



# **Draft of Ellis Act Ordinance Amendments**

**DEADLINE FOR COMMENTS:**

**WEDNESDAY, FEBRUARY 19, 2020 5:00 PM**

**SEND COMMENTS TO [RSP@SANJOSECA.GOV](mailto:RSP@SANJOSECA.GOV)**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 11 OF CHAPTER 17.23 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY THE RECONTROL PROVISIONS OF THE ELLIS ACT ORDINANCE TO INCLUDE A CAP ON THE NUMBER OF PROPERTIES THAT ARE SUBJECT TO RECONTROL AND TO ALSO INCLUDE ADDITIONAL EXEMPTIONS WAIVING RECONTROL OF NEW RESIDENTIAL CONSTRUCTION.**

**WHEREAS,**

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**NOW, THEREFORE,** BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 17.23.1110 of Chapter 17.23 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.23.1100 Title**

This Part shall be known as the "Ellis Act Ordinance."

**17.23.1110 Policy and Purposes Declaration**

- A. Owners of residential rental property are entitled to certain rights under California Government Code sections 7060 - 7060.7, as amended (the "Ellis Act"). The purposes of this Part 11 are to: (1) set forth the City's requirements for withdrawal of a building containing covered residential rental units from the residential rental market in accordance with the Ellis Act; and (2) mitigate any adverse impact on persons displaced by that withdrawal through the provision of relocation assistance. This Part 11 complements existing state regulation of the landlord-tenant relationship and is intended to provide tenants with the maximum protections under the Ellis Act and to support the City's Apartment Rent Ordinance. This Part 11 does not supersede any state law, or grant or deny any entitlement to the use of real property. The rights and obligations created by this Part 11 for owners of residential rental property and tenants are created pursuant to the City's general police powers to protect the health, welfare, and safety of its residents and are in addition to any rights and obligations under state and federal law and are being adopted pursuant to the provisions of the Ellis Act.
  
- B. The Ellis Act broadly regulates how property owners may remove any tenants from residential rental units in order for the property owner to withdraw all units in a building from the residential rental market. The sequence of events to remove a tenant, withdraw a building, and subsequent regulation of the property is summarized in the table below. The table below is provided for information purposes. The provisions of the Ellis Act and this part shall govern.

Summary of State and Local Ellis Act Removal Provisions

<u>#</u>	<u>Timeline</u>	<u>Activity or Event</u>	<u>Citations</u>
1		Notice of Intent to Withdraw ("Withdrawal Notice") is provided to Tenants (if any) Base Assistance payment is deposited into escrow; fee is paid to City.	Gov. §7060.5 SJMC §17.23.1140 SJMC §17.23.1150

2	<b>Within 10 days</b> of delivery of Notice to Tenants	A copy of the Withdrawal Notice is delivered to the Director.	Gov. §7060.4 SJMC §17.23.1140
3	<b>Within 10 days</b> of delivery of Notice to City	Owner must record summary memorandum encumbering the property for ten (10) years within ten (10) days and before sale or transfer to another party.	Gov. §7060.3 - .4 SJMC §17.23.1145
4	<b>Within 60 days</b> of delivery of Notice to City	Owner deliver a conformed copy of the recorded summary memorandum to City.	SJMC §17.23.1145
5	<b>120 days</b> from delivery of Notice to the City	Earliest* effective date of withdrawal of a building from the residential rental market ("Withdrawal"); or Earliest date to provide tenant 3-day notice to quit.	Gov. §7060.4 SJMC §17.23.1160
6	<b>1 year</b> from delivery of Notice to the City	Earliest effective date of Withdrawal if Tenant Household includes an elderly or disabled person.	Gov. §7060.4 SJMC §17.23.1160
7	<b>Within 2 years</b> of Withdrawal	Owner must notify City and former Tenants of intent to return unit to residential rental market; and Tenant displaced by Withdrawal has right to return to the unit under the original lease terms.**	Gov. §7060.2 SJMC §17.23.1170

8	Within <b>5 years</b> of Withdrawal	<p>Owner must notify City of intent to return unit to residential rental market;          Tenant displaced by Withdrawal has right to return to the unit;          Covered Unit returned to market after Withdrawal remains subject to City Apartment Rent Ordinance; and  <u>Any Fifty percent (50%) of newly constructed units built on site that are on-site of Covered Unit that is</u> placed in <u>the</u> residential rental market, <u>up to a maximum of seven times the number of demolished Covered Units, is are</u> subject to <u>the</u> Apartment Rent Ordinance.  <u>Exemption applies if affordable housing is built either on-site or within three (3) linear miles of the site, and the displaced tenants are offered either an equivalent rental unit or 2/3rds reach an agreement on other terms with the Owner.</u></p>	Gov. §7060.2 SJMC §17.23.1170
9	Within <b>10 years</b> of Withdrawal	<p>Owner must notify City of intent to return unit to residential rental market; and          Tenant displaced by Withdrawal of unit has right to return to the unit.</p>	Gov. §7060.2 SJMC §17.23.1170

\*Earliest effective Withdrawal date for certain Tenant Households with minors in school may be extended to sixty (60) days after the conclusion of the school year. (SJMC §17.23.1160.)

\*\*The right to return to a unit under the original lease terms applies to all tenancies created after December 31, 2002; different rules apply for tenancies commenced prior to that date. (Gov. §7060.2(e).)

SECTION 2. Section 17.23.1180 of Chapter 17.23 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.23.1180 Re-Control**

- A. If a building containing a Covered Unit is withdrawn from the residential rental market and is returned by an Owner to the residential rental market within five (5)

years, then that unit must be offered and rented or leased at the lawful rent in effect at the time the Notice of Intent to Withdraw was delivered to the City, plus any annual adjustments authorized by Title 17, Chapter 23 of this Code. This Section applies regardless of the occupancy status of each Covered Unit when the building was withdrawn from the residential rental market and regardless of whether a displaced Tenant exercises a Right to Return.

- B. If a building containing a Covered Unit is demolished and new unit(s) are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building containing the Covered Unit, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished, limited to no more than seven (7) times the number of Covered Units, shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance, Title 17, Chapter 23 of this Code. Any new units made subject to the Apartment Rent Ordinance which are in excess of the number of demolished Covered Units shall remain subject to the Annual General Increase limit of the monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%) in the event that Section 17.23.310.B is amended to change the Annual General Increase limit.
- C. Waiver for Projects with On-Site Affordable Units. If at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that if the Owner meets the conditions of either subsection (i) or (ii) below, and meets the conditions of either subsection (iii), (iv), or (v) below:
- (i) develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability

restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; ~~and or~~

- (ii) develops twenty percent (20%) of the newly constructed units as affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines, within three (3) linear miles of the Covered Units that were demolished. ~~develops an additional five percent (5%) of the newly constructed units as on site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.~~

and:

- (iii) If the Owner rents other residential property in San Jose when the Covered Units are withdrawn from the rental market, the Owner offers first to Tenant Households that include one or more minor children and then to any other Tenant Household for rent or lease the next available Rental Unit that is equivalent in number of bedrooms to that Tenant Household's Covered Unit. The Rental Unit must be offered and rented or leased without the requirement of a new rental application and under the same rental agreement and lawful rent in effect at the time the Owner delivered the Notice of Intent to Withdraw to the City. Annual rent increases for any such Rental Units must be limited to no more than those authorized by Title 17, Chapter 23 of this Code, so long as any such Rental Unit is occupied by the Tenant Household; or

- (iv) If the Owner does not own other residential rental property in San Jose at the time the Covered Units are withdrawn from the rental market, the

Owner offers first to Tenant Households that include one or more minor children and then to any other Tenant Household a newly-constructed rental unit built on-site that is equivalent in number of bedrooms to that Tenant Household's Covered Unit. The Rental Unit must be offered and rented or leased without the requirement of a new rental application and at the lawful rent in effect at the time the Owner delivered the Notice of Intent to Withdraw to the City, with annual adjustments based upon the Consumer Price Index (CPI) for the San Francisco-Oakland-Hayward area, and limited to no more than 5% annual rent increases, so long as any such Rental Unit is occupied by the Tenant Household; or

- (v) The Owner signs an agreement with at least two-thirds (2/3<sup>rd</sup>s) of the tenants whose Covered Units were withdrawn from the rental market. Any such tenants shall have the right to form a tenant group and negotiate an agreement with the Owner that includes provisions such as additional relocation assistance, phased development, or other financial incentives, to mitigate the effects of the withdrawal of the Covered Units. The Owner shall notify all tenants of their right to refuse any such agreement and of their right to seek legal counsel.



PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk