



Memorandum

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Johnny Khamis

SUBJECT: Amendment to the Ellis
Act Ordinance & Actions
Related to Tenant
Protection Ordinance

DATE: April 14, 2017

APPROVED:

DATE

4/14/17

RECOMMENDATION:

1. Reject staff recommendations for the following items:
 - a. 4.2 Amendment to the Ellis Act Ordinance Implementing Procedures for Removal of Rent Stabilized Units from the Rental Market
 - b. 4.3 Actions Related to Tenant Protection Ordinance.
2. Direct staff to develop protections that avoid the creation of a larger City Housing Department bureaucracy, by incorporating some of the noticing requirements of the Ellis Act proposal and developing a plan to fund adequate legal assistance for renters to exercise their rights under existing State and Federal laws that protect tenants who report code violations and discriminatory behavior to include:
 - a. Annual information postcard in three languages sent to all ARO units that notifies residents of their rights under City, State, and Federal law and how to access legal help to enforce those rights; and,
 - b. A budget proposal for the 2017-2018 budget cycle for contracting with or hiring legal counsel to aid ARO renters.

DISCUSSION:

In the City Auditor's review of the Apartment Rent Ordinance, customer interactions with the Housing Department in Fiscal Year 2015-2016 represented 8% of the City's 45,820 identified ARO-covered units. Of course, many of these interactions were regarding non-ARO units, thus the 3,489 interactions are out of approximately 140,000 rental units City-wide, an interaction rate of less than 2.5%. In 2016, Housing staff reports that they "had interactions with 111 residents who explicitly stated their concerns of retaliation from property owners over filing a Code or ARO complaint" (from memo on item 4.3 from Housing staff). This represents less than three-tenths-of-one-percent (.3%) of the ARO units within San Jose or less than eight-hundredths-of-one-percent (.08%) of all rental units. To address an issue faced by LESS THAN ONE PERCENT of renters within ARO units within San Jose, over the past year, we have already done the following:

Items 4.2 & 4.3 – Amendment to the Ellis Act Ordinance & Actions Related to Tenant Protection Ordinance

- Limited rent increases in units subject to ARO to 5% annually, down from 8% which was in place since 1979;
- Eliminated banking of rent increases when rental providers have raised rent less than the allowable maximum of 5% - a program which existed since 1979;
- Created the new reporting requirement of a rent registry that covers all ARO units, the administration of which requires higher fees on rental providers.

Prior to these actions, in order to aid renters, we implemented a tiered code enforcement inspection regime to increase the frequency of inspections of poorly-maintained properties and increased fees on those property owners who have the most code issues, to cover the costs of the additional attention.

Housing staff is now recommending that we implement extremely complicated new laws to FORCE rental providers to pay tenants the equivalent of about six months' rent – whether the cause is just or not or if the owner decides to upgrade their property with new structures that meeting modern standards for building safety and efficiency. Not only does it discourage the redevelopment of housing that doesn't meet modern codes, it potentially criminalizes property owners – threatening them with six months in jail!

As with the Ellis Act changes, item 4.3 on the agenda is a complicated, bureaucratic law that applies to evictions of bad tenants as well as to good ones and it ultimately provides tenants that are bad actors with the same protections as those available to good tenants. The bad actors – drug dealers, gang members, and the like, can easily game the new proposed system and live secure in their units without fear of eviction for a period of TWO YEARS, while their neighbors and their neighbors' children live with the consequences.

Of course, none of the actions proposed in the Ellis Act or Tenant Protection ordinances will add a single new low-income unit to the housing stock in San Jose. Since we won't get any more housing units or lower-cost housing units with these new regulations, what will we get?

- Micromanagement of property owners and limitation of their flexibility in ensuring tenants have good neighbors that aren't conducting gang activities and dealing drugs out of their units;
- The piling of higher per-unit costs onto rental providers;
- A bigger Housing bureaucracy within City government not focused on getting affordable new units built;
- A rent-controlled housing stock that continues to age and that was not built to current building safety codes, endangering those living in these old structures in the event of fires or earthquakes;
- If San Francisco's experience with these types of onerous regulations is indicative, fewer affordable rental units made available to the market – owners may take units off the market and wait out the 5-year rule;
- The transformation of the Housing Director role into one of Tsar over the limited number of already-regulated, privately-owned units of unsubsidized affordable housing within San Jose; and,
- More units controlled by large, absentee Corporate landlords instead of local, mom-and-pop property owners, since the large Corporate owners spread the compliance and administrative costs over their already-large pool of units, something the small-scale owners cannot do.

CITY COUNCIL

Agenda: 01/31/2017

Items 4.2 & 4.3 – Amendment to the Ellis Act Ordinance & Actions Related to Tenant Protection Ordinance

If all of the onerous new regulations proposed by the Housing Department are implemented, a rental provider will be required to get approval from the Housing Tsar to do just about anything with her or his property, lest they run afoul of the rules and face jail time. Want to vacate units to upgrade the water pipes? File with the Tsar! Raise the rent – get the Tsar’s approval! Moving a family member into a unit? It must pass the test of the housing Tsar! Evicting a problem tenant? The Tsar will tell you what you need to do and how long you need to wait to get them out!

At what point do all of these new regulations over private properties in the rental market constitute a “taking” under the U.S. Constitution? We may be opening ourselves up to a series of costly new lawsuits.

Staff proposes to tackle a relatively small problem with a giant sledge hammer instead of a tiny tack hammer, and increase the power of the bureaucracy in the process. Let’s send staff back to the drawing board to find much less onerous ways to target the problems a relative few tenants have due to a few bad owners. The talents of our City Housing Department staff will have a greater positive impact on the rental housing market if they are focused on putting the proceeds of the almost \$1 billion voter-approved Measure A money to work in getting new, affordable units planned, built, and available for occupancy instead of imposing complicated, costly, and burdensome bureaucratic regulations on all who are providing unsubsidized affordable rental housing.

Efforts to increase the affordable housing supply, combined with the elements we propose in this memo, can achieve the intended outcomes without growing bureaucracy, increasing costs, and opening ourselves up to lawsuits.