4.

<sup>17</sup> See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

California FEHA,<sup>18</sup> as well as the City’s Obligation to Affirmatively Further Fair Housing.<sup>19</sup> As explained above, modifying the Ellis Act Ordinance to allow developers to recontrol fewer of the rent-stabilized units they demolish or more easily seek exemption from the ordinance altogether will cause the loss of affordable units. This loss will have a disparate impact on tenants who are people of color and female heads of households because these residents are the most highly-rent-burdened and frequently-evicted for not being able to afford the rent or for no cause.<sup>20</sup>

While the City absolutely has an ethical obligation to mitigate the impact of displacement by providing alternative housing, it is unlikely that providing housing elsewhere would absolve the City of all liability under the FHA and FEHA if it were to weaken the recontrol provision of the Ellis Act Ordinance. This is because alternative housing must be “truly comparable” to the housing denied, which “is not simply a question of price and model, but also of the factors that determine the desirability of particular locations—factors such as similarly or better performing schools, comparable infrastructure, convenience of public transportation, availability of amenities such as public parks and community athletic facilities, access to grocery or drug stores, as well as equal or lower crime levels.”<sup>21</sup>

The Ellis Act Ordinance already provides a compliance option for developers to meet their recontrol obligation through payment of a fee to the City to develop affordable housing offsite.<sup>22</sup> Expanding the offsite compliance option will make it particularly difficult for the City to show that its policy provides for truly comparable housing to displaced tenants because throughout the Bay Area, tenants who are forced to move consistently end up in more highly rent-burdened units.<sup>23</sup>

It is also unlikely that any affordable units actually produced through the off-site options are truly comparable to those demolished because so many of the factors affecting whether the units are truly comparable to those denied rely on the neighborhood in which the units are located. Moreover, those tenants displaced during construction may never be financially able to remain and return to San Jose. Therefore, even under the convenient and misleading fiction that the people whose rent-controlled units are demolished for redevelopment are the people who are

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<sup>18</sup> See *Yazdian v. Las Virgenes Vill. Cmty. Ass'n*, 2012 U.S. Dist. LEXIS 191221, \*14 (C.D. Cal. 2012) (“Plaintiffs must demonstrate that the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole.” (citing *Charleston Hous. Auth. v. USDA*, 419 F.3d 729, 740-741 (8th Cir. 2005))).

<sup>19</sup> See Cal. Gov’t Code § 65583.

<sup>20</sup> SILICON VALLEY RISING, CASHING IN ON RENTERS 1, 2 (Apr. 2017), <https://www.siliconvalleyrising.org/files/CashingInOnRenters.pdf>.

<sup>21</sup> *Ave. 6E Invs., Ltd. Liab. Co. v. City of Yuma*, 818 F.3d 493, 512 (9th Cir. 2016).

<sup>22</sup> See

<sup>23</sup> U.C. BERKELEY URBAN DISPLACEMENT PROJ. AND THE CAL. HOUS. P’SHIP, RISING HOUSING COSTS AND RE-SEGREGATION IN THE SAN FRANCISCO BAY AREA 16 (2019), [http://www.urbandisplacement.org/sites/default/files/images/bay\\_area\\_re-segregation\\_rising\\_housing\\_costs\\_report\\_2019.pdf](http://www.urbandisplacement.org/sites/default/files/images/bay_area_re-segregation_rising_housing_costs_report_2019.pdf).



actually able to occupy newly-developed units,<sup>24</sup> off-site compliance options still create barriers to fair housing choice. This is especially true in an era of transit-oriented and mixed-use development that add neighborhood amenities and enhance community livability while increasing the number of residential units.

Although renters of all racial backgrounds typically see a rent hike when moving, low-income renters who are people of color frequently end up in highly segregated, high-poverty regions while low-income white renters are able to access more resource-rich areas.<sup>25</sup> Therefore, weakening the Ellis Act Ordinance's reconrol provisions will perpetuate residential segregation in San José, which is already highly divided by race and income.

The City of San José's Housing Element for 2014–2023 observes that “certain race/ethnic groups tend to concentrate in specific parts of the City.”<sup>26</sup> Hispanic residents live in higher numbers “on the east side of San José (Central, Alum Rock, and Alviso areas) where traditionally lower income neighborhoods exist, while Asians and Whites are the majority group in the northern, southern, and western parts (Berryessa, Evergreen, Willow Glen, West Valley, Cambrian, and Almaden areas) where traditionally higher income neighborhoods are found.”<sup>27</sup>

As explained above, this distribution originated in the explicitly discriminatory and intentionally segregative practice of redlining that existed for much of the twentieth century. Not surprisingly, the majority of aging properties with rent-controlled units that are being considered for Ellis Act conversion are located in these predominately Hispanic, low-income neighborhoods.<sup>28</sup> Thus, redevelopment of these buildings and surrounding neighborhoods will not only disproportionately displace Hispanic tenants, it will do so just before these neighborhoods become some of the City's newest, most desirable places to live. The City should be studying the segregative effects of the loss of such rent-controlled units, not accelerating their redevelopment.

After decades of targeted and intentional disinvestment of communities of color followed by a concerted effort to gentrify the same neighborhoods through redevelopment, the City has an obligation to invest in preserving and improving the affordable units that still exist in these

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<sup>24</sup> Displaced tenants typically cannot access affordable units constructed off-site because tenants in rent-controlled apartments are displaced prior to their building's demolition, but fees for off-site affordable housing development are not collected until the certificate of occupancy is issued.

<sup>25</sup> *Id.* at 15.

<sup>26</sup> CITY OF SAN JOSÉ, HOUSING ELEMENT II-9 (2015).

<sup>27</sup> *Id.* at II-9.

<sup>28</sup> See Attachment A to Memorandum from San José Housing Department to City Council RE: Item 4.2 – Amendments to Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance) (Mar. 15, 2018), <https://sanjose.legistar.com/View.ashx?M=F&ID=6190894&GUID=12094E01-AB81-4478-B7BD-7759773FE62B> (providing the location of properties up for conversion under the Ellis Act).

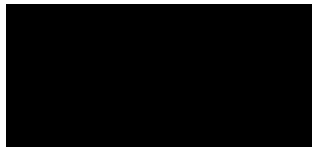


neighborhoods. The notion that a policy change that will make it more profitable for developers to flip ARO-covered buildings will somehow lead to a net benefit for low-income renters sometime after the actual occupants of those buildings are displaced is totally backwards. This logic shows a callous disregard for the history of oppression that San José's people of color have suffered due to housing policy and promises to reproduce the existing segregation that such policy created.

#### **4. Conclusion**

Reflecting on the long history of discriminatory housing policy in San José and those of our neighbors who have been forced out of their homes following the demolition of their building under the Ellis Act, we urge you to recommend that City Council abstain from further rolling back the Ellis Act Ordinance for the second time within a year. We would be happy to meet with you to discuss this matter further. You can reach me at [michael.trujillo@lawfoundation.org](mailto:michael.trujillo@lawfoundation.org) and (408) 280-2454.

Sincerely,



Nadia Aziz, Supervising Attorney  
Michael Trujillo, Staff Attorney

CC:  
San José City Council  
Rick Doyle, City Attorney  
David Sykes, City Manager

**From:** Jeffrey Buchanan < >

**Sent:** Tuesday, April 23, 2019 9:56 AM

**To:** City Clerk; The Office of Mayor Sam Liccardo; District7; Khamis, Johnny; Jimenez, Sergio; Diep, Lan; Perez, Raul; Jones, Chappie; Carrasco, Magdalena; Davis, Dev; Arenas, Sylvia; Foley, Pam

**Cc:** Quintero, Andres; Sandoval, Vanessa; Ramos, Christina M; Herbert, Frances; McGarrity, Patrick; Gomez, David

**Subject:** Item 4.4: Jimenez Memo 4/22 (SUPPORT)

Greetings:

On behalf of Working Partnerships USA, I encourage the Council to support the [4/22 memo from Councilmember Jimenez](#) on item 4.4 (the Ellis Act Ordinance) as the Council gives direction on deferring this item to a later date. The memo adds to the list of additional information requested from staff for when the item comes back to Council within Mayor Liccardo's 4/19 memo. Specifically, the memo encourages staff to bring back information on the San Jose families and seniors who live in homes governed by the Apartment Rental Ordinance which are subject to current recontrol provisions under the Ellis Act Ordinance. These families depend on ARO units as naturally occurring affordable housing and would be put at greater risk of eviction and displacement if changes are made to the ordinance, impacts that will be important for Council to consider as it weighs any policy changes.

In order to have a fuller discussion about the impacts of these policies, it will be important to not only review the surveys with bankers and developers who have inquired about Ellis Act redevelopments but the debate could benefit from a presentation of how this policy may impact access to housing and personal finances of San Jose's communities of color, seniors, families with school-aged children, single parent households, veterans, low-income, disabled tenants, and other vulnerable populations that either depend disproportionately on ARO housing or are at greater risk of experiencing impacts. We believe City staff should be able to do this building on previous work, including the City's 2016 comprehensive report by the Economic Roundtable on the Apartment Rental Ordinance which included extensive data on these topics.

Thank you for your consideration.

Best,  
Jeffrey

Jeffrey Buchanan, Director of Public Policy  
Working Partnerships USA

GOLDEN STATE MANUFACTURED - HOME OWNERS  
LEAGUE



GSMOL Superchapter 0018 - Pepper Tree- and 0018A - Colonial Mobile Manor

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April 23, 2019

TO: Mayor and Council

FROM: Glenna Howcroft, President

Martha O'Connell, Secretary

RE: Ellis Act Ordinance Recontrol Provisions  
Council agenda 4-23-19 item 4.4

GSMOL Superchapter 00018/0018A joins with the City's Housing and Community Development Commission, the Law Foundation of Silicon valley, Working Partnerships USA, the Affordable Housing Network, PACT, Debug, and other community leaders who oppose any changes to the current recontrol provisions of the Ellis Act.

We understand that affordable housing is an extensive matrix which is why we support all affordable housing and not just that inherent in mobilehomes.

We also support the 4-22-19 letter submitted by Councilperson Sergio Jimenez.