



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** April 6, 2017

Approved

Date

4/7/17

**SUBJECT: ORDINANCE IMPLEMENTING PROCEDURES FOR REMOVAL OF RENT STABILIZED UNITS FROM THE RENTAL MARKET (ELLIS ACT ORDINANCE)**

## RECOMMENDATION

- (1) Approve an ordinance adding Part 11 to Chapter 17.23 of the San José Municipal Code to provide procedures for an owner's withdrawal of rent stabilized apartments from the rental market including requirements for noticing, relocation benefits, the tenant rights to return, and control of rents for apartments constructed or returned to the rental market within five years of withdrawal.
- (2) Adopt a resolution establishing a schedule for Relocation Assistance and establish the Filing Fee and other fees pursuant to the Ordinance.

## OUTCOME

The adoption of an Ellis Act Ordinance will provide guidelines to property owners who plan to remove rent stabilized apartments from the rental market. The adoption of this ordinance will require property owners to: notice tenants prior to the withdraw from the rental market; pay relocation benefits to impacted tenants; provide the right to return for impacted tenants over a ten-year period; and require the re-control of apartments when they re-enter the rental market within a five-year period.

## EXECUTIVE SUMMARY

As the demand for housing in San José increases, pressure to redevelop rent stabilized apartments continues to rise. The Ellis Act Ordinance provides a process for buildings subject to the City's Apartment Rent Ordinance (ARO) to be permanently withdrawn from the rental

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market by the property owner. The Ellis Act Ordinance also provides benefits to tenants living in rent stabilized apartments that will be withdrawn from the market.

A summary of the Ellis Act Ordinance requirements is provided below:

- ***Notice of Intent to Withdraw*** – Owners are required to give tenants advance notice of the owner’s Intent to Withdraw the apartments from the market.
- ***Relocation Assistance*** – The Ordinance sets forth the proposed relocation benefit provisions for tenants being displaced when rent-stabilized apartments are being removed from the market per the Ellis Act.
- ***Voluntary Option to Offer a Similar Apartments*** – Provides a relocation benefit alternative to be created for property owners who may be willing to relocate impacted tenants to vacant apartments at other properties that they own. The option is a voluntary option for tenants to select and includes a reduced amount to the tenant for relocation benefits.
- ***Relocation Assistance in Vacant Apartments*** – Addresses the applicability of relocation benefits to residents who were given no-cause notices to vacate within 12 months prior to the owners issuing Notices of Intent to Withdraw.
- ***Tenant Right to Return*** – Covers the tenants right to return to existing apartments or newly constructed apartments on a property where the original rent stabilized apartments were removed from the market through the Ellis Act process (“Ellised” and the owner’s obligations to notify the tenants of this right).
- ***Reporting Requirements*** – Covers the owner’s obligations to provide reports to the City. The City will be tracking the information and if any vulnerable population will be impacted, the City wants to be notified as soon as possible. These reports will also evaluate the effectiveness of the Ellis Act program over time.
- ***Re-control*** – This section covers the requirements for apartments being returned to the Market within five years after being withdrawn through the Ellis Act and for new apartments built on the property after demolition and offered for rental within five years of the withdrawal.

These recommended Ellis Act Ordinance provisions will provide protections for tenants in rent-stabilized apartments throughout San José.

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## **BACKGROUND**

On May 10, 2016 the City Council directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market. The Council gave this direction as part of the policies adopted to strengthen the ARO.

The City Council directed staff to return with an ordinance or ordinances addressing displacement of tenants due to the following reasons:

- Demolition of rental properties under ARO;
- Major rehabilitation of rental properties under ARO; and
- Conversion of rental properties under ARO to condominiums.

The direction also stated that the requirements should apply to all rental housing of four apartments or more. In addition, staff was directed to analyze relocation benefits provided in other cities and compare with recommendations suggested for implementation in San José. The benefits should include the following:

- Three months of monthly median rent for an apartment of comparable size/number of bedrooms;
- Mandate to return deposit made on rental apartment;
- Mandate a right to return for displaced tenants;
- Low income households (at 80% of AMI or lower), people with disabilities, seniors and families with minor children will receive additional relocation benefits of at least \$3,000 per household.

### State Ellis Act Requirements

The Ellis Act (California Government Code sections 7060-7060.7) was enacted to provide owners of rent stabilized properties with four or more apartments the right to permanently remove those buildings from the residential rental market. As such, provides a tenant notification process to which owners must conform. The Ellis Act authorizes cities with rent stabilization ordinances to adopt a local ordinance to add certain tenant protections such as relocation benefits to the local program.

The State Ellis Act applies to apartments being removed from the rental market, regardless of whether the end result is demolition or conversion of apartments to condominiums. The State Ellis Act does not apply to substantial rehabilitation of rent stabilized apartments, Relocation benefits for tenants displaced for substantial rehabilitation is typically addressed under a local Just Cause ordinance.

The State Ellis Act covers properties with four apartments or more, but does allow local jurisdictions to include tri-plexes. The Proposed City Ordinance covers properties with four apartments or more built and occupied prior to September 7, 1979 (rent stabilized apartments). As the Proposed City Ordinance is implemented, staff will continue to review Title 20 to ensure that the condominium conversion process is consistent with the Proposed Ordinance.

Need for Proposed City Ellis Act Ordinance

In 2016, the property owner of the Reserve Apartments began the process to withdraw the property from the rental market for the purpose of demolishing the existing structures and redeveloping the property as a more dense, new apartment complex. Without a local Ellis Act Ordinance, the Reserve developer was only required to comply with the state Ellis Act's noticing process. In addition, the new rental housing to be constructed on site is not subject to the Apartment Rent Ordinance. Some relocation benefits were negotiated as part of the land use approval process and provided to some tenants. The City's recent experience with the Reserve Apartments aided in the development of the relocation benefits included in the Proposed Ellis Act Ordinance.

Based on the current housing market and age of San José's rent stabilized housing stock, redevelopment of existing ARO structures will continue. Throughout 2016, staff experienced an increase in inquiries from property owners about the redevelopment requirements for ARO properties. The demand for housing continues to exceed the supply. As land prices rise in San José, market pressures to redevelop older housing into a higher density product is expected to escalate.

Without a local Ellis Act Ordinance, property owners would still need to comply with the noticing process set forth in State law. However, the tenants would be displaced without being provided relocation benefits. Furthermore, removed apartments would not be subject to the City's ARO requirements (re-control) if returned to the market in the first five years. Absent such an Ordinance, the City could experience an additional loss of rent stabilized housing stock as developers demolish rent stabilized buildings and build new unrestricted rental apartments.

Seven other jurisdictions within California have Ellis Act Ordinances in place. In California, all cities with active rent stabilization programs have local ordinances implementing the Ellis Act. All cities with an ordinance implementing the Ellis Act also have Just Cause. Just Cause ensures that tenants are not evicted prior to the commencement of an Ellis Act withdrawal as a means for the owner to avoid paying relocation benefits to tenants. The City contracted with Management Partners to complete a study of these programs to serve as background information for San José's Proposed Ordinance. A summary of the relocation assistance provided and other terms is included as **Attachment A** to this memorandum.

**ANALYSIS**

General Overview of the Proposed Ellis Act Ordinance

Staff has developed a Proposed Ellis Act Ordinance ("Proposed Ordinance") based on the direction of City Council. In developing the Proposed Ordinance, staff considered the following sources of information: stakeholder input from tenants and landlords of varying size properties, public input, and research from other cities implementing local Ellis Act Ordinances.

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The Proposed Ordinance is intended to provide tenants with protections authorized under the state law, to facilitate the retention of rent stabilized housing and to support the Apartment Rent Ordinance. It creates a standard process for issuing notices, provides relocation benefit amounts, and creates stability for new apartments when re-rented. The Proposed Ordinance subjects buildings that are withdrawn from the rental market to re-control under the City's ARO if the property is returned to the rental market within five years. In addition, it provides tenants a right of return if the buildings are returned to the rental market within ten years. The Proposed Ordinance does not supersede State law. It does not prevent a property from being removed from the residential rental market.

A summary of the Ordinance in the form of a fact sheet is provided in **Attachment B**. Key components of the Proposed Ordinance are provided below.

***1. Apartments Covered by the Proposed Ellis Act Ordinance***

The Proposed Ordinance applies to properties with four apartments or more built prior to 1979. There are a total of 43,814 apartments subject to the City's Apartment Rent Ordinance. Of this number, 1,056 apartments are triplex apartments. The total number of apartments that will be covered by the Proposed Ordinance is 42,758.

Rationale

1. The City Council directed staff to develop an Ellis Act Ordinance that applies to properties with four apartments or more.

***2. Notice of Intent to Withdraw – Section 17.23.1140 and Section 17.23.1160***

Owners are required to give tenants advance notice of the owner's intent to withdraw the apartments from the market. The City will provide a Notice of Intent to Withdraw form in the three most commonly spoken languages in San José. Specific requirements are listed below.

Proposed Provisions

<b>Population</b>	<b>Amount of Notice</b>	<b>Requirement</b>
<b>All Tenant Households</b>	120 days	Mandatory Minimum
<b>Senior Citizens (62+) living in apartment for more than 12 months</b>	One Year	If requested by Tenant
<b>Disabled Individuals living in apartment for more than 12 months</b>	One Year	If requested by Tenant
<b>Families with enrolled school aged children living in apartment for more than 12 months</b>	120 days, or 60 days beyond the end of the current school year, whichever is greater	If requested by Tenant

### Rationale

1. The State Ellis Act provides that all tenants should be provided 120 days' notice (approximately four months) to relocate once they receive a Notice of Intent to Withdraw from the rental market.
2. The average vacancy rate in San José over the last two years has been 4.7%, with some periods dipping as low as 3.3%. When vacancy rates drop below 5%, this means that there is increased demand, competition, and reduced supply that results in increased rents. This is the most challenging time to find a new apartment. The need for a household to find a similar apartment, or one with comparable amenities, proximity to work and school, or accessibility accommodations further limits the housing options available to them.
3. Seniors, disabled individuals, and lower income tenants may have additional challenges and need more time to find suitable housing. The State law allows local jurisdictions to require that these households receive up to a year to relocate if they request additional time. Additionally, the Proposed Ordinance provides families with minor children enrolled in school up to 60 days after the end of the school year to relocate. This is intended to reduce disruptions in schooling and provide additional time for the family to find housing within the district where the child is enrolled.
4. As recommended by the HCDC, a Notice of Intent to Withdraw form shall be provided on a form by the City and will be available in the three most commonly spoken languages in San José. The original Ordinance language required landlords to provide this information in the appropriate language for the tenant household. However, input received via the public process indicated this requirement seemed too burdensome to property owners. It has been revised to alleviate the burden of translation on the property owners.

### ***3. Relocation Assistance – Section 17.23.1150***

This section of the Proposed Ordinance sets forth the relocation benefit provisions for tenants being displaced when rent stabilized apartments are being removed from the market per the Ellis Act. The benefits were developed by researching average costs for security deposits and moving expenses. They are proposed to be adjusted annually by the Consumer Price Index – Rent for all urban consumers for the San Francisco–Oakland–San José area.

The proposed benefits are summarized in the following table.

Proposed Relocation Provisions

<i>Benefits Provided by Household - Calculated by No. of Bedrooms</i>				
<b>San José - Proposed Benefit Levels</b>				
<b>Benefit Type</b>	<b>Studio</b>	<b>1BR</b>	<b>2BR</b>	<b>3BR</b>
First and Last Month's Rent	\$ 3,700	\$ 4,550	\$ 5,652	\$ 6,826
New Security Deposit	\$ 1,850	\$ 2,275	\$ 2,826	\$ 3,413
Moving Expenses	\$ 1,200	\$ 1,400	\$ 1,700	\$ 2,000
Application fees (approx. five applications at \$35)	\$ 175	\$ 175	\$ 175	\$ 175
<b>Total Base Relocation</b>	<b>\$ 6,925</b>	<b>\$ 8,400</b>	<b>\$ 10,353</b>	<b>\$ 12,414</b>
<i>*Average Monthly Rent – 2016 Q3, RealAnswers</i>	\$ 1,850	\$ 2,275	\$ 2,826	\$ 3,413
<b>Qualified Assistance Levels</b>				
40% of Total Base Relocation	\$ 2,770	\$ 3,360	\$ 4,141	\$ 4,966
<b>Total Base Assistance + 40%</b>	<b>\$ 9,695</b>	<b>\$ 11,760</b>	<b>\$ 14,494</b>	<b>\$ 17,380</b>
<b>Alternative Apartment/Special Assistance Levels</b>				
	\$ 1,200	\$ 1,400	\$ 1,700	\$ 2,000

1. All relocation benefits will be provided to the household, not to the individual tenants. The base assistance benefit level in the Proposed Ordinance will be provided to all tenant households impacted by the Ellis Act regardless of income.
2. Relocation benefits must be made available in two payments. The first is the "Base Assistance" payment available through an escrow account on the day the Notice of Intent to Withdraw is given to the tenant household. The second is the "Qualified assistance" amount that is available to the tenant household when at least one tenant is one of the following: lower income, sixty-two years old or older, has a disability, terminally ill, catastrophically ill, or has a custodial or familial relationship with a child under the age of 18 that is enrolled in K-12 schools. If applicable, it is payable on the first business day after the Tenant gives 30 day notice to vacate, or the last day that the tenant has paid rent, whichever is earlier.
3. Tenants would also receive relocation specialist services. Services include: meeting with tenants on-site; verifying relocation benefit qualifications for tenant households; and assistance with housing search and creating a relocation plan.
4. The owner must pay a fee to the City for the Relocation Specialist Services paid as part of the filing fee. The City will contract with a relocation specialist experienced in providing relocation services to tenants in the San José area.
5. The Proposed Ordinance's relocation benefit amounts are proposed to be adjusted annually by the Consumer Price Index – Rent for the San Francisco–Oakland–San José area.

6. The owner must refund any security deposit paid by the Tenant. The owner may withhold any properly itemized deductions from the security deposit under Civil Code section 1950.5.

### Findings and Rationale

1. Relocation benefits are allowed under the state Ellis Act.
2. The most significant costs associated with moving include the cost of paying new deposits, the cost to pack and move belongings, security deposit, application fees, and possibly higher monthly rent. Other cities provide relocation benefits that capture these three main expenditures. A matrix of relocation benefits provided by other cities is provided in **Attachment C**.

In most cities, a base level of relocation benefits is provided to all residents impacted by an Ellis Act eviction. Some local Ellis Act Ordinances provide a second tier of benefits. These additional benefits are typically provided to: households that earn less than 80% of the Area Median Income (AMI); households that include a senior citizen aged 62 or older; or are disabled. Some cities include families with a dependent minor child. Only Los Angeles structures their tiered benefits by the length of tenancy. A matrix of the Housing Department Affordable Housing Income Limits (based on HCD Income Limits) is provided in **Attachment D**.

3. The state Ellis Act authorizes cities to mitigate the adverse impact of the withdraw of apartments from the rental housing market. Per input provided by stakeholder groups, the City has identified the following costs that should be mitigated: First and last month's rent; new deposit costs; the costs of packing and moving; and the cost of new application fees. The average rent rates are based on RealAnswers average market rents for the third quarter of 2016 by bedroom size. The moving expenses were based on a study of moving costs related to bedroom size. The security deposit amount of one month's rent and the application fee amounts were found by completing a survey of available apartments on Craig's List. The application fee was determined by including the cost of five new applications at \$35 each.

It should be noted that the original City Council direction indicated that the relocation assistance should include three months of median rent for an apartment of comparable size. The proposed relocation amounts were based on "average" rents, which is the methodology used by the service which provides regular updates on the rents in San José. Staff was not able to locate a reliable and consistent data set that provides median rents. The proposed relocation amounts were limited to first and last month's rent reflects the initial costs of displacement to tenants.

4. The Qualified Assistance amount is 40% of the Base Assistance. This was determined by completing a survey of other jurisdictions that provide relocation

benefits under the Ellis Act. The range of increased amounts for qualified assistance is broad. However, when evaluating the average of the ranges, the average amount came to 41.5% of an increase above the base level of assistance. The proposed rate of 40% is based on this analysis.

The original City Council direction indicated households receiving qualified assistance should receive at least \$3,000 per household in additional assistance. Based on the methodology used, the qualified assistance amounts to the following by bedroom size:

<b>San José - Proposed Benefit Levels</b>				
<b>Benefit Type</b>	<b>Studio</b>	<b>1BR</b>	<b>2BR</b>	<b>3BR</b>
Additional Assistance for Qualified Households	\$ 2,770	\$ 3,360	\$ 4,141	\$ 4,966

The proposed amounts for one, two and three bed-room apartments are in the range of at least \$3,000 more than the base assistance. Assistance for studios was not contemplated in the original City Council direction.

5. Households in San José are comprised of families that are making financial decisions together, as well as individuals living in shared housing. The relocation benefits package provided to tenants at the Reserve Apartments was only given to households earning less than 80% of AMI. This disqualified many tenants from receiving any relocation benefits even though their household was made of individuals living together as roommates and individuals in the households earned less than 80% of the AMI. Data from Rock Springs also showed many combined households living together to afford the rent.
6. According to the 2010 Housing Element, approximately 21,000 rental households experience overcrowding and approximately 56,000 households are rent burdened. This is an indication that there are likely many instances where non-family members are living together to afford their rental housing.
7. The CPI-Rent Index is the most appropriate index because it will capture the increases and decreases in asking rents.

**4. *Voluntary Alternative Relocation – Section 17.23.1151***

Proposed Provision

Through stakeholder engagement, a voluntary alternative to the relocation payment was proposed. If agreed upon by the tenant, the property owner may offer an alternative apartment in another rental complex for the same rent paid in the current apartment. This approach was used in the recent Reserve Apartments relocation and was successful in

relocating 21 households in need of similar housing. This provision would require a Special Assistance payment equal to the moving cost by bedroom size.

### Rationale

1. Searching for a new apartment can place a significant burden on tenants. During the public outreach process, both major stakeholder groups asked for a relocation benefit alternative to be created for property owners who are willing to relocate impacted tenants to vacant apartments at other properties that they own. Property owners asked for this alternative in lieu of paying full relocation benefits. Tenants asked that this alternative be considered if the new rent remains the same.
2. The Special Assistance payment allows for a lower relocation benefit for those instances when a property owner has voluntarily offered a similar apartment at the same rent as the tenant is currently paying. The Special Assistance amount is intended to cover the costs of moving expenses. The tenant household would have the option to accept the apartment, or accept the full relocation benefit that they are entitled to and continue their housing search. A property owner would always have the option to offer a vacant apartment at the same rent to the new tenant or to pay the full relocation benefits.

### **5. *Relocation Benefits in Vacant Units – Section 17.23.1155***

This section addresses the applicability of relocation benefits to residents who were given termination of tenancy notices within 12 months prior to the owners issuing Notices of Intent to Withdraw. The explicit intent of this provision to encourage owners to provide Relocation Assistance to tenants living in ARO apartments. It is presumed that the owner's termination of a tenancy without cause during the 12-month period is an action in bad faith intended to avoid the requirements of paying relocation benefits.

### Proposed Provisions

1. If a household's tenancy is terminated without cause within 12 months prior to the property owner issuing Notices of Intent to Withdraw, the household will be entitled to receive relocation benefits as if they were still a resident in the apartment.
2. If the household cannot be located, the owner will be required to pay the maximum relocation benefits to the City. This payment will be collected when the first land use approval is sought for the withdrawing property. The City can through its own effort locate the household to provide the relocation benefits. If after a year the City is unable to locate the household, the full relocation benefits will be refunded to the owner.

Rationale

1. This provision only applies to situations where no-cause notices are given to tenants. This provision does not apply to voluntary vacancies or evictions for cause.
2. In the absence of a Just Cause Ordinance applicable to all rent stabilized apartments, rent stabilized tenancies may be terminated for no-cause, thus without this vacant apartment provision, a property owner could use the no-cause notice to avoid paying relocation benefits to a household.
3. If payment is made to the City, the City can through its own efforts, work to provide compensation to the household. This ensures that due diligence has been done on behalf of the tenant. The full relocation benefits will be refunded to the owner if the City cannot locate the tenant household after a year.

**6. *Tenant Right to Return – Section 17.23.1170***

This section covers the tenant's right to return to existing apartments or newly constructed apartments on a property where the original rent stabilized apartments were removed from the market through the Ellis Act process ("Ellised") and the owner's obligations to notify the tenants of this right.

Proposed Provisions

1. If a building with rent stabilized apartments that has been Ellised but returns to the rental market within five years, the household that received a Notice of Intent to Withdraw will have the first right of refusal to rent the same apartment.
2. If a property that has been removed from the rental market using the Ellis Act returns to the rental market within ten years, the owner must notify the City at least 120 days before bringing the apartment back onto the market. Additionally, the first right of refusal must be offered to households that were displaced by the Ellis Act removal.
3. Notification from a tenant to a landlord accepting the apartment must happen within 30 days of receiving the notice of right of first refusal.
4. The City may request that the property owner offer the renewed tenancy to the former tenant.

Rationale

1. The tenant's right to return is provided for in the State Ellis Act.

2. Providing the right of first refusal allows tenants the option of moving back into their apartments, if they choose. No additional relocation benefits are provided to move the tenant back in to the apartment.

**7. Reporting – Section 17.23.1175**

This section covers the owner’s obligations to provide reports to the City. It is important that the City be provided ongoing information to include updates relating to the occupancy of the apartments, any 30 day notices received, request for right to return, and any leasing activity with asking rents. The City will be tracking the information, and if any vulnerable population will be impacted, the City wants to be notified as soon as possible. It is also important because it also tells the City what happened to tenants and impact of being Ellised.

Proposed Provisions

The property owner must submit the following reports to the City of San José Department of Housing at various times throughout the Ellis Act process.

<b>Report</b>	<b>Timeline</b>	<b>Content</b>	<b>Ordinance</b>
<b>Tenant Displacement Period</b>			
Summary Report of Tenant Information	Within 30 Days of Providing Tenant Household Notice of Intent to Withdraw	Tenant demographics, benefit levels	17.23.1140
Monthly Activity Report	After Tenants receive Notice of Intent to Withdraw until apartments are withdrawn	Move-out activity	17.23.1175
<b>Return to the Market</b>			
Return to the Market	120 days prior to the property being re-rented	Notice of intention to bring property back onto market	17.23.1175
Monthly Activity Report	Monthly, after the 120-day Return to Market Notice is given to the City until apartments come back on market	Contact of former tenants, leasing activity, rent levels	17.23.1175

Rationale

1. These reports are necessary to ensure compliance with the Proposed Ordinance.

**8. Re-Control – Section 17.23.1180**

This section covers the requirements for apartments being returned to the market within five years after being withdrawn through the Ellis Act and for new apartments built on the property after demolition and offered for within five years of the withdrawal. State law allows for the re-control of all new apartments constructed on the property originally

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removed from the market under the Ellis Act. The Proposed Ordinance recommends that all new apartments be subject to the City's ARO (re-control). For example, if 10 apartments were removed and 20 apartments were constructed on the same property, all 20 new apartments would be subject to the ARO. This provision may act as a disincentive to redevelopment of sites throughout the City.

#### Proposed Provisions

1. If a building is Ellised and then returned to the rental market within five years, the re-rented apartments are subject to the ARO and the new rent must be set at the previous rent level at the time of the withdraw escalated by the annual allowable increase (5% rent increase per year).
2. If a building is Ellised and demolished and new apartments are built on the same property and offered for rent within five years, all new apartments on the property will be subject to the ARO.

#### Rationale

1. The state Ellis Act allows for the re-control of apartments for five years after an Ellis Act withdrawal has been completed. This is a common provision of other cities operating an Ellis Act Ordinance.
2. Maintaining the stock of apartments with regulated annual increases is in keeping with the public purpose of the Apartment Rent Ordinance. Specifically, it strengthens the "prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants..."

### **9. Public Outreach**

Staff met with a wide range of stakeholders while developing the proposed Ellis Act Ordinance. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with property owners and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. For the first round of public meetings, the Department hosted three public meetings on the Proposed Ordinance. Staff was invited to attend four additional meetings hosted by stakeholders representing landlords and tenants. For the second round of public meetings, the Department hosted four public meetings on the draft Ellis Act Ordinance. Below is a chart of all the public meetings.

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<b>DATE</b>	<b>LOCATION</b>
<b>First Round of Public Meetings</b>	
November 7, 2016	Cypress Community Center
November 14, 2016	San José City Hall
November 16, 2016	Bascom Community Center
December 5, 2016	Housing & Community Development Commission
<b>First Round of Stakeholder Meetings</b>	
November 30, 2016	Santee Tenants
December 4, 2016	Small Property Owners
December 13, 2016	Sacred Heart Community Service
December 19, 2016	Reserve Apartment Tenants
<b>Second Round of Public Meetings</b>	
February 8, 2017	San José City Hall
February 15, 2017	Bascom Community Center
February 17, 2017	San José City Hall
February 27, 2017	Cypress Community Center

The prior version of the Proposed Ordinance was released on January 18, 2017 and was available for a 45-day public comment period. Written comments were due to City staff by March 3, 2017. The public comment file can be found at:

<http://www.sanjoseca.gov/DocumentCenter/View/66105>.

The public comment file is **Attachment E**. Additionally, the City received letters regarding displacement on April 6, 2017 and are included as **Attachment F**.

### **Pipeline Projects**

All development projects will be subject to the requirements in the Ellis Act Ordinance upon the effective date of the Ordinance. The following is the schedule for approval:

- April 18, 2017 – First Reading
- May 2, 2017 – Second Reading
- June 1, 2017 – Effective date of the Ellis Act Ordinance (30 days after the second reading)

Projects will file a Notice of Withdraw to the City as required by the Proposed Ordinance following June 1, 2017.

### **POLICY ALTERNATIVES**

***Alternative #1: Amend the Proposed Ordinance to include properties with three apartments.***

***Pros:*** An additional 1,056 apartments will be covered by the local Ellis Act Ordinance. If amended, the tenants in these apartments will receive relocation benefits if displaced. Without any financial benefit, tenants may struggle to find a new home. Seniors, disabled individuals and families with

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children will receive one-year notice of the removal instead of 120 days. In addition, this modification creates consistency between all apartments covered by the ARO.

**Cons:** May create a burden to owners of small properties.

**Reason for not recommending:** Council direction stated the Ellis Act Ordinance would cover properties with four apartments or more.

**Alternative #2:** *The Council directed relocation benefits to include three months of monthly median rent for an apartment comparable size and number of bedrooms.*

**Pros:** Tenants would receive more relocation benefits.

**Cons:** Three month's rent is beyond the initial necessary costs associate with displacement.

**Reason for not recommending:** The recommendation of first and last month's rent is consistent with the initial costs of relocating to a new apartment.

**Alternative #3:** *The Deposit must be returned to the Tenant, but the owner may withhold any properly itemized deductions from the Deposit. HCDC proposed an alternative that 100% of the deposit be returned.*

**Pros:** Tenant would receive the maximum amount of the security deposit, consistent with the original City Council direction.

**Cons:** The state Civil Code provisions controls security deposits.

**Reason for not recommending:** The proposed language follows the state Civil Code.

**Alternative #4:** *Qualified Assistance amount is 40% of the Base Assistance. HCDC proposed an alternative increasing the Qualified Assistance to 50%. The below chart outlines the values of this alternative.*

<b>San José - Proposed Benefit Levels</b>				
<b>Benefit Type</b>	<b>Studio</b>	<b>1BR</b>	<b>2BR</b>	<b>3BR</b>
First and Last Month's Rent	\$ 3,700	\$ 4,550	\$ 5,652	\$ 6,826
New Security Deposit	\$ 1,850	\$ 2,275	\$ 2,826	\$ 3,413
Moving Expenses	\$ 1,200	\$ 1,400	\$ 1,700	\$ 2,000
Application fees (approx. five applications at \$35)	\$ 175	\$ 175	\$ 175	\$ 175
<b>Total Base Relocation</b>	<b>\$ 6,925</b>	<b>\$ 8,400</b>	<b>\$ 10,353</b>	<b>\$ 12,414</b>
*Average Monthly Rent - 2016 Q3, RealAnswers	\$ 1,850	\$ 2,275	\$ 2,826	\$ 3,413
<b>Qualified Assistance Levels</b>				
50% of Total Base Location	\$ 3,463	\$ 4,200	\$ 5,177	\$ 6,207
<b>Base Assistance + 50%</b>	<b>\$ 10,388</b>	<b>\$ 12,600</b>	<b>\$ 15,530</b>	<b>\$ 18,621</b>

- Pros:** The relocation amounts may not be adequate to address the needs of the most vulnerable populations. The increase would also meet the Council's direction of relocation benefits of at least \$3,000 per household for: low income households, people with disabilities, seniors, and families with minor children.
- Cons:** The additional increase may place an onerous burden on the property financially.
- Reason for not recommending:** May create a burden to owners of small properties.
- Alternative #5:** *The HCDC considered the provision in the Ellis Act Ordinance requiring all new construction to be subject to the ARO and proposed an alternative that re-control would only apply to the number of apartments withdrawn from the market. For example, if ten apartments were removed and twenty apartments were constructed, only ten of the new apartments would be subject to the ARO.*
- Pros:** Developers may be more likely to invest in the redevelopment of less dense housing into new, higher density developments that will provide additional housing for San José residents. This alternative would align with the landlord statements that re-control of new apartments should be limited to replacement of rent-stabilized apartments on a one-for-one basis.
- Cons:** There would be a loss of apartments subject to the ARO over time with the new developments.
- Reason for not recommending:** There would be a diminishing supply of rent stabilized apartments over time.

## **EVALUATION AND FOLLOW-UP**

The Housing Department will provide City Council with an Information Memo regarding any property that utilizes the Ellis Act Ordinance.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office and the City's Planning, Building, and Code Enforcement (PBCE) Department.

## **COMMISSION RECOMMENDATION/INPUT**

The proposed draft Ordinance was presented to the Housing and Community Development Commission at their regularly scheduled meeting on March 2, 2017 for recommendations to the City Council. Action Minutes for the Housing and Community Development Commission's Special Meeting is provided in **Attachment G**.

April 6, 2017

**Subject: Ordinance Implementing Procedures for Removal of Rent Stabilized Units from the Rental Market (Ellis Act Ordinance)**

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### **COST SUMMARY/IMPLICATIONS**

The implementation and administration of the Ellis Act Ordinance will be funded through a filing fee required by property owners upon filing a Notice of Intent to Withdraw under the Ordinance. The proposed structure for this fee is provided in **Attachment H**. The fee structure will require the payment of \$2,235 per apartment for the first ten apartments and an additional \$860 per apartment for all additional apartments. This fee is based on staff's assessment of the amount of work required and includes relocation specialist costs. Implementation of the Ellis Act Ordinance will be supported by the current staffing levels of the Rental Rights and Referrals Program. This fee will be reviewed on an annual basis as a part of the City's annual Fees and Charges recommendations.

### **CEQA**

Exempt under Section 15061(b)(3) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA; Public Resources Code 21000–21189). This action has no potential for causing a significant effect on the environment. File No. PP17-033.

/s/

JACKY MORALES-FERRAND  
Director, Department of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8310.

#### Attachments:

- A: Other Cities Relocation Assistance Survey
- B: Ellis Act Fact Sheet
- C: Relocation Benefit Matrix
- D: Housing Department Affordable Housing Income Limits
- E: Ellis Act Public Comments Received
- F: Letters Regarding Ellis Act
- G: Housing & Community Development Commission Special Meeting Action Minutes
- H: Ellis Act Ordinance Filing Fee Structure