



MEMORANDUM

CSFRA, Community Development Department

DATE: February 12, 2018

TO: Rental Housing Committee

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

SUBJECT: Relocation Assistance and the First Right of Return

RECOMMENDATION

That the Rental Housing Committee provide policy guidance to the Environmental Planning Commission and City Council regarding implementation of the Relocation Assistance and the First Right of Return benefits included in the Community Stabilization and Fair Rent Act for certain types of terminations of tenancy in order to create a uniform Relocation Assistance and First Right of Return policy under the Community Stabilization and Fair Rent Act, City ordinance, and State Ellis Act.

BACKGROUND

The Community Stabilization and Fair Rent Act (CSFRA) provides that Relocation Assistance and the First Right of Return be provided to tenants in specific circumstances. The City Tenant Relocation Assistance Ordinance (TRAO) also provides for Relocation Assistance for certain terminated tenancies. Relocation Assistance and the First Right of Return are also governed in part by the State Ellis Act.¹ To create one uniform Relocation Assistance and First Right of Return policy in the City, the City Council must revise the TRAO. Staff has identified three policy questions to help facilitate a request by the Rental Housing Committee (RHC) to the City Council as it revises the TRAO to conform to the CSFRA and the Ellis Act. This report discusses:

- Obligations under the CSFRA; and
- Current City practices under the TRAO; and
- Limitations created by the Ellis Act; and
- A policy discussion to assist the RHC to deliberate harmonizing the CSFRA, TRAO, and Ellis Act; and
- An explanation of the next steps required to create uniform City policy.

¹ The interaction between the CSFRA, TRAO, and State Ellis Act was discussed during the December 4, 2017 RHC meeting. The staff report accompanying that discussion, dated December 4, 2017, is attached to this report.

A. Relocation Assistance and the First Right of Return under the CSFRA

The CSFRA identifies nine just causes for eviction and mandates that no tenancy may be terminated unless one of the nine just causes is applicable to the tenancy that will be terminated. The nine just causes are identified in the table below and split into two categories: terminations for which Relocation Assistance and First Right of Return benefits are inapplicable and those for which the benefits may be required.

| Just Causes for Eviction (CSFRA § 1705) | |
|---|---|
| Relocation Assistance and First Right of Return INAPPLICABLE | Relocation Assistance and First Right of Return POTENTIALLY REQUIRED |
| (1) Failure to Pay Rent | (6) Necessary and Substantial Repairs Requiring Temporary Vacancy* |
| (2) Breach of Lease | (7) Owner Move-In |
| (3) Nuisance | (8) Withdrawal of the Unit Permanently from Rental Market |
| (4) Criminal Activity | (9) Demolition |
| (5) Failure to Give [Landlord] Access | |

* Either the First Right of Return or Relocation benefits may apply. See CSFRA § 1705(a)(6).

The CSFRA defines the amount of Relocation Assistance by referencing the TRAO and gives the City Council the ability to raise the amount of Relocation Assistance due to qualifying tenants.² However, the CSFRA is applicable to more tenancies than the TRAO, as discussed further below. The RHC is empowered to create the procedures under which a tenant would qualify for Relocation Assistance and the timeframe for delivery of Relocation Assistance.³

²See CSFRA §§ 1702(o) and 1705(b)(1).

³ CSFRA § 1705(b)(2). For instance, potential procedures could confirm: (1) whether the termination invoked a qualifying just cause; (2) whether the tenant household income qualifies for Relocation Assistance; and (3) whether the tenant household qualifies for special Relocation Assistance because the household includes a person 62 years old or older, a disabled person, or a minor child, as identified in the CSFRA and defined in the TRAO.

Although the First Right of Return is created by the CSFRA, the parameters of this benefit are not defined in the CSFRA. The TRAO does not provide for a First Right of Return. The maximum benefits under a local First Right of Return policy for an Ellis Act termination are defined in the State Ellis Act and described in Section C, below.

B. The City TRAO

The City adopted the TRAO in 2010, with a notable expansion in 2014. Currently, City staff track submittals for development applications filed with the City. When four or more units located on one parcel will be removed from the rental market 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. Under the TRAO, tenant households with an annual income that does not exceed 80 percent of the median income for Santa Clara County are eligible to receive relocation assistance. Eligible households with a member who is 62 or older, disabled, or a dependent under age 18 receive additional relocation assistance. Developers pay relocation assistance to eligible households by funding an escrow account: eligible households are paid 50 percent of the relocation assistance upon verification of eligibility and the remaining 50 percent upon vacating the rental unit. The TRAO does not provide for a First Right of Return.

C. The State Ellis Act

The State Ellis Act (Government Code Sections 7060 through 7060.7) impacts Relocation Assistance and the First Right of Return in two ways. First, the Ellis Act only authorizes an elected body to define the parameters of local Relocation Assistance and First Right of Return benefits.⁴ Second, the Ellis Act has been interpreted to set the maximum parameters of local Relocation Assistance and the First Right of Return benefits with respect to Ellis Act eviction, as described below.

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 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.

⁴ See Gov. Code § 7060.5.

1. **Three Components of a First Right of Return**

The First Right of Return is slightly more complicated. There are three principal components of a First Right of Return benefit under the Ellis Act. First, for how long does the tenant have a First Right of Return? The Ellis Act states that a First Right of Return may not exceed 10 years.⁵ However, cities may provide for a shorter period during which the First Right of Return would apply. For instance, a city could create a First Right of Return for tenants that lasts 5 years from the termination of tenancy, but could not create a First Right of Return that lasts for 12 years from the termination.

Second, the First Right of Return may identify the terms of the renewed tenancy, potentially including the amount of monthly rent. The Ellis Act provides for limited vacancy control: for up to 5 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.⁶ 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 5 years.

Third, the First Right of Return may authorize a tenant to seek actual and exemplary damages from a landlord who withdraws a unit from the rental market but then rerents the unit within two years.⁷ The ability to seek actual and exemplary damages could apply regardless of the First Right of Return, to discourage landlords from withdrawing units from the rental market and then returning the units to the rental market within two years. Or, actual and exemplary damages could be made available only to tenants whose First Right of Return was violated. 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

⁵ 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.

⁶ Gov. Code § 7060.2(a).

⁷ 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)).

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. 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 > | | | | | | | | | |

Accordingly, the policy questions discussed in the Analysis section refer to the three components of the First Right of Return benefits in accordance with the Ellis Act. The RHC may recommend the appropriate policies for consideration by the City Council.

ANALYSIS

First, there are notable differences when comparing the Relocation Assistance and First Right of Return benefits required under the CSFRA and TRAO. Notably, benefits under the TRAO are functionally triggered by development applications, while benefits under the CSFRA are triggered by terminations of a tenancy. Likewise, the maximum household income to be eligible for benefits differs.

Second, the CSFRA appears to create divided authority for Relocation Assistance. As previously noted, the CSFRA defines the amount of Relocation Assistance as an amount determined by the City Council.⁸ The CSFRA then states that the RHC will create procedures to implement and administer Relocation Assistance.⁹

As discussed in the Next Steps section, the City Council will consider amendments to the TRAO to comport with the CSFRA and the Ellis Act. The RHC could provide policy guidance to the City Council to facilitate amendment of the TRAO. If the RHC chooses to provide policy guidance, staff has identified three policy questions that could shape

⁸ CSFRA §§ 1702(o) and 1705(b)(1).

⁹ CSFRA § 1705(b)(2).

amendments to the TRAO to ensure compliance with the CSFRA and State Ellis Act as well as support the RHC's purpose to administer and enforce the CSFRA. Each question is discussed below. To facilitate discussion of each question, a comparison chart identifying how other cities have answered these questions is attached to this report.

1. For how long should a tenant have a First Right of Return?

The CSFRA provides for a First Right of Return without identifying its duration. The CSFRA could be interpreted to provide a First Right of Return for up to 10 years from a qualifying termination of tenancy in accordance with the Ellis Act. The RHC may wish to consider this question in conjunction with the following question related to the limited vacancy control authorized under the Ellis Act. A right to return to a unit with a monthly rental payment the tenant could not afford may provide limited actual benefit to tenants. Of course, some former tenants may value the opportunity to return to a unit notwithstanding a potential increase in rent.

2. For how long should a tenant have a First Right of Return, including the same monthly rental payment (plus annual general adjustments)?

The CSFRA states, "Rent for the Rental Unit shall be the Rent lawfully paid by the Tenant at the time the Landlord gave notice of termination based on Subsections (a)(6)-(9) here."¹⁰ Thus, the CSFRA mandates that 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. Still, the RHC may identify for how long a tenant should be able to renew a tenancy, including the previous monthly rent, plus any annual general adjustments. The Ellis Act authorizes this limited form of vacancy control to be provided to tenants for up to 5 years.

3. For how long and under what circumstances should a tenant have the ability to seek actual and exemplary damages?

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: (a) if the landlord rerents the unit to any tenant; or (b) 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 (Option "a") would encourage landlords to carefully scrutinize

¹⁰ CSFRA § 1705(c).

the value of terminating a tenancy to move in, withdraw the unit from the rental market, or demolish the unit. Authorizing actual and exemplary damages if a landlord fails to provide the former tenant with a First Right of Return (Option “b”) would not provide the same policy benefits as Option “a” to discourage frivolous terminations of tenancy, but Option “b” would create a self-enforcing mechanism to encourage compliance with the First Right of Return required under the CSFRA. Likewise, the rerental time period during which actual and exemplary damages may apply could be less than the 2-year period authorized by the Ellis Act.

NEXT STEPS

Any recommendations of the RHC will be provided to the Environmental Planning Commission which, in turn, is required to review and make recommendations regarding any changes to the TRAO prior to the City Council’s consideration of such amendments. The EPC is scheduled to meet on February 21, 2018 and the City Council is tentatively scheduled to consider this matter in March. Recommendations from both the RHC and EPC will be provided to the City Council for consideration with any amendments to conform the TRAO to the CSFRA and Ellis Act. Following any action by the City Council related to the TRAO, the RHC will be asked to provide direction to staff to draft regulations to implement the Relocation Assistance and First Right of Return benefits mandated by the CSFRA and the TRAO.

PUBLIC NOTICING – Agenda posting.

AK/1/CDD
896-02-13-18M-E

- Attachments:
1. Staff Report: Issues Related to the Ellis Act and Tenant Relocation Assistance Ordinance (dated December 4, 2017)
 2. City Comparison Chart of First Right of Return Benefits
 3. Ellis Act (Gov. Code §§ 7060 through 7060.7)
 4. Tenant Relocation Assistance Ordinance (City Code §§ 36.38 through 36.38.45)

cc: City Council