



**MEMORANDUM**

CSFRA, Community Development Department

**DATE:** December 4, 2017

**TO:** Rental Housing Committee

**FROM:** Karen Tiedemann, Special Counsel  
Justin Bigelow, Special Counsel

**SUBJECT:** **Issues Related to the Ellis Act and Tenant Relocation Assistance Ordinance**

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**RECOMMENDATION**

That the Rental Housing Committee consider coordinating its actions with the City Council and provide direction to staff regarding potential areas of regulation and ways to integrate the CSFRA with the State Ellis Act and the City's Tenant Relocation Assistance Ordinance and return with a future agenda item.

**BACKGROUND**

The State Ellis Act and City Tenant Relocation Assistance Ordinance ("TRAO") each govern aspects of landlord-tenant relations that overlap with or otherwise relate to the CSFRA, including relocation assistance and the first right of return in CSFRA Sections 1705(b) and (c).

**A. State Ellis Act**

The State Ellis Act (Government Code Sections 7060 through 7060.7) was enacted in 1985 in response to the 1984 California Supreme Court decision in *Nash v. City of Santa Monica*, 37 Cal.3d 97. In *Nash*, the California Supreme Court upheld the Santa Monica rent control program, which effectively required landlords to continue operating property as rental housing in perpetuity.<sup>1</sup>

The Ellis Act rejects the ruling in *Nash* and establishes the following: (1) the ability of owners of certain residential rental property to permanently withdraw the

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<sup>1</sup> See, e.g., *City of West Hollywood v. Kihagi* (2017) 16 Cal.App.5th 739, 743 (discussing purpose of the Ellis Act).

property from the rental market; (2) potential procedures to exit the rental market; and (c) potential procedures and regulations to reenter the rental market after exiting under the Ellis Act. Notably, the procedures to exit and reenter the rental market are *potential* procedures because they must be enacted by a local government to become effective. Moreover, only elected officials may enact ordinances and regulations to implement the Ellis Act locally, as further discussed in the Analysis section below.<sup>2</sup> Even though the potential procedures require local enactment to become effective, landlords' ability to exit the rental market under the Ellis Act is effective regardless of local action. The following sections briefly summarize notable components of the Ellis Act.

### 1. **Landlords' Ability to Exit the Rental Housing Market**

The Ellis Act prohibits a local government from compelling "the owner of any residential real property to offer, or to continue to offer" specified property for residential lease or rent. The Ellis Act does not treat all residential rental property equally. First, special rules apply to mobile home parks. (Gov. Code § 7060.7(f).) Second, the Ellis Act generally allows landlords the ability to remove all of the rental units in a building from the rental market; it does not allow the landlord to selectively remove one or two units in a building. (Gov. Code § 7060.7(d).) Special rules apply to multiple rental units in separate buildings located on the same parcel. (Gov. Code §§ 7060(b)(1) and 7060.7(d).)

### 2. **Procedures to Exit the Rental Housing Market:** Relocation Assistance and Special Notices

The Ellis Act authorizes local governments to enact specific procedures allowing landlords to exit the rental housing market. First, local governments may enact ordinances "to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations" often in the form of relocation assistance payments paid by the landlord to displaced tenants. (Gov. Code § 7060.1(c).) Second, the Ellis Act allows local governments to require specific noticing requirements to exit the rental housing market, including notice to the local agency up to 120 days prior to the effective termination of tenancies under the Ellis Act, with special provisions allowing elderly and/or disabled persons to extend their tenancy for an additional year. (Gov. Code § 7060.4.)

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<sup>2</sup> Government Code Section 7060.5 states, in part: "The actions authorized by Sections 7060.2 and 7060.4 may be taken by regulation adopted after public notice and hearing by a public body of a public entity, if the members of the body have been elected by the voters of the public entity."

### 3. **Procedures to Reenter the Rental Housing Market:**

#### First Right of Return and Future Application of Rent Control

Finally, the Ellis Act authorizes local governments to enact specific regulations when property owners desire to rent units on a property that were removed from the rental housing market under the Ellis Act. Specifically, local governments may enact a first right of return for tenants who were displaced when the property was removed from the rental market, if the property is returned to the rental market within 10 years. (Gov. Code §§ 7060.2(b) & (c).) The Ellis Act also allows for penalties if a landlord returns the property to the rental market within two years and allows reapplication of local rent control if the property is returned to the rental market within five years. (Gov. Code §§ 7060.2(a) and (d).)

## **B. Tenant Relocation Assistance Ordinance (TRAO)**

The Tenant Relocation Assistance Ordinance (City Code Sections 36.38 through 36.38.45, the “TRAO”) requires a landlord that permanently displaces four or more households within a one-year period to provide financial assistance to the low-income households that were displaced. Household eligibility, qualifying displacement, and the amount of relocation assistance under the TRAO are described below.

### 1. **Household Eligibility for Relocation Assistance under the TRAO**

#### Income Qualification and Eligible Unit Type

To receive assistance under the TRAO, the displaced household’s income may not exceed 80 percent of the median income for Santa Clara County (“AMI”), as published by the U.S. Department of Housing and Urban Development. (City Code § 36.38.05(c).) Likewise, the household must not have been displaced from any of five specified unit types, including: a unit shared with a landlord, a single-family dwelling on its own parcel, a mobile home, a tourist hotel, or a condominium. (City Code § 36.38.05(e).)

### 2. **Qualifying Displacement for Relocation Assistance under the TRAO**

#### Permanent Displacement Required and For-Cause Terminations Ineligible

To be entitled to relocation assistance under the TRAO, a household must be required to permanently relocate from the unit, as compared to a temporary relocation for renovations where the household has been provided with alternative temporary lodgings. (City Code § 36.38.05(b), ¶2(4).) The TRAO

defines six causes of displacement that would qualify a tenant household for relocation assistance, including: (1) Ellis Act withdrawal of units; (2) demolition or other removal of units from the rental market; (3) rehabilitation of units that causes permanent displacement; (4) conversion of the units to condominiums; (5) a change from residential to nonresidential uses of the units; and (6) a change from rental units to ownership units. (City Code § 36.38.05(b), ¶1.)

However, households displaced due to fire or natural disasters, or for failure to pay rent, causing nuisances, or otherwise violating the terms of a rental agreement are not eligible for relocation assistance. (City Code §§ 36.38.05(b), ¶2(3)-(4) & 36.38.05(c).)

### **3. Relocation Assistance Defined**

If an eligible household is permanently displaced as outlined above, then the household is entitled to receive a 60-day subscription to a rental agency plus the cash equivalent of three months of rent for a similar-sized unit with the same number of bedrooms and bathrooms, as determined by a survey of rents in the City. (City Code § 36.38.15.) In addition, households with one member who: is at least 62 years old, or qualifies as disabled, or is a dependent under age 18, are also entitled to an extra payment of \$3,000 (adjusted for inflation by the CPI). (City Code §§ 36.38.05(g) and 36.38.15(d).)

Landlords must provide relevant payments into an escrow account and cannot obtain demolition, building, or other City permits related to the rental units until the relocation obligations under the TRAO have been fulfilled. (City Code § 36.38.20.)

## **ANALYSIS**

This primer discussing the Ellis Act and the TRAO are provided for informational purposes in anticipation of any potential regulations or other action to be taken by the Rental Housing Committee.

The CSFRA regulates the reasons for which a tenancy in a Covered Rental Unit or in a Partially Exempt Rental Unit may be terminated, referred to as just cause for eviction protections. (CSFRA §§ 1703(b) and 1705.) The just cause for eviction protections in Section 1705 of the CSFRA provide for the first right of return and relocation assistance if a tenancy is terminated for one of the four following causes for termination:

- § 1705(a)(6) necessary and substantial repairs requiring temporary vacancy;
- § 1705(a)(7) owner move-in;
- § 1705(a)(8) withdrawal of the unit permanently from rental market; and
- § 1705(a)(9) demolition.

The cause for termination under Section 1705(a)(8) (withdrawal of the unit permanently from the rental market) raises issues of State law preemption and the scope of RHC authority, as discussed in Section A below. The other three causes for termination do not necessarily overlap or conflict with State law, but call for relocation assistance that could overlap and potentially conflict with the TRAO, as discussed in Section B below.

#### **A. Ellis Act Preemption of RHC Action**

CSFRA Section 1705(a)(8) requires landlords to:

[F]irst file the requisite documents with the Committee initiating the procedure for withdrawing Rental Units from rent or lease under Government Code Section 7060 *et seq.* [the Ellis Act] and all regulations passed by the Committee, with the intention of completing the withdrawal process and going out of the rental business.

However, the Ellis Act only governs the way a local government may regulate the withdrawal of units from the rental market; it does not require any documents be filed. The City does not appear to currently require submission of documents to permanently withdraw units from the rental market under the Ellis Act.

As noted above, the Ellis Act limits how a local government may regulate the removal of units from the market: only elected officials may enact ordinances or regulations to implement the local procedures authorized by the Ellis Act. (See Footnote No. 2.)

Accordingly, the RHC may wish to identify desirable elements of the Ellis Act procedures and either suggest legislative activity or other actions with the City

Council, which is empowered to enact the local procedures contemplated by the Ellis Act, including the provision of relocation assistance and the first right of return when units are permanently withdrawn from the rental market.

## **B. First Right of Return and Relocation Assistance Outside of the Ellis Act**

The CSFRA calls for the tenants displaced by temporary repairs, owner move-ins, and demolition of units to receive a first right of return and relocation assistance. To the extent those three causes of displacement do not overlap with displacement under the Ellis Act,<sup>3</sup> the RHC may adopt regulations to implement the first right of return and relocation assistance benefits.

It appears that the first right of return has not been previously implemented in the City. To ease administration of a first right of return, staff recommends that any first right of return benefit follow the procedures identified in the Ellis Act and be coordinated with any Ellis Act ordinance pursued by the City Council.

Although the TRAO currently provides relocation assistance in limited circumstances, the benefit would be available to more households under the CSFRA (e.g., the TRAO arguably applies only if four or more units are located on one parcel, while CSFRA relocation assistance would be available to residents of triplexes; and the TRAO limits assistance to households with income at or below 80 percent AMI while the CSFRA provides assistance to households with income at or below 120 percent AMI). Likewise, relocation assistance under the CSFRA invokes the financial support identified in the TRAO, but also states that the RHC shall issue rules and regulations, including “the procedures for establishing the amount of Relocation Assistance applicable to any given tenant household.” (CSFRA §§1702(o) and 1705(b)(2).) It is our understanding that the City Council may be considering amendments to the TRAO early next year. In light of the apparent inconsistencies within and between the CSFRA and the TRAO, staff recommends that the RHC consider providing recommendations to the City Council to revise the TRAO and provide for a unified procedure for relocation assistance and first right of return, including the Ellis Act.

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<sup>3</sup> For instance, termination of a tenancy under the CSFRA based on a demolition would likely also be covered by the Ellis Act. It is unclear whether attempts to provide relocation assistance and/or a first right of return based on the demolition of a unit, notwithstanding the permanent withdrawal of the unit under the Ellis Act, would withstand judicial scrutiny or be rejected as an attempt to evade the Ellis Act requirement that those benefits be enacted by elected officials.

**PUBLIC NOTICING** – Agenda posting.

KT-JB/AK/2/RHC

896-12-04-17M-E-1

cc: City Council

Attachments:   1.   Ellis Act (Gov. Code §§ 7060 through 7060.7)  
                      2.   Tenant Relocation Assistance Ordinance (City Code §§ 36.38  
                              through 36.38.45)