



DATE: March 6, 2018

CATEGORY: Public Hearing

DEPT.: City Attorney's Office and
Community Development Department

TITLE: **Amendments to the Tenant
Relocation Assistance Ordinance**

RECOMMENDATION

Introduce an Ordinance Amending the City's Tenant Relocation Assistance Ordinance, Mountain View City Code Sections 36.38 through 36.38.45, and set second reading for March 27, 2018.

BACKGROUND

Three laws govern how the City of Mountain View requires and can require assistance be provided to households that are displaced, or forced to move, from rental housing units (commonly referred to as "relocation assistance" benefits). First, the City adopted a Tenant Relocation Assistance Ordinance (TRAO) in 2010 to help very low-income households that are displaced due to the renovation, destruction, redevelopment, or withdrawal of rental housing units from the rental market. The City Council amended the TRAO in 2014 to increase the level of assistance provided to displaced tenant households and to expand the scope of the ordinance to include both very low- and low-income households (i.e., households earning up to 80 percent of the area median income).

Second, in November 2016, the voters approved the Community Stabilization and Fair Rent Act (CSFRA) as a Charter amendment. The CSFRA requires a landlord to provide relocation assistance benefits in more situations than currently required under the TRAO and establishes a higher income eligibility threshold.

Third, a State law, known as the Ellis Act, provides landlords with the right to permanently withdraw rental units on their property from the rental market. It also authorizes local governments to enact specific procedures when a landlord permanently withdraws rental units from the rental market and governs local relocation assistance requirements.

The CSFRA requires a First Right of Return benefit for tenants who are displaced due to owner move-in, temporary repairs, demolition of the rental unit, and permanent withdrawal of the rental unit from the market as authorized by the Ellis Act. The First Right of Return issue is being presented to the City Council because the Ellis Act requires an ordinance be adopted to address a tenant's First Right of Return when rental units are "permanently withdrawn" from the rental market but later returned to the rental market. Only the City Council can adopt an ordinance. The Rental Housing Committee (RHC) will be working in parallel to develop regulations regarding the First Right of Return for displacements due to owner move-in, substantial repairs, and demolition of rental units. To create a uniform relocation assistance and First Right of Return policy in the City, both the City Council and the RHC need to adopt additional regulations. The RHC and the EPC have provided input, and it is summarized later in this report.

The proposed amendments included in Attachment 1 modify the TRAO so it is consistent with the CSFRA and simplify the administration of both the TRAO and the CSFRA. The amendments also respond to questions that have arisen in the administration of the Tenant Relocation Assistance Program during the implementation of the CSFRA. The ordinance has also been reorganized to make it easier to understand.

ANALYSIS

Overlap of the TRAO and CSFRA

In large part, the TRAO and the CSFRA cover the same rental units. As an ordinance, the TRAO can only be amended by the City Council. The CSFRA requires the RHC to adopt rules, regulations, and relocation assistance procedures. Thus, the City Council and the RHC will both adopt legislation to effectuate the relocation assistance program. The State Ellis Act precludes the RHC from adopting regulations requiring relocation assistance or a First Right of Return when rental units are permanently withdrawn from the rental market because the RHC is not an elected body. Accordingly, the City Council is responsible for clarifying the First Right of Return that is required by the CSFRA for the permanent withdrawal of units from the rental market and can accomplish this task through amendments to the TRAO.

Staff previously presented proposed amendments to the TRAO which were deferred until the outcome of the 2016 election, so any changes to the TRAO could be harmonized with a ballot measure adopted by the voters. Based on input from the RHC on the First Right of Return and the EPC, staff has proposed changes to the TRAO. The input of both the EPC and the RHC is included in this report.

Proposed Amendments to the TRAO

This report describes policy decisions identified by City staff that fall within the City Council's jurisdiction and explains the relationship of any City Council action to the CSFRA and RHC regulations.

Terms

Both the TRAO and the CSFRA use a number of the same defined terms, but currently contain different definitions. "Tenant," "Landlord," and "Rental Units" are key concepts utilized in both the CSFRA and the TRAO. In the interest of consistency and because the CSFRA may only be revised with voter approval, staff recommends amending the TRAO to adopt the definitions used in the CSFRA to create a common understanding and avoid confusion. For example, the "landlord" definitions are provided below.

<p>CSFRA: An owner, lessor, sublessor, or any other person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, predecessor, or successor of any of the foregoing.</p>	<p>TRAO: An owner, lessor, or sublessor of property (including any person, firm, corporation, or other entity) who receives or is entitled to receive rent for the use of any rental unit, or the agent, representative, or successor of any of the foregoing.</p>
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The EPC supported defining terms common to both the TRAO and CSFRA to be consistent.

Eligibility for Relocation Assistance (Tenant Income Requirement)

The TRAO defines an eligible residential household as one whose "annual household income does not exceed eighty percent (80%) of the median household income for Santa Clara County as adjusted for household size according to the United States Department of Housing and Urban Development."

The CSFRA established a different threshold; to be eligible, tenant household income cannot exceed one hundred twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the United States Department of Housing and Urban Development. Any multi-family rental property in Mountain View built before the effective date of the CSFRA (December 23, 2016) is subject to the relocation assistance provisions of the CSFRA, meaning that all

redevelopment projects currently in the TRAO process have been using the 120 percent AMI eligibility threshold.

As background, market rents have increased significantly in recent years and have become increasingly out of reach for even moderate-income households (defined as 80 percent to 120 percent area median income). The median income in Santa Clara County for a four-person household is \$113,300. Using the Federal government's definition of rent burden (e.g., a household should spend no more than 30 percent of household income for rent), a four-person household should spend no more than \$2,833 per month for rent. In 2017, the average effective rent for a two-bedroom apartment was \$3,051. Primarily higher-end residential products are being built in the City with rents for new two-bedroom apartments of up to \$5,085 per month.

The EPC recommended using the same income eligibility threshold of 120 percent for relocation assistance benefits under both the CSFRA and the TRAO.

Eligibility for Relocation Assistance (Threshold Number of Units)

The CSFRA requires a landlord to pay relocation assistance benefits in certain instances when tenants are displaced from a single rental unit. The TRAO is triggered when the households in four or more rented dwelling units that are located on one lot are displaced from those units within one year. This inconsistency makes it challenging for staff and the public to understand when payment of relocation assistance benefits is required. Staff recommends modifying the TRAO to require the payment of relocation assistance whenever an eligible household is displaced, similar to the CSFRA.

The EPC supported staff's recommendation to require the payment of relocation assistance to eligible households any time a household in a covered CSFRA rental unit is displaced and any time three or more non-CSFRA-covered dwelling units on a single property are displaced.

Administration of the Relocation Assistance Process

The TRAO is currently administered through the development review process. Staff tracks submittals of (re)development applications filed with the City and, when four or more units will be removed from the rental market (current projects vary in size from 4 units to as many as 208 units) in a single year, the developer is required to reimburse the City for hiring a relocation agency to assist both the developer and tenants through the relocation process. This agency organizes an informational meeting with tenants to explain eligibility criteria and to hand out applications. The developer is required to set up an escrow account from which relocation assistance will be paid to eligible

households (50 percent upon approval of the application and 50 percent upon move-out). The developer must demonstrate compliance with the TRAO (payment of relocation assistance to eligible households) prior to the issuance of a demolition or building permit. Staff recommends retaining this process for the displacement of three or more rental units on a single property in one year, to cover terminations under the Ellis Act that may be covered by the CSFRA.

As noted above, the CSFRA expands eligibility for relocation assistance beyond the scope of the TRAO. The CSFRA requires relocation assistance for a single household whose tenancy is terminated when an owner or family member wants to move into a rental unit, when a landlord wants to demolish a single rental unit, and when a single-tenant household is temporarily displaced so the landlord can undertake substantial repairs that are necessary to bring the rental unit into compliance with applicable codes and laws affecting health and safety (unless the tenant accepts a landlord's offer to move to a comparable rental unit). These displacements would not be captured through the development review process used to administer the TRAO.

From staff's perspective, the relocation assistance process for larger projects seems cumbersome for tenant relocation in cases of single rental unit displacements, which could be addressed by the RHC through a simpler, less formal process. The City/relocation agency will work directly with both landlord and tenant to establish eligibility and payment pursuant to CSFRA regulations. For instance, information about rights and obligations under the CSFRA and the TRAO can be a mandatory component of every notice of termination. When a tenant receives a termination notice, they could contact the City to determine their eligibility for relocation assistance and then the City could request the services of the relocation agency to ensure compliance, verifying eligibility and payment.

The EPC supported staff's recommendation to create a simpler process to administer the Relocation Assistance Program when one or two units are impacted.

Other Amendments to the TRAO

Staff seeks policy direction on one additional aspect. Under the current TRAO, a tenant that moves into a rental unit after the owner has filed a development application with the City is not entitled to relocation assistance, provided the landlord has served notice to existing tenants informing them of the redevelopment and notifies new tenants of the redevelopment before the tenancy begins. The CSFRA permits a landlord to evict a tenant for just cause and requires a landlord to provide relocation assistance to eligible tenants if the owner moves in, when the owner performs necessary repairs requiring a vacancy, demolishes the units, or permanently withdraws the rental units from the

market. The CSFRA does not specifically address the relocation assistance requirement in the context of a tenant who moves into a rental unit after an owner has filed a development application and provided notice to the incoming tenant. Staff suggests the Council consider two options to address and clarify the application of tenant relocation assistance in light of the CSFRA. First, the City Council could delete this language from the TRAO. Staff is concerned about this option due to the number of development projects in the current pipeline and the impact it would have on the availability of rental units that become vacant and could be occupied during the entitlement and development process. Landlords would be less likely to rent the units if they will be required to pay relocation assistance to a new tenant and are likely to already have paid relocation assistance to the prior tenant through the development process. Alternatively, the City Council could consider a tiered relocation assistance benefit. The EPC voted unanimously and recommended the relocation assistance benefit for tenants who move into a rental unit after the owner has filed a development application with the City or received approval be limited to the payment of a 60-day subscription to a rental agency. Alternative language, as recommended by the EPC, is included in the attached ordinance for the City Council's consideration.

The CSFRA, the Ellis Act, and the First Right of Return

The CSFRA

In addition to relocation assistance, the CSFRA provides that tenants shall have the first right to return to that Rental Unit if that Rental Unit is returned to the rental market by the Landlord or successor Landlord if they are displaced in the following four circumstances:

1. If the landlord needs to make necessary and substantial repairs requiring a temporary vacancy;
2. If the owner moves into the rental unit;
3. If the landlord permanently withdraws the unit from the rental market; or
4. If the landlord demolishes the rental unit.

The CSFRA further provides: “[R]ent for the Rental Unit shall be the Rent lawfully paid by the Tenant at the time the Landlord gave notice of termination.” (CSFRA §1705(c)).

The CSFRA creates the First Right of Return for tenants, but does not specify how long this right exists. Clarification is needed from both the City Council and the RHC to

provide guidance to landlords and tenants on the First Right of Return required by the CSFRA.

The Ellis Act

The Ellis Act was originally enacted in response to a California Supreme Court case. *Nash v. City of Santa Monica* (1985) 37 Cal.3d 97 upheld Santa Monica's rent control program and effectively prevented landlords from withdrawing their rental units from the rental market. The Ellis Act supersedes this ruling and authorizes owners of certain residential rental property to permanently withdraw their property from the rental market. It also sets limits on local government authority to establish noticing requirements, a First Right of Return, and relocation assistance when rental units are permanently withdrawn from the rental market. This State law expressly authorizes the City to mitigate any adverse impact on persons displaced by the withdrawal of the rental units from the market, including the relocation assistance in the TRAO and the CSFRA. This law also allows a city with rent control to enact specific regulations to address what happens when a property owner desires to re-rent units on a property that was removed from the rental housing market under the Ellis Act, including a potential first right to return to the units for tenants who were displaced.

While the RHC can enact regulations for those first rights of return related to repairs, owner move-in, and demolition, the Ellis Act does not allow the RHC to enact regulations regarding the permanent withdrawal of the rental units. Only an elected body, such as the City Council, is authorized to enact such a regulation by an ordinance. As part of the amendments, the City Council will address the First Right of Return when a landlord who permanently withdraws a rental unit from the market decides to return that unit to the rental market. Consequently, this is an area where both the City Council and the RHC should coordinate their respective regulations to ensure consistency.

First Right of Return

A First Right of Return benefit essentially requires that a tenant, whose tenancy was terminated for a qualifying just cause, be offered the first opportunity to re-rent the same rental unit if and when the rental unit is again offered for rent or lease. For instance, if a landlord decides to exit the rental market, then the landlord could terminate the tenancy of all units in the landlord's property by citing CSFRA Section 1705(a)(8). Simply stated, if the landlord decided to rent a unit after it was vacated, the landlord must offer the unit to the former tenant.

Three Components

First, the Ellis Act allows for actual and exemplary damages to be sought by tenants if a rental unit is rerented within two years. Actual and exemplary damages could be authorized either: (1) if the landlord rerents the unit to any tenant; or (2) if the landlord fails to provide the former tenant with a First Right of Return. Authorizing actual and exemplary damages if a unit is rerented to any tenant within two years would encourage landlords to carefully scrutinize the value of terminating a tenancy to move-in, withdraw the unit from the rental market, or demolish the unit.¹ For instance, if a landlord terminated a tenancy in December 2020 to withdraw a property from the rental market, but then returned a unit to the rental market in 2021, the former tenant could be authorized to seek actual and exemplary damages. A city could provide for a shorter actual and exemplary damage period, but the period may not exceed two years from withdrawal from the rental market.

Second, the CSFRA mandates the First Right of Return include the ability to renew a tenancy under the same monthly rental amount as when the tenancy was terminated, augmented by any annual general adjustments in accordance with the Ellis Act. The Ellis Act provides for limited vacancy control: for up to five years from the qualifying termination of tenancy, the accommodations shall be offered and rented or leased at the lawful rent in effect when the notice was delivered, plus annual adjustments.² Accordingly, if a tenancy was terminated in 2020 and the tenant exercised a First Right of Return in 2025, the vacancy control provision of a First Right of Return could define the monthly rent of the renewed tenancy to equal the monthly rent paid in 2020, plus any annual general adjustment. A city may set a shorter term during which the vacancy control provision of a First Right of Return applies, but it may not apply vacancy control under the First Right of Return for longer than five (5) years.

Third, the question of how long a tenant has a First Right of Return needs to be defined. The CSFRA provides for a First Right of Return without identifying its duration. The Ellis Act states that a First Right of Return may not exceed 10 years.³ The CSFRA could be interpreted to provide a First Right of Return for up to 10 years from a qualifying

¹ This component of a First Right of Return would not apply to temporary vacancies for repairs (CSFRA § 1705(a)(6)), but could apply to owner move-ins, withdrawals from the rental market, and demolitions (CSFRA § 1705(a)(7) - (9)).

² Gov. Code § 7060.2(a).

³ Gov. Code § 7060.2(c). Although the Ellis Act does not govern each just cause for termination for which the First Right of Return applies under the CSFRA, staff recommends a uniform First Right of Return benefit in compliance with the Ellis Act regardless of the qualifying just cause to ease administration and provide clarity to landlords and tenants.

termination of tenancy in accordance with the Ellis Act. However, cities may provide for a shorter period during which the First Right of Return would apply.

The maximum periods for each of the three components of a First Right of Return are provided in the graphic below.

Maximum Terms of First Right of Return Benefit Components under the Ellis Act

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Period Actual and Exemplary Damages									
Period of Vacancy Control									
Period of the First Right of Return									

All three components of the First Right of Return benefits permitted in the Ellis Act should be addressed in the ordinance. The RHC and the EPC both considered the three components of the First Right of Return and unanimously recommend the following:

1. A tenant should have the ability to seek actual and exemplary damages for the two years allowed under the Ellis Act.
2. A tenant should have a First Right of Return, including the same monthly rental payment (plus annual general adjustments) for the five years allowed under the Ellis Act.
3. A tenant should have a First Right of Return for the 10 years allowed under the Ellis Act. Per the Ellis Act, the landlord would be required to first offer the returned unit to the tenant at a negotiated rate, but the tenant would not be able to recover punitive damages against a landlord who fails to comply with the ordinance.

Staff has drafted a First Right of Return that includes the provisions in the Ellis Act recommended by both the RHC and EPC (included in Attachment 1). Attachment 2 describes the Ellis Act requirements for other cities with rent stabilization.

ENVIRONMENTAL REVIEW

Amendments to the Tenant Relocation Assistance Ordinance are exempt from the California Environmental Quality Act (CEQA) as it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment (CEQA Guidelines Section 15061.b.3).

FISCAL IMPACT – There is no fiscal impact for this item. The cost of the administration of the TRAO is recovered from project applicants.

CONCLUSION

The proposed ordinance amendments have been drafted based on the policy direction of the RHC and the recommendations of the EPC. Staff recommends the City Council introduce an ordinance to provide clarity on the First Right of Return and modify the TRAO to be more consistent with the CSFRA.

ALTERNATIVE

Provide other direction to staff.

PUBLIC NOTICING – Agenda posting.

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Attachments: 1. Proposed Ordinance
2. Ellis Act Requirements of Peer Cities