

Agenda Report

April 7, 2025

TO: Honorable Mayor and City Council

FROM: Department of Rent Stabilization

SUBJECT: REQUEST FROM THE CITY COUNCIL TO RETURN WITH OPTIONS AND LEGAL ANALYSIS ON THE REQUEST OF THE PASADENA RENTAL HOUSING BOARD FOR THE CITY COUNCIL TO DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE WITHIN 60 DAYS ADOPTING ALL AVAILABLE TENANT PROTECTIONS PROVIDED IN THE ELLIS ACT (GOVERNMENT CODE SECTION 7060 ET SEQ.)

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the action proposed herein is not a "project" subject to the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 21065 and within the meaning of Section 15378(b); and
2. Direct the City Attorney to prepare an ordinance within 60 days adopting all available tenant protections provided in Government Code section 7060 et seq., as detailed in Background section below.

BACKGROUND:

On March 24, 2025, the City Council directed staff to return with legal analysis of the Ellis Act and include staff's recommendation. Staff is recommending, based on the intent of the voters when enacting Measure H, that the City Council adopt all of the tenant protections provided in the Ellis Act as follows:

1. A right for the displaced tenant to return to the rental unit if the rental unit is returned to the rental market within 10 years of the withdrawal (Gov. Code 7060.2(c));

2. A right for a displaced tenant to return to any rental unit that is returned to the rental market within 2 years at the rent paid by the tenant prior to the withdrawal plus any allowed annual general adjustments (Gov. Code 7060.2(b));
3. A right for any tenant who occupies a unit that was previously withdrawn and returned to the market within 5 years to pay the rental rate paid prior to the withdrawal plus any allowed annual general adjustments (Gov. Code 7060.2(a)).
4. The right of the displaced tenant or the City to recover damages , if the rental unit is returned to the rental market within two years of withdrawal (Gov. Code 7060.2(b), and the right to recover an amount not to exceed six months' rent if the rental unit is returned to the rental market within ten years and is not offered to the displaced tenant who has requested notification of the right to return (Gov. Code 7060.2(c));
5. The requirement that if rental units withdrawn from the rental market are demolished and new rental units constructed within five years of the withdrawal, the new rental units will be subject to Article XVIII (Gov. Code 7060.2(d)); and
6. Notice requirements in 7060.4, including filing a notice of intent to withdraw with the rent stabilization entity, recording the information listed in 7060.4, and providing 120 days' notice of withdrawal, or one year for certain tenants.

The Ellis Act

The Ellis Act protects a landlord's right to exit the residential rental market. The Act responded to attempts by rent control jurisdictions to force landlords to remain in the rental housing market out of a concern about preserving the housing stock and the impact of displacement on tenants. Specifically, the California State Legislature enacted the Ellis Act, Gov. Code §7060 et seq. (Attachment A), to supersede *Nash v. City of Santa Monica* to permit landlords to go out of business. Nash, a landlord, brought a constitutional challenge against the City of Santa Monica's Charter Article XVIII Section 1803. Nash sought to evict tenants and demolish his building rather than to await his tenants' voluntary departure or to sell his property.

The Court found in favor of the City of Santa Monica because the limitation upon Nash's interests was minimal and not significantly different from other, constitutionally permissible, limitations upon the use of private property imposed by government regulation, whereas protecting existing tenants against eviction and the scarce supply of residential housing in Santa Monica against further erosion served important public objectives. The Court reasoned that it was not unconstitutional involuntary servitude, as the law did not force the owner into an occupation against the owner's will; rather, the City of Santa Monica simply required that so long as tenants remained in Nash's building, and so long as he continued to receive a fair rate of return on his investment, he could not evict them and demolish the building. The Court explained that an owner could remove themselves from the operations of the business by permitting someone else to manage the business without the owner's involvement, keeping units off the market as they became vacant, or by simply selling the property. As a land-use ordinance, something often upheld, it only needed to pass the "rational relationship" test, and the Court found that it did.

The Legislature enacted the Ellis Act in response to *Nash v. City of Santa Monica* to permit landlords to go out of business. It specifically speaks to any jurisdiction where a public entity exercises control over or operates a system of control over the price of rents (rent stabilization). The Ellis Act provides that:

“It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in Nash v. City of Santa Monica, 37 Cal.3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business.” (Gov. Code §7060.7).

The Ellis Act provides that no public entity can compel the owner of any residential real property to continue to offer accommodations for rent or lease:

“(a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease.” (Gov. Code §7060(a)).

The Ellis Act further provides that if a public entity has in effect any control or system of control on the price at which accommodations may be offered for rent or lease (rent stabilization), such as the City of Pasadena’s Charter Article XVIII, and adopts the Ellis Act’s tenant protections, any rental property subject to rent stabilization at the time of withdrawal shall be subject to the following:

1. For all tenancies commenced either: 1) within the five-year period after any notice of intent to withdraw accommodations is filed with the public entity, whether or not the notice of intent is withdrawn or completed; or 2) within the five-year period after the accommodations are withdrawn; the owner must rent or lease the units at the lawful rent in effect at the time any notice of intent is filed with the public entity, plus allowed annual adjustment . (Gov. Code §7060.2(a)(1)).
 - These five-year tenant protections provide that the new rent for any withdrawn unit, even if it is a different tenant, be the rent charged at the time the unit was withdrawn plus any allowed annual adjustments.
2. For accommodations offered again for rent or lease within two years of the date the accommodations were withdrawn, the owner is subject to the following:
 - a. The owner must offer the unit to the displaced tenant, if the tenant advised the owner within 30 days of the displacement of their intent to return;
 - b. A public entity may institute a civil proceeding against the owner; and
 - c. The owner shall be liable to any tenant or lessee who was displaced for actual and exemplary damages. (Gov. Code §7060.2(a)(b)).
 - These two-year tenant protections provide the tenant with the right of first refusal at the controlled rent, the original rent the tenant paid plus any

allowable rent increases provided by the annual general adjustment, and eligibility for damages .

In addition, the Ellis Act provides that a public entity may require by statute, ordinance, or regulation that an owner who offers the accommodations for rent or lease again within 10 years from the date the unit was withdrawn, first offer the unit to the tenants or lessees displaced by the withdrawal who requested notification of the intent to return it to the market, and also require notification to the rent stabilization entity. (Gov. Code §7060.2(c)).

- These ten-year tenant protections provide the tenant with the first right of refusal, though the rent is not vacancy controlled, and can be the market rate. The tenant is eligible for punitive damages if not notified, which are not to exceed 6 months' rent.

It is important to note that the protections through the 10-year mark do not allow a tenant to return at the controlled rent. They are only allowed the first right of return. However, if they chose to enforce that right, they may re-rent, and the owner is allowed to rent to the returning tenant at the market rate.

It should be noted that the Ellis Act protections available to a jurisdiction with rent stabilization are only applicable to rent stabilized units.

Charter Article XVIII

The Pasadena Charter Article XVIII (Charter) at Section 1806(a)(10) originally provided that the Pasadena Rental Housing Board be required to issue regulations relative to the withdrawal of units from the rental market, as described in the Ellis Act. In November of 2024, the Pasadena voters approved Pasadena Measure PR that added in the City Council at Charter section 1806(a)(10) as follows:

*(10) Withdrawal of the Unit Permanently from Rental Market. To the extent required by California Government Code Section 7060 et seq., the Landlord may seek in good faith to recover possession to withdraw all Rental Units of an entire Property from the rental market. The Landlord first must have filed the requisite documents with the Rental Board initiating the procedure for withdrawing Rental units from rent or lease under California Government Code Section 7060 et seq. and all regulations passed by the Rental Board **and/or the City Council of the City**, with the intention of completing the withdrawal process and going out of the rental business or demolition of the Property. If demolition is the purpose of the withdrawal, then the Landlord must have received all needed permits from the City of Pasadena before serving any notices terminating a tenancy based on Subsection (a)(10) herein. Tenants shall be entitled to a minimum of 120 days' notice or one (1) year in the case Tenants are defined as senior or Disabled as defined in California Government Code Section 7060 et seq. Notice times may be increased by regulations if state law allows for additional time. (emphasis added)*

The Charter further provides that the Board implement all of the provisions of the Ellis Act to the maximum extent of the law at Section 1806(c) and Section 1806(d) as follows:

*(c) Right of Return and First Right of Refusal. All Tenants whose tenancy is terminated on a basis enumerated in Subsections (a)(8)- (11) herein shall have the first right of refusal to return to the Rental Unit if that Rental Unit is returned to the market by the Landlord or a successor Landlord **to the maximum extent permitted by state law.** Rent for the Rental Unit shall be the Rent lawfully paid by the Tenant at the time the Landlord gave notice of termination based upon Subsections (a)(8)-(11) herein **to the maximum extent permitted by state law.** The Rental Board shall decide on a timeline and procedures for the subsequent notification of the former Tenant of the return of their Rental Unit to the market.*

*(d) Required Notice for Withdrawal of Rental Units From Rental Housing and Regulation of Property on Re-Offer of Rent or Lease After Withdrawal. Within 180 days of the first meeting of the Rental Board, the Rental Board shall adopt regulations, in the manner specified by California Government Code Section 7060.5, **that implement all of the provisions set forth in California Government Code Section 7060 et seq.** Such regulations shall be updated from time to time to ensure consistency with California Government Code Section 7060 et seq. and to **ensure that the maximum protections authorized by law are afforded to Tenants** of Rental Units. (emphasis added)*

Board Action

On March 17, 2025, the Rent Stabilization Department (RSD) provided an Agenda Report to City Council on the Pasadena Rental Housing Board's request for the City Council to direct the City Attorney to prepare an ordinance within 60 days adopting all available tenant protections provided in the Ellis Act. The March 17, 2025, Agenda Report is provided as Attachment B.

The Board adopted Resolution No. PRHB-2024-23 (Attachment C) recommending that City Council adopt regulations that implement all tenant protections allowed in California Government Code Section 7060 et seq. The Board requested that the City Council direct the City Attorney to return with an ordinance within 60 days as is called for by the Charter Article XVIII and explained in Attachment B. The Board requested that the City Council adopt the Ellis Act protections because the Ellis Act explicitly requires that such protections be adopted by an elected body and makes the adoption of such protections subject to the right of referendum. The Board as an unelected body is not eligible to adopt the protections.

The tenant protections provided for in the Ellis Act were established to prevent an owner from avoiding the rent stabilization provisions adopted by a local jurisdiction. Most public entities that have established controls on rent have adopted the majority of the tenant protections provided for in the Ellis Act.

The following is a schedule of other jurisdictions that have adopted the Ellis Act tenant protections.

ELLIS ACT –OTHER JURISDICTIONS

Peer Agency	Just Cause Eviction Protection	Right of First Refusal	Tenant Responsibilities		Returned to Rental Market Within 2 Years		Returned to Rental Market Within 5 Years		Returned to Rental Market Within 10 Years	
			Request Right to First Refusal	Respond within 30 Days of Receiving Right to First Refusal Notice	Right to First Refusal (Limited Vacancy Control)	Tenant Eligible for Actual and Punitive Damages	Right to First Refusal (Limited Vacancy Control)	Tenant Eligible for Punitive Damages if Not Notified (not to exceed 6 months' rent)	Right to First Refusal (rent at market rate)	Tenant Eligible for Punitive Damages if Not Notified (not to exceed 6 months' rent)
Alameda	✓	✓	✓	✓	✓	✓	✓	NA	NA	NA
Berkeley	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Beverly Hills	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
East Palo Alto	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Los Angeles	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA
Oakland	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Richmond	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Francisco	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Jose	✓	✓	✓	✓	✓	✓	✓	NA	✓	NA
Santa Monica	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
West Hollywood	✓	✓	✓	✓	✓	✓	✓	NA	✓	✓

The foregoing schedule reflects some important differences.

- All jurisdictions have adopted tenant protections if a withdrawn rental unit is returned to the market within the 2-year mark from Section 7060.2(b). Protections at the two-year mark include **ability to bring suit, right of first refusal**, and vacancy control of the rent when the unit is returned to the market.
- All jurisdictions have adopted protections requiring vacancy control (renting the unit at the **same rental rate**, plus annual adjustments), if the unit is returned to the market within the 5-year mark from Section 7060.2(a).
- Most have established **right of first refusal** protections for units returned to the market within the 10-year mark from Section 7060.2(c), with the following exceptions:
 - San Jose has not adopted the provision that allows a tenant to be eligible for punitive damages if not notified (not to exceed 6 months' rent) but has adopted the first right of refusal.
- Only one jurisdiction has not extended the right of first refusal protection through 10 years (Alameda), which chose five (5) years.

The Effects of the Ellis Act

The USC Lusk Neighborhood data for social change recently reported that for the period through 2001, the City of Los Angeles lost 27,000 rent-controlled units through the Ellis Act. In response, several cities, including Los Angeles and San Francisco, with long tenured rent control ordinances and numerous Ellis Act cases, signed on to Assembly Bill 854 which would have curbed landlords' ability to evict tenants under Ellis in rent controlled jurisdictions. Although the Assembly Bill did not pass, this effort aimed to preserve affordable housing for the most vulnerable families and households during an affordable housing crisis.

The USC Study also found that Ellis's evictions tended to predominately be in neighborhoods with high concentrations of poor and minority renters, who are less likely to stay in their original city. They further found that Black and Hispanic households were disproportionately harmed by lack of affordable rental unit, more likely to be renters, and have fewer assets and savings to rely upon.

(<https://la.myneighborhooddata.org/2022/12/ellis-act-evictions/>)

The tenant protections provided in the Ellis Act play a crucial role in upholding the voter-approved rent stabilization measures in Article XVIII and mitigating the significant impacts of evictions on households and the community. The proposed protections ensure that landlords' right to go out of business is not misused. The tenant protections within the Ellis Act aim to prevent landlords from evicting tenants and subsequently re-renting the units in a manner that circumvents the protections of the rent stabilization ordinance. It provides an avenue for the Rent Stabilization Department to enforce the tenant protections and the Board the ability to comply with the Charter requirements.

LEGAL ANALYSIS:

Application

The Ellis Act applies to units subject to rent stabilization control at the time they were withdrawn. (Gov. Code §7060.2.) Units not subject to rent control are not subject to the Ellis Act protections. (See *id.*) It also does not apply to units never offered for rent. (*Id.*, specifying application to rent control units "which have been offered for rent or lease".) The requirement to offer to rent to a former tenant also may not apply in certain circumstances, such as where the owner or a family member of the owner occupies the unit. (Gov. Code § 7060.7.)

Article XVIII and State Law

The PRHB is bound by the scope of power conferred by Article XVIII. (*Danekas v. San Francisco Residential Rent Stabilization & Arb. Bd.* (2001) 95 Cal.App.4th 638, 644.) Article XVIII only permits the PRHB to issue "regulations". (E.g., Art. XVIII, §1811(e).) An ordinance granting the PRHB authority to act via ordinance rather than regulation would conflict with the Charter, rendering the ordinance void. (*Currieri v. City of Roseville* (1970) 4 Cal.App.3d 997, 1001).

Delegation of the power to adopt via ordinance would circumvent both the spirit and the letter of the Ellis Act. Per Section 7060.5, if a public entity like the City of Pasadena elects to adopt the Ellis Act protections by regulation rather than ordinance, the regulation must still be “subject to referendum in the manner prescribed by law for the ordinances of the legislative body of the public entity”. (Gov. Code §7060.5.) It must also be adopted by a “public body” of the public entity, whose members “have been elected by the voters of the public entity.” (*Ibid.*) As state law governing an issue of statewide concern, the Ellis Act would supersede local decisions regarding the method of its adoption.

Interpreting Article XVIII

Interpretation of municipal legislation follows the basic principles of statutory construction. (E.g., *In re Benson* (1985) 172 Cal.App.3d 532, 534.) Provisions adopted by the people are interpreted to effectuate voter intent, affording initiative measures liberal construction. (*Bd. of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 863.) Related provisions must be read and construed together in a manner that gives effect to each and harmonizes them with the others. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 205, 218.)

For voter-enacted provisions, the chief principle is ascertaining voter intent, turning first to the words of the provision; if the words are unambiguous, the analysis ends there. (*Delaney v. Superior Ct.* (1990) 50 Cal. 3d 785, 798, 789 P.2d 934, 940.) The words of the initiative are given their ordinary meaning but construed in the context of the overall scheme. (*Pro. Eng'rs in California Gov't v. Kempton* (2007) 40 Cal. 4th 1016, 1037.) If literal construction is contrary to original intent, the letter of the law will be read to conform to the spirit of the law. (*Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735.)

The plain meaning interpreted in isolation can sometimes lead to absurd results, so the language must be read not only in light of the measure as whole, but its purpose. (*MacIsaac v. Waste Mgmt. Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083.) As provisions relating to the same subject must be harmonized internally and with each other to the extent possible, if the language is ambiguous, it is proper to look to extrinsic aids such as ballot materials to interpret the conflicting sections together. (*Thomsen v. City of Escondido* (1996) 49 Cal.App.4th 884, 896–97.)

The plain meaning of Article XVIII's Ellis Act provisions requires the PRHB to adopt “all” of the Ellis Act's tenant protections. Read and construed together to give effect to each and harmonize each with the others, Article XVIII's Ellis Act provisions make voter intent clear: The City could adopt “all of the provisions” of the Ellis Act to comport with the intent of the voters, and in doing so, will ensure the “maximum protections authorized by law” via legislation “passed by the Rental Board *and/or* the City Council of the City”, so that tenants have those protections (such as the right of first refusal) “to the maximum extent permitted by state law.” But Article XVIII does not direct the City Council to adopt such an ordinance, and state law requires an ordinance relating to the Ellis Act be adopted by the city's elected body. Therefore, the City Council could choose to adopt the full protections of the Ellis Act, as have most other jurisdictions, or it could enact other protections, as has the City of Alameda.

COUNCIL POLICY CONSIDERATION:

The proposed adoption of all available tenant protections provided for in the Ellis Act (Government Code Section 7060 et. seq.) aligns with the City Council goals to support and promote tenant protections.

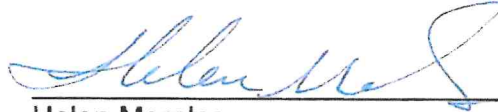
ENVIRONMENTAL ANALYSIS:

CEQA excludes, from environmental review, actions that are not “projects” as defined by CEQA Guidelines Section 21065 and within the meaning of Section 15378(b). Sections 21065 and 15378(b) define a project as an action which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Section 15378 excludes from the definition of “project” administrative activities of governments, general policy and procedure making that will not result in direct or indirect physical changes in the environment. The actions proposed herein, directing the preparation of an ordinance to expand tenant protections, is an administrative activity, and therefore is not a “project” as defined by CEQA. Since the action is not a project subject to CEQA, no environmental document is required.

FISCAL IMPACT:

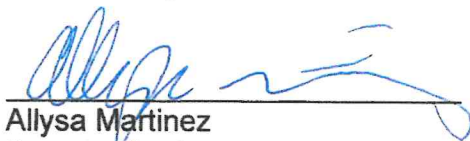
The implementation of the Ellis Act may have an impact on the budget, but that impact cannot be determined until the Rent Stabilization Department can determine the number of Ellis Act evictions that occur each year.

Respectfully submitted,



Helen Morales
Executive Director, Rent Stabilization
Department

Reviewed by:



Allysa Martinez
Deputy City Attorney

Approved by:



MIGUEL MARQUEZ
City Manager

ATTACHMENTS:

- Attachment A Government Code Sections 7060 – 7060.7- Ellis Act
- Attachment B March 17, 2025 Agenda Report
- Attachment C A Resolution of The City of Pasadena Rental Housing Board Recommending to the City Council of the City of Pasadena that the City Council Adopt, Either by Resolution or Ordinance, Regulations Implementing All Available Tenant Protections Provided in the Ellis Act (Government Code Section 7060 et seq.)