



RENT STABILIZATION DEPARTMENT

November 7, 2024

TO: Pasadena Rental Housing Board

FROM: Karen M. Tiedemann, Goldfarb & Lipman LLP,
Counsel to the Board
Nazanin Salehi, Goldfarb & Lipman LLP, Counsel to the Board

SUBJECT: Ellis Act Study Session

RECOMMENDATION: It is recommended that the Pasadena Rental Housing Board receive information regarding the Ellis Act and provide direction to the staff regarding a recommendation to the City Council for adoption of Ellis Act protections.

BACKGROUND AND DISCUSSION:

On November 8, 2022, the voters of the City of Pasadena (the "City") voted to adopt Measure H ("Article XVIII"), which amended the City's Charter to impose rent control and just cause eviction protections. The Pasadena City Council ("City Council") adopted a resolution certifying the results of the November 8, 2022, election on December 12, 2022, and Article XVIII was thereafter filed with the California Secretary of State and took effect on December 22, 2022.

Article XVIII includes at Section 1806(a)(10) as a just cause for eviction withdrawal of a Rental Unit permanently from the rental market in accordance with Government Code section 7060. Government Code Section 7060 et seq., commonly referred to as the "Ellis Act," requires that landlords must be allowed to go out of the rental business. In order to use the Ellis Act as a basis for an eviction, the landlord must withdraw all of the rental units on the property from the market.

Article XVIII also provides that tenants subject to eviction as a result of the withdrawal of the unit from the rental market have a first right of refusal to return to the Rental Unit if the Rental Unit is returned to the market by the landlord to the maximum extent permitted by state law and that rent for the Rental Unit upon return shall be the rent lawfully paid by the Tenant at the time the Landlord gave notice of termination of tenancy to the maximum extent permitted by state law. Section 1806(c) goes on to state that the PRHB shall decide on the timeline and procedures for the subsequent notification of the former Tenant of the return of the Rental Unit to market.

Finally, Section 1806(d) provides that within 180 days of the first meeting of the PRHB, the PRHB shall adopt regulations, in the manner specified in Government Code Section 7060.5, that implement all of the provisions set forth in the Ellis Act. As has been previously discussed with the PRHB, despite the mandated obligation in Section 1806(d) for the PRHB to adopt regulations implementing the protections in the Ellis Act, the Ellis Act requires that any regulations adopted to implement such protections be adopted by an elected body, which the PRHB is not. Since the

City Council is the only elected body with jurisdiction over rental units in the City of Pasadena, any regulations to implement the Ellis Act protections must be adopted by the City Council.

The State Ellis Act

The state Ellis Act (Government Code sections 7060 – 7060.7) allows cities with rent stabilization to adopt regulations that provide tenants with a first right to return to a unit that is withdrawn from the rental market if that unit is returned to the market. Additionally, it provides additional notice for tenants subject to eviction due to withdrawal of the unit from the market.

A First Right of Return benefit essentially requires that a tenant, whose tenancy was terminated based on 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.

Three Components of a First Right of Return

Under the Ellis Act, 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 the tenant has a First Right of Return. The Ellis Act states that a First Right of Return may not exceed 10 years.¹ 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.² Accordingly, if a tenancy was terminated in 2025 and the tenant exercised a First Right of Return in 2030, 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 2025, plus any annual general adjustments between 2025 and 2030. 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. This means that if a city has adopted a First Right of Return period longer than 5 years, the tenant would still have the First Right to Return if the unit is returned to the market in years 6-10. but the landlord would have unlimited discretion to set the rent to which the tenant would return.

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 re-rents the unit within two years. 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. Alternatively, 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 2025 to withdraw a property from the rental market, but then returned a unit to the rental market in 2026, the former tenant could be authorized to seek actual and exemplary damages. A city could provide for a shorter actual and

¹ Gov. Code § 7060.2(c).

² Gov. Code § 7060.2(a).

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 & 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 PRHB may recommend the appropriate policies for consideration by the City Council.

ANALYSIS

Because the PRHB is not authorized to adopt the regulations that would implement the Ellis Act protections, the PRHB can make recommendations to the City Council for the City Council to adopt such regulations, either by resolution or ordinance. It should be noted that Article XVIII of the Charter states that the PRHB "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." (Section 1806(d), emphasis added). Although this language only obligates the PRHB which is not empowered under state law to take the required actions, it does evidence the intent of the voters in adopting Article XVIII. However, in developing a recommendation to the City Council, the PRHB may want to consider the following:

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

Article XVIII provides for a First Right of Return without identifying its duration. The Regulations adopted by the PRHB regarding the First Right of Return in the event of an owner move in eviction grant the tenant a First Right of Return if the unit is ever returned to the rental market, meaning there is no time limitation on the First Right of Return. The Ellis Act prohibits an unlimited First Right of Return but does allow a First Right of Return for up to 10 years.

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

Article XVIII states that the "rent for a 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. Thus, Article XVIII 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. The PRHB 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.

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 re-rented within two years. Actual and exemplary damages could be authorized either (a) if the landlord re-rents 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 re-rented to any tenant within two years would encourage landlords to carefully scrutinize the value of withdrawing the unit from the rental market. Authorizing actual and exemplary damages if a landlord fails to provide the former tenant with a First Right of Return would not necessarily discourage frivolous terminations of tenancy but would create a self-enforcing mechanism to encourage compliance with the First Right of Return required under Article XVIII. Likewise, the re-rental period during which actual and exemplary damages may apply could be less than the 2-year period authorized by the Ellis Act.

Application of Article XVIII to Rental Units Rebuilt after Withdrawal

The Ellis Act also provides that a City can require that if rental units are withdrawn from the rental market in order to demolish the Rental Units and new rental units are built on the property, those newly rebuilt units can be subjected to Article XVIII with the initial rent to be based on the reasonable fair rate of return for the newly constructed units. This provision would allow newly built units replacing existing rent stabilized units to be subject to rent stabilization despite the fact that currently, pursuant to Costa Hawkins, units constructed after February 1, 1995, are not subject to local rent stabilization. In order for this provision to be applicable in Pasadena, the City Council would need to include it in any adopted Ellis Act regulations.

Noticing Periods for Tenant Termination for Withdrawal of Units

In addition to the First Right of Return, the Ellis Act also allows extended noticing for tenants subject to an eviction due to withdrawal of the unit from then rental market but only if the Ellis Act regulations require that a notice be recorded against the property that includes the information in the notice of termination redacted to remove confidential information such as the tenants name. If the termination notice information is required to be recorded, then the notice period for all tenants is 120 days. If the tenant is a senior (62 or older) or disabled, the notice period can be extended to one year if the tenant eligible for the extension notifies the landlord of their status within 60 days of receipt of the notice of termination. Article XVIII originally includes at Section 1806(a)(10) a requirement that all tenants receive a 180-day notice and that tenants defined as seniors or disabled receive a one-year notice. However, the 180-day notice was found by the Superior Court to conflict with the Ellis Act and was removed when the judge reformed Article XVIII. Thus, currently there is no provision to provide 120 days' notice to all tenants subject to an Ellis Act eviction but there is a one-year notice requirement for those tenants who meet the definition of senior or disabled. However, Article XVIII does not include the requirements regarding recording the notice of termination information so in order to ensure that tenants receive these protections, any City Council adopted regulations, resolution or ordinance should include those requirements.

FISCAL IMPACT:

Consideration of recommendations regarding Ellis Act recommendations to the City Council is not anticipated to have an impact on the budget of the Pasadena Rental Housing Board or the Rent Stabilization Department.