



DATE: May 12, 2020

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **Tenant Relocation Assistance Ordinance Modifications**

RECOMMENDATION

Introduce an Ordinance Amending Article XIII of Chapter 36 of the Mountain View City Code Related to Tenant Relocation Assistance, to be read in title only, further reading waived, and set second reading for June 9, 2020 (Attachment 1 to the Council report).

BACKGROUND

In Fiscal Year 2018-19, several residential projects went through the entitlement process that included demolishing older apartments covered under the Community Stabilization and Fair Rent Act (CSFRA) and redeveloping the sites with ownership units. A number of low-income households were displaced as a result of the redeveloped project. During project entitlement hearings, Council discussed various ways to respond to the displacement of tenants in those projects but also discussed longer-term options, such as modifying the City's Tenant Relocation Assistance Ordinance (TRAO). Project 1.1 ("Hold a Study Session on displacement and no net loss; develop a work plan for any desired follow-up actions") was included as part of the Fiscal Year 2019-21 Council Major Goals Work Plan.

On October 29, 2019, Council conducted a Study Session to discuss potential strategies and options for responding to displacement. At the meeting, Council unanimously supported five key principles and a six-pronged strategy. Council also directed staff to bring back the TRAO modifications ahead of the other displacement response strategies and to review the enhanced relocation benefits provided by developers as part of last year's various redevelopment projects as mentioned above for potential TRAO modifications.

On January 1, 2020, Senate Bill 330 (SB 330) went into effect, which provides (among other obligations) relocation requirements for projects that include the demolition of

certain existing rental housing units, including units covered by the CSFRA, units subject to affordable housing covenants, units occupied by very low- and low-income households, and units subject to an Ellis Act eviction in the last 10 years. SB 330 is complex, and staff has been evaluating the legislation, developing a process to implement the legislation, and determining how the bill interacts with and potentially impacts modification of the TRAO.

At its February 4, 2020 meeting, during the Council Goal Work Plan Update item, Council directed staff to bring forth several specific TRAO modifications as follows:

1. Landlord will waive tenants' obligation to provide a 30-day move-out notice;
2. Second 50 percent TRAO payment upon submittal of documentation securing a replacement rental (not after move-out);
3. Enhanced assistance by AutoTemp to assist in search for housing;
4. Area median income (AMI) eligibility increased by \$5,000; and
5. Special-circumstances households receive an additional \$5,000.

Previous Public Hearings

Environmental Planning Commission Public Hearing

On April 15, 2020, the Environmental Planning Commission (EPC) held a public hearing to discuss the proposed code amendments to Chapter 36 (Attachment 2). The EPC had a number of questions about SB 330. Although not part of their formal motion, because SB 330 requirements are currently set to expire in five years, the EPC was interested in integrating some of the SB 330 requirements into potential future TRAO revisions as they learn more about the SB 330 requirements for the purpose of codifying certain State provisions and making them more permanent. Ultimately, the EPC voted unanimously to recommend the City Council adopt the proposed Zoning Text Amendments with some clarifying text changes discussed below in the context of the proposed changes.

ANALYSIS

This section provides a summary of the key TRAO requirements currently in place, SB 330 relocation requirements, how TRAO and SB 330 interact, and the recommended TRAO modifications based on this analysis. Notably, potential modifications to the

TRAO would be superseded by SB 330 requirements. A detailed discussion about the interactions between SB 330 and TRAO are provided later in the report.

Finally, SB 330 is newly enacted State legislation. Staff has analyzed SB 330 and its requirements and implications to the extent possible. Because SB 330 is complex, there may be unique situations and circumstances, including how it interacts with TRAO, that arise in the future that cannot be anticipated now. Based on current understanding, staff believes that the recommended TRAO modifications identified below, working in concert with SB 330, provides a comprehensive set of enhancements to more effectively mitigate the impacts of tenant displacement.

Key Current TRAO Provisions

The TRAO currently has the following key provisions:

1. **Eligibility**: A residential household qualifies for TRAO benefits if they vacate a rental unit covered under the CSFRA or three or more rental units on a parcel for those rental units that are not covered by the CSFRA within a one-year period after notice from the landlord as the result of or to enable any of seven actions, such as demolition of the property, rehabilitation of the building, condominium conversion, etc.
2. **Income Requirement**: Annual household income must not exceed 120 percent of the median household income for Santa Clara County as adjusted for household size.
3. **Relocation Assistance/Provisions**:
 - a. **Security Deposit Refund**: A full refund of a tenant's security deposit except for funds that may be necessary to repair tenant's damage to property in rental units that will be reoccupied prior to undergoing renovation or demolition.
 - b. **Subscription Agency**: The TRAO requires the developer to provide a 60-day subscription to a rental agency.
 - c. **Three Months' Rent**: The cash equivalent of three months' rent based on the median monthly rent for a similar-sized unit with the same number of bedrooms and bathrooms.

- d. Special Circumstance Households: An additional \$3,000 per rental unit for special-circumstance households, adjusted annually for inflation based on the Consumer Price Index for the San Francisco Bay Area (2019: \$3,497). Special-circumstance households are defined as eligible households with at least one person 62 years of age or older, disabled or handicapped, or with one or more minor children under 18 years of age who are legally dependent.

Key SB 330 Relocation Provisions

SB 330 went into effect on January 1, 2020. The legislation includes various requirements for residential projects that demolish existing rental units, including requirements to replace those units and to provide relocation assistance. This report focuses only on SB 330's relocation assistance provisions, with the key components as follows:

1. Eligibility: Tenants are eligible for relocation assistance if they are displaced from "protected units," defined as units that are: (1) deed-restricted; (2) covered by rent stabilization; (3) occupied by low- or very low-income households in the last five years; or (4) have been removed from the rental market via the Ellis Act in the past 10 years.
2. Income Requirement: If a tenant is displaced from a deed-restricted or rent-stabilized unit, there is no income requirement. However, if a tenant is displaced from a unit that is not deed-restricted or under a rent-stabilization program, they would only qualify for relocation assistance if they are low- or very low-income.
3. Relocation Assistance/Provisions:
 - a. Tenants in protected units are entitled to relocation advisory services, actual and reasonable moving expenses, and a replacement housing payment up to 42 months of the difference between current and market rent of a comparable unit.
 - b. Eligible tenants are entitled to a right of first refusal to rent or buy a comparable unit in the new development at an affordable rent or affordable housing cost.

TRAO and SB 330 Applicability

There are approximately 20,000 rental units in the City of Mountain View composed of CSFRA, non-CSFRA, and affordable rental units. Of those, staff estimates that there are approximately 17,000 protected units covered under SB 330.

As discussed above, the TRAO and SB 330 each have eligibility requirements that must be met to qualify for relocation benefits, and project’s relocation requirements will depend on the specifics of the project.

Please see the table below for a summary comparison of relocation requirements for SB 330 and the TRAO.

| Requirement | SB 330 | TRAO |
|----------------------|---|---|
| AMI level | Up to 80% | Up to 120% |
| Amount of Relocation | Up to 42 months | 3 months |
| Relocation Formula | Difference between median rent and actual rent | Median rent of similar sized unit |
| Unit Eligibility | <ol style="list-style-type: none"> 1. CSFRA covered 2. Deed restricted 3. Occupied by low- or very low-income household 4. Removed from Ellis Act | CSFRA covered |
| First Refusal | Household rent/buys at affordable price in new development | If the unit returns to the rental market, rents at lawful rental rate |
| Service Agency | Yes | Yes |
| Special Circumstance | No | Yes |

There may be a situation where SB 330 requirements do not apply and where the TRAO requirements are still required. For example, TRAO covers households that earn up to 120 percent AMI, while SB 330 applies to very low- and low-income households. In that case, the TRAO would still apply to those households earning between 80 percent and 120 percent AMI displaced if they were in a rental unit that was not covered by CSFRA, deed restricted, or had not been removed from the Ellis Act in the past 10 years.

TRAO and SB 330 Implementation/Interaction

Because the City has the TRAO and must also implement SB 330, each residential project must be evaluated through the requirements of both programs. Therefore, it is

possible that a project might have a mix of relocation obligations from both programs, but where SB 330 requirements overlap with the TRAO, the stricter requirement(s) will prevail. The specific combination of obligations will depend on the specifics of the project.

One key difference between TRAO and SB 330 is how the amount of relocation assistance is determined. Currently, TRAO requires the equivalent of three months' median rent of a comparable unit be paid to the displaced household, while SB 330 requires up to 42 months of the differential between tenant and market rent of a comparable unit. Administratively, the calculation of three months' rent is straightforward, while determining the differential is more involved.

Staff has conducted analysis using current projects in the development pipeline, comparing the full rent approach and differential rent approach. Staff found that three months' full rent is essentially the equivalent of a 12-month rental differential. One past project offered up six months of full rent and, using that time frame, it would be the approximate equivalent of 24 months of rent differential.

Proposed TRAO Modifications

At its February 4, 2020 meeting, during the Council Goal Work Plan Update item, the Council directed staff to bring forth the following TRAO modifications:

1. *Increase the income eligibility for TRAO, adjusted by household size, by an additional \$5,000.*

Currently, the TRAO includes households earning up to 120 percent AMI as eligible for TRAO benefits. In past projects, there were households that slightly exceeded the maximum income limits for 120 percent AMI households, therefore making them ineligible by a few thousand dollars. The consideration is to include an additional \$5,000 buffer to the 120 percent AMI maximum income limit. For example, if a 120 percent AMI household exceeded the 120 percent AMI maximum income limit by less than \$5,000, the household could still be eligible for TRAO benefits.

For reference, below are the 120 percent AMI maximum income limits for Santa Clara County as adjusted by household size.

| Household Size | 1 | 2 | 3 | 4 | 5 | 6 |
|-----------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 120% AMI | \$110,400 | \$126,150 | \$141,950 | \$157,700 | \$170,300 | \$182,950 |
| + \$5,000 | \$115,400 | \$131,150 | \$146,950 | \$162,700 | \$175,300 | \$187,950 |

2. *Increase the amount of relocation assistance to special-circumstance households from \$3,000 to \$5,000.*

The current TRAO provides special-circumstance households \$3,000 in relocation assistance in addition to the three months' rental assistance. This modification would provide special-circumstance households an additional \$5,000 (instead of \$3,000). Consistent with EPC's recommended revision to the ordinance, the proposed ordinance clarifies that the annual Consumer Price Index adjustment to the \$5,000 of additional assistance is adjusted at the beginning of the calendar year on January 1.

3. *Enhanced assistance by a relocation agency in searching for replacement housing.*

The TRAO allows for a 60-day subscription to a rental agency. During its deliberation, the Council also wanted to include enhanced assistance by a relocation agency to help with any housing search. Therefore, staff recommends that the following language be added for enhanced assistance:

- a. Unlimited access to a subscription service to a rental agency until the time of move-out; and
- b. Include the services of a relocation agency with extended advisory and personalized replacement housing assistance based on a household's preferences, housing budget, preferred location, and other requirements. Also, provide up to five rounds of referrals through analysis of available rental housing, including Internet listings, contact with property management companies, and available affordable housing options to include wait-list opportunities and other leads on housing.

4. *Payment of the rental assistance based on evidence of secured housing or after vacating the unit.*

The current TRAO process requires that 50 percent of the calculated rental assistance be paid at the approval of the tenant relocation assistance application and the remaining 50 percent be paid to the tenant after vacating the unit.

This administrative modification would allow the tenant to collect the remaining 50 percent when they provide verification of secured housing instead of after vacating the unit. The notion is that tenants would ideally secure alternative housing before vacating their current unit. As such, the tenant would have access

to the funds earlier to use for the deposit for the new rental unit. EPC recommended adding this as a basis for obtaining payment in addition to the existing basis of vacating the unit, and the proposed ordinance reflects this recommendation.

In addition to the Council-directed TRAO modifications, staff also recommends the following TRAO modifications:

5. *County recording of notice of TRAO requirements.*

In order to notify future owners of the TRAO requirements for an owner of a property that withdrew from the rental market under the Ellis Act, it is recommended to add a requirement in the TRAO that a summary memorandum of these TRAO requirements be recorded with the County Recorder when a unit is withdrawn under the Ellis Act. The memorandum shall summarize the obligations of the owner and any successor-in-interest related to the property, including the tenant right to return, the tenant relocation assistance requirements, and the City's CSFRA. The County recording requirements are already part of the City's implementation of the Ellis Act, so incorporating this County recording requirement into the TRAO program would provide consistency between the two programs.

6. *Add general language specifying that the stricter of TRAO or State law shall prevail.*

As mentioned, SB 330 is a new and complex law, and it would be difficult to anticipate all of the different possible scenarios in which SB 330 and TRAO would apply. Therefore, staff recommends that general language be added to the TRAO specifying that the stricter of the TRAO or SB 330 requirements shall prevail where applicable.

Finally, the following requested TRAO modification has been excluded from the proposed ordinance for the reasons discussed below.

7. *Waive tenant's obligation to provide 30-day move-out notice.*

Council provided direction in the February 2020 meeting to allow landlords to waive tenant's obligation to provide a 30-day move-out notice. The purpose of this modification was to help provide maximum flexibility to the tenant so that they could avoid potentially paying two rents for the current unit and the future rental unit. However, State law requires that tenants provide landlords a 30-day move-out notice for month-to-month leases, and a local ordinance cannot conflict

with State law. Therefore, this modification has not been included in the draft ordinance, and staff instead recommends that this modification be placed in the TRAO Administrative Guidelines as a suggested option for the landlord's voluntary consideration.

FISCAL IMPACT – There is no impact on the City's General Fund.

CONCLUSION

Staff recommends that Council approve the proposed modifications to the Tenant Relocation Assistance Ordinance.

ALTERNATIVES

1. Introduce an ordinance amending the Tenant Relocation Assistance Ordinance with modifications.
2. Refer the item back to the Environmental Planning Commission for further analysis and reconsideration.
3. Do not introduce the proposed ordinance.

PUBLIC NOTICING – Agenda posting.

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- Attachments:
1. Ordinance
 2. Environmental Planning Commission Staff Report – April 15, 2020