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**COUNCIL TRANSMITTAL: REPORT ON EVICTIONS UNDER THE ELLIS ACT,
APPLICABILITY OF THE TENANT HABITABILITY PROGRAM AND THE
PREVENTION OF BAD FAITH EVICTIONS**

SUMMARY

The General Manager of the Los Angeles Housing Department (LAHD) respectfully submits this report in response to a motion dated September 1, 2023 (C.F. No. 23-0930) regarding evictions under the Ellis Act, applicability of the tenant habitability program, and the prevention of bad faith evictions. This transmittal requests approval to amend the Rent Stabilization Ordinance (RSO) and offers policy recommendations for the enhancement of future safeguards in Ellis withdrawals of rental properties.

RECOMMENDATIONS

That the City Council, subject to the approval of the Mayor:

1. INSTRUCT LAHD to work with the Mayor and Chief Legislative Analyst to support legislative changes in the state Ellis Act to:
 - a. Require one-year extensions for all tenants in a building if there is at least one unit qualifying for a one-year extension.

- b. Explicitly allow cities to regulate the initial rent for the first 10 years of re-rental to conform with a right to return of 10 years.
 - c. Require a response from property owners on the intended future use of the property and, if the reason is for primary renovation or any renovation work, allow cities to reject the filing of the Ellis forms.
 2. REQUEST the City Attorney, with the assistance of LAHD, to draft amendments to the Rent Stabilization Ordinance (RSO) as follows:
 - a. Disallow approval for permits for primary renovation work that requires the filing of a Tenant Habitability Plan while an Ellis withdrawal has been filed and tenants continue to reside at the rental property or have been temporarily relocated.
 - b. Establish an administrative appeal process for tenants' claims for extended tenancies.
 - c. Codify that the extension of tenancies beyond one year do not change the withdrawal date of the property and clarify that longer extensions are not a re-rental, in conformance with state law. This would encourage landlords to allow longer periods for tenants to move out.
 - d. Clearly state that the payment of punitive damages to a tenant shall not be construed to extinguish the owner's obligation to comply with their re-rental obligations, in conformance with state law.
 - e. Require that landlords may either pay relocation directly to the tenant or deposit relocation into an escrow account the minimum relocation amount to which an Eligible tenant would be entitled to receive, within 15 days of service of the written notice of termination. If the tenant is later determined to be entitled to a higher amount of relocation, then the landlord shall pay the additional monies within 15 days of the relocation determination issued by the City or the City's relocation consultant.
 - f. Provide that tenants evicted in order to comply with a Government Order have a right to return to the same unit and at the same rent rate they were paying plus annual allowable adjustments, if the violation cited in the government order is remedied and the unit is habitable.
3. INSTRUCT LAHD, together with the assistance of the City Attorney, to report back on the feasibility of amending the RSO to:

- a. Require property owners to state the intended future use of the property and disallow a response of “undecided” on Notices of Intent to Withdraw Units from Rental Housing Use (Ellis withdrawals).
 - b. Add a financial penalty for demolishing an RSO unit without filing the required Ellis forms with LAHD.
 - c. Add a financial penalty for failure to file annual status reports after filing the Ellis.
 - d. Deny RSO exemptions for newly constructed units built subsequent to an illegal demolition done without the Ellis or without demolition permits.
4. INSTRUCT the Los Angeles Department of Building and Safety (LADBS), with the assistance of LAHD, to report back on the feasibility of establishing a “bad actor” policy, whereby owners are unable to pull permits for new projects if there is a record of unresolved citations, orders to comply and/or violations at an existing property, including demolitions of existing RSO units without complying with the RSO Ellis provisions.

BACKGROUND

On May 8, 2023, Barrington Pacific LLC, the ownership of the Barrington Plaza Apartments, located at 11740 Wilshire Blvd, filed a Notice of Intent to Withdraw under the Ellis Act, stating their intention to withdraw 712 units from the rental market, of which 577 were occupied.

Under the provisions of the Ellis Act, tenants must vacate their rental units within 120 days of the filing of the Ellis withdrawal. The 120-day Notice to Vacate issued to tenants at the Barrington Plaza Apartments expired on September 5, 2023. However, tenants who are elderly or disabled and have lived in their rental units for one year prior to the filing of the Ellis forms were able to request a one-year extension, enabling them to remain until May 8, 2024. LAHD completed the necessary relocation determinations on August 3, 2023 for all of the 577 rental units located in the Barrington Plaza Apartments and ensured relocation was provided to 394 households who were required to move out by September 5, 2023. LAHD worked closely with the tenants and landlord representatives to ensure that all eligible tenants were granted a one-year extension; these determinations were completed on October 10, 2023. A total of 183 households were granted one-year extensions and allowed to remain at the Barrington Plaza Apartments until May 8, 2024.

The City Council adopted a motion (C.F. No. 23-0479) on June 20, 2023, relative to the status of the Ellis Act process and relocation of tenants at the Barrington Plaza Apartments. Subsequently, on September 19, 2023, the City Council adopted a motion (C.F. No. 23-0930) instructing LAHD

to report on matters related to the prevention of bad faith use of evictions under the Ellis Act and the Tenant Habitability Program, and the adequacy of the City's mechanisms to enforce and communicate protections set forth in State law for first right of refusal, right of return at original rents, relocation payment, and payment for damages throughout the ten-year compliance period.

This report addresses the Council requests, including the Ellis process both generally as it applies city-wide and specifically as it relates to the Barrington Plaza, including:

1. A comparison analysis between evictions based on government order or the Ellis Act from the Tenant Habitability Plan (THP).
2. Monitoring of bad faith in Ellis Act evictions.
3. Options to prevent bad faith use of the Ellis Act for renovations, retrofits and habitability improvements when the property intends to continue renting after completion of the work and the THP would prevent displacement.
4. The City's mechanisms to ensure that the protections set forth in State law for first right of refusal, right of return at original rents, relocation payment, and payment of damages are enforced and communicated to tenants and property owners throughout the ten-year compliance period.
5. LADBS, with the assistance of LAHD, and any other relevant departments, to report to Council on the feasibility of establishing a "bad actor" policy, whereby owners are unable to pull permits for new projects if there is a record of unresolved citations, orders to comply and/or violations at an existing property.
6. Recommended actions the City could potentially take to intervene in this process to ensure that tenants are not permanently displaced.

Additionally, the report provides recommendations for support of legislative changes at the state level, amendments to the RSO Ellis provisions, and policies for additional review together with the City Attorney and LADBS.

The following items are discussed in a companion LAHD report, dated February 13, 2024, under C.F. No. 23-0479:

7. The status of the Ellis Act process and relocation of tenants at the Barrington Plaza located at 11740 Wilshire Blvd., including relocation benefits and right to return.

8. LADBS/LAHD to report to Council with a comprehensive list of any code violations at the Barrington Plaza Apartments over the last ten years. The report should include what happened after the previous code violations and the fires that took place at the Barrington Plaza Apartments.

DISCUSSION

Ellis Act Evictions

Ellis is a state law that prohibits any jurisdiction from compelling an owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease. Therefore, the LAMC allows a landlord to terminate a tenancy under either of the following circumstances:

- a. to demolish the rental unit; or
- b. to remove the rental unit permanently from rental housing use, in conformance with the requirements of LAMC 151.22 through 151.28.

The Ellis rules require a minimum of 120 days for tenants to move out. However, tenants who are elderly or disabled have a right to claim a one-year extension of tenancy. There is currently no administrative remedy for tenants to pursue in defense of their claim to the extension when a property owner denies an extension of tenancy. To address this issue, the City should add an administrative appeal process to the LAMC specifically for extended tenancies which differs from the existing right of administrative appeal only for relocation amount determination disputes. An additional recommendation for change at the state level is that the law be revised to ensure that, if any tenant requests and is approved for a one-year extension, all tenants should be granted a one-year extension since demolition and construction work cannot commence while a tenant is in place.

Additionally, the RSO should be amended to conform with state law and codify that the extension of tenancies beyond one year does not change the withdrawal date of the property and clarify that longer extensions are not a re-rental. This would encourage landlords to allow longer periods for tenants to move out.

Per state law, a tenant who is evicted under the Ellis Act has a right to return to the same unit for 10 years after the withdrawal date, but the rent rate varies depending on the timing of the re-rental. If the same units are re-rented within 5 years after the withdrawal date then the initial re-rental rent amount is the lawful rent in effect at the time the Notice of Intent to Withdraw the accommodations was filed with the city, plus annual adjustments available under the RSO. After 5 years, the state

law does not indicate that the initial rent rate is the same as when the tenant was displaced and instead initial rent is set at market rate.

Government Order Evictions

Under the RSO, a landlord may terminate a tenancy “to comply with a governmental agency’s order to vacate, order to comply, order to abate, or any other order that necessitates the vacating of the building housing the rental unit as a result of a violation of the Los Angeles Municipal Code or any other provision of law.” (LAMC 151.09.A.11).

The LAMC does not give a tenant who is evicted based on a government order to comply with a right to return, but does regulate the rent rate if the unit is ever rented again. If the same unit is rented after a tenant is evicted for compliance with a government order, then the initial rent amount is the lawful rent in effect at the time of the termination of tenancy for compliance with a government order, plus annual adjustments available under the RSO. Unlike the Ellis Act, there is no time bar for the City to require the re-rental rate to be set at the same rental rate plus annual adjustments. There is no right of return in the LAMC for Government Order evictions and one of the LAHD recommendations addresses this issue.

Tenant Habitability Plan

The purpose of the Tenant Habitability Plan (THP) Program is to protect tenants from tenantable housing conditions during renovation work and/or forced permanent displacement. The scope of work qualifying for THP is defined as “*Primary Renovation Work*,” construction work that involves repairing or replacing major building systems, such as central heating/air conditioning, water and sewage piping, wiring inside walls, elevators, or reinforcement of the building structure. It is also work that is undertaken to abate hazardous materials such as lead-based paint or asbestos.

A THP is a document prepared by a property owner, with the assistance of LAHD’s Tenant Habitability Program staff, that describes the scope of the work and the methods that the owner, contractor, and workers will use to mitigate potential impact to the tenants and the tenants’ personal property during the period that primary renovation work occurs in a tenant’s unit.

Evictions are NOT allowed for Primary Renovation Work or as part of a Tenant Habitability Plan, however, tenants may be evicted for failure to comply with an approved THP.

THP reviews are initiated through a clearance request process once a permit application is submitted to the Los Angeles Department of Building and Safety (LADBS) for work contemplated within a building, subject to the Rent Stabilization Ordinance under Section 152.00 of the Los Angeles Municipal Code.

LAHD’s THP staff review permit applications prior to LADBS issuing a permit and determine whether or not the proposed work will substantially affect tenants or their residential units or common areas. THP staff also determine whether a THP is required based on the potential impact to the tenants. A THP is required before commencement of any permitted work in occupied units that creates an untenable condition within a rental unit, as well as to correct and/or comply with lead based paint and asbestos findings. *A THP is not required in order to conduct work in vacant units, or unoccupied portions of a building, unless the work will substantially impact occupied adjacent units.*

Under the THP, if tenants are temporarily displaced from their unit, the tenants may return to the same unit at the rent rate they were paying plus annual adjustments and cost recovery approvals. Unlike the Ellis Act, there is no time bar for a tenant to return at their same rental rate plus adjustments as long as the tenant does not choose to permanently vacate in exchange for a relocation payment.

The chart below provides a comparison of the eviction types, the controlling law, and whether a right to return and rent rate upon re-rental is currently allowed.

Eviction Type Comparison Chart

Eviction Type	Controlling Law	Right of Return	Rent Rate Upon Re-Rental
Government Order	LAMC	None, per LAMC.	Same amount that displaced tenant was paying, plus annual allowable increases (charged to new tenant).
Ellis	State Law	Right of return for 10 years.	5 years: Same amount displaced tenant was paying + annual allowable increases. After 5 years: Initial rent is set at market.
THP	LAMC	Right of return if the tenant chooses to wait for the work to be completed and does not take the permanent relocation payment.	Same tenant returns: Same amount the tenant was paying at the time the THP was filed. Tenant Voluntary Moves out: Initial rent is set at market.

Monitoring Ellis Act Evictions

Landlords must act in good faith when evicting tenants under the RSO. Per the Rent Adjustment Commission (RAC) regulations, the phrase “in good faith” means honestly, without fraud, collusion or deceit; really, actually, without pretense. A landlord demonstrates good faith by following the RSO provisions and not using the eviction as a method to circumvent the RSO.

The RSO Ellis provisions mirror the state law and prescribe rules that the City must follow in processing withdrawal notifications in compliance with the Ellis Act. Consistent with the state law, LAHD requires landlords to file the Notice of Intent to Withdraw, the recorded Memorandum (filed with the County) and a copy of the notice served on tenants summarizing their rights under the Ellis rules.

Because this is a complex legal process, LAHD requires that owners meet with staff to review the Ellis forms prior to officially filing and initiating the withdrawal process, to ensure that the forms are complete and the owner understands their obligations under the Ellis rules. LAHD staff review the forms to ensure the information required under state law is completed prior to accepting the filing. Information required includes: the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit. If the forms fail to comply with state law requirements, LAHD will reject the filing. From November 2021 to February 2024, there were 1,847 appointments of which LAHD has only accepted 606 (32%) for official filing. Many of these were repeat filers who needed LAHD's review to ensure their forms were properly completed. Without the LAHD review, many first time filers would have been in violation of the Ellis rules.

There is no requirement under state law that a landlord inform the City of the landlord's intended plans for future use of the property, however, LAHD does request this information in the filing form, allowing owners to report their plans if they choose to do so. LAHD has revised the withdrawal form to remove the "undecided" option even if the City cannot reject the filing if the property owner declines to answer the intended future use question. Our recommendations include amendment of the RSO to require property owners to disclose the intended future use of the rental property. For example, In the filing for the Barrington Plaza Apartments, the owner indicated "Undecided."

There are other situations where property owners fail to comply with the rules, possibly in bad faith, and LAHD will reject an Ellis filing. The Ellis Act requires that landlords serve tenants a notice of Ellis rights within 5 days after filing the Ellis forms with LAHD. When landlords miss this 5-day window, LAHD revokes the Ellis filing and requires the owner to re-file the forms and start the tenant notification period over again. LAHD will also revoke an Ellis filing when owners fail to include all occupied units in the Ellis forms or are found to have rented units to new tenants after filing the Ellis.

The LAMC also follows the state law regulations on the re-rental procedures, which LAHD monitors. A landlord is required to file a Notice of Intent to Re-rent with LAHD and notify tenants of the re-rental in order for tenants to request their right to return. If the landlord files a re-rental notice, LAHD sends a letter to the owner and tenant to ensure they are aware of their rights and responsibilities under the re-rental rules. LAHD assists with calculating the legal rent during the

first 5 years after the withdrawal to ensure the tenant returns at the legal rate. If there is a failure to re-rent in compliance with the law, LAHD refers cases to the City Attorney's Office and has had success both in civil and criminal court as described under the Payment of Damages section of this report.

Additionally, as part of a 2017 set of RSO Ellis reforms, the LAMC requires that landlords file an Annual Property Status report for seven years after the filing of the Ellis. These reports provide LAHD a method to monitor and track a property that has been re-rented, demolished or developed. There is no financial penalty for failure to file the property status report or the notice of re-rental. This presents an opportunity for the City to add a financial penalty for non-compliance, as provided in Recommendation 3(c).

Use of the Ellis Act for Renovations, Retrofits and Habitability Improvements

LAHD was requested to report on prevention of "bad faith" evictions and misuse of the Ellis Act for renovations, retrofits and habitability improvements when the property owner intends to continue renting after completion of the work and a THP would prevent displacement.

The fundamental purpose of the THP (LAMC Section 152.00) is to protect existing tenants by requiring the landlord to provide a plan to mitigate the impact of construction on the health and safety of the tenant's living areas prior to the commencement of Primary Renovation work. The THP Program is not applicable where Primary Renovation work is contemplated to be performed in a vacant building. LAHD recommends adoption of an ordinance amendment that explicitly disallows approval for permits for primary renovation work that requires the filing of a Tenant Habitability Plan while an Ellis withdrawal has been filed and tenants continue to reside at the rental property or have been temporarily relocated.

LAHD recommends that the Department continue to review Ellis forms for compliance with state law, enforce tenant re-rental rights including referrals to the City Attorney, and review THP forms prior to permit clearances. Additionally, LAHD recommends adoption of proposed policy changes discussed in the recommendations section of this report to strengthen the City's enforcement of the Ellis Act and provide additional safeguards. Recommendations for immediate implementation include:

- a. Disallow approval for permits for primary renovation work that requires the filing of a Tenant Habitability Plan while an Ellis withdrawal has been filed and tenants continue to reside at the rental property or have been temporarily relocated.
- b. Establish an administrative appeal process for tenants' claims for extended tenancies.

- c. Codify that the extension of tenancies beyond one year do not change the withdrawal date of the property and clarify that longer extensions are not a re-rental, in conformance with state law. This would encourage landlords to allow longer periods for tenants to move out.
- d. Clearly state that the payment of punitive damages to a tenant shall not be construed to extinguish the owner's obligation to comply with their re-rental obligations, in conformance with state law.
- e. Require that the landlord shall pay the minimum relocation amount to which an Eligible tenant would be entitled to receive, within 15 days of service of the written notice of termination. If the tenant is later determined to be entitled to a higher amount of relocation, then the landlord shall pay the additional monies within 15 days of the relocation determination issued by the City's relocation consultant.
- f. Provide that tenants evicted in order to comply with a Government Order have a right to return to the same unit and at the same rent rate they were paying plus annual allowable adjustments, if the violation cited in the government order is remedied and the unit is habitable.

Additionally, the LAMC states that if a landlord demolishes an RSO unit without filing the Ellis forms they are subject to a penalty to be adopted by the Council. This could occur either when a landlord exceeds the scope of a renovation permit or demolishes without permits. There is currently no penalty adopted by the Council. A financial penalty will assist in discouraging owners from demolishing units without filing the Ellis forms or exceeding the scope of renovation permits. LAHD will report back on further recommendations for penalties for non-compliance.

Right of Return, Relocation, and Payment of Damages

LAHD was requested to report on the adequacy of the City's mechanisms to ensure that the protections set forth in State law for first right of refusal, right of return at original rents, relocation payment, and payment of damages are enforced and communicated to tenants and property owners throughout the ten-year compliance period.

Right to Return

One of the main safeguards in the Ellis Act is that if withdrawn units are returned to the rental market, the units must be offered to those displaced tenants, who notified the landlord of their interest in returning, at the same rent that they were paying (plus annual allowable rent increases). This is meant to deter landlords from bad faith evictions under the Ellis Act. In these instances, the

RSO delineates the steps a landlord must take to return the units to the rental market, by filing a Re-Rental Notice with LAHD.

The Ellis Act provides a right of return to the same unit if it is re-offered for rent within ten years after the withdrawal date. However, under state law, the right to return at the same rent applies only if the same unit(s) are re-rented during the first five years. After five years, the state law is silent on whether the initial rent rate must be the same. This is problematic because the right to return is for ten years, but the initial rent rate may be set at market after five years.

At the start of an Ellis based eviction, tenants are informed about their right to return by LAHD, the city's relocation consultant and the state mandated notice of tenant rights a landlord must serve to the tenants. The City's consultant also includes a form for tenants to fill out and provide to their landlord notifying them of their interest in claiming a right of return if the units are ever rented. Landlords are also provided with detailed information of the re-rental rules.

The Ellis Act provides that the City or tenant(s) can seek a civil remedy in a court action for actual and exemplary damages if the property is re-rented within the first two years after the withdrawal date. A tenant can pursue a civil case against the property owner to recover both actual and exemplary damages. The City can pursue a civil case for exemplary damages. The City Attorney legally represents the City and not the tenant. Compensatory damages are awarded by a court as the money that a wrongdoer pays in order to compensate for the actual tenant losses, whereas exemplary damages are awarded by the courts to punish the wrongdoer and not necessarily for tenant losses. In other words, tenants are provided more direct remedies by pursuing a private civil case.

Tenants are informed of their right to pursue a civil case at the start of the Ellis eviction process in a notice required to be served to tenants by landlords upon re-rental of the units. LAHD also notifies tenants of their re-rental rights and rules about damages. LAHD assisted in a case where a tenant obtained a civil judgment of \$750,000 in a private legal action on the basis that the landlord refused to re-rent the unit back to the tenant and committed financial elder abuse, after LAHD Investigated and informed the tenants of their re-rental rights and right to pursue damages in court.

In other cases, the City Attorney has taken legal action against owners who violated re-rental rules when they re-rented units without notifying LAHD. In a criminal case filing for violation of re-rental rules, the property owner received 24 months of summary probation. In a civil case, there was no court order, but the owner settled and agreed to refund new tenants overpaid rent, correct the rent to the legal amount, pay \$10,000 to fund the Renter's Assistance Program and reimburse the city costs incurred and to obtain permits from LADBS for unpermitted work that had been done while the property was off the market.

Additionally, penalties exist under both state and City law when a landlord fails to first offer to rent each unit to the displaced tenants after tenants request the offer during the first 10 years, for punitive damages in an amount which does not exceed the contract rent for six months. However, state law was amended in January 2020 to clearly state that the payment of punitive damages to a tenant shall not be construed to extinguish the owner's obligation to comply with their re-rental obligations. Although this has been LAHD's position communicated to tenants and owners, the LAMC does not clearly indicate this, and landlords have attempted to pay tenants the six months' contract rent and deny the right to return. LAHD has intervened when the landlord attempts to unilaterally terminate the right to return with this approach. A recommended ordinance amendment (Recommendation 2(d)) will strengthen this provision.

Relocation

The LAMC requires relocation to be paid to tenants within 15 days after the notice to terminate is served. LAHD sends correspondence to tenants informing them that the owner has filed the Ellis forms and that they are entitled to relocation assistance, as well as the timelines that affect the tenant. The property owner is also required to file notice of the withdrawal to tenants, including information about relocation.

The requirement that the relocation funds be paid within 15 days leaves very little time for a tenant to prove they are entitled to the maximum amount if they are claiming to be a Qualified tenant based on disability, age or presence of a minor child. It is also confusing to landlords as to what amount to pay the tenant at the 15-day deadline. There is an opportunity for the City to improve the rules on timing of payments as proposed in the recommendations section of this report, requiring payment of the minimum relocation within 15 days and any additional relocation as provided in an escrow agreement, upon the tenant's request, or when the tenant vacates the unit.

Other Remedies

Separately, the LAMC offers remedies when there is a violation of the RSO, which states that a person who violates the RSO or willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in a notice of declaration is guilty of a misdemeanor. This requires the involvement of the City Attorney's Office to analyze whether the legal standard is met on a case-by-case basis. As noted previously, LAHD has referred re-rental violations in the past to the City Attorney's Office which has been successful in litigation of the issues.

"Bad Actor" Policy

LADBS has the ability to withhold permits under [LAMC Section 91.106](#), known as the "scorched earth" policy that would disallow issuance of future permits to property owners. However,

extending such a policy raises legal questions and could have unintended consequences of hindering needed building improvements and upgrades and slowing down construction of additional housing.

LAHD recommends continued study, with the assistance of LADBS, of the feasibility of establishing a “bad actor” policy, whereby owners would be unable to pull permits for new projects if the property owner has a record of unresolved citations and/or orders to comply, unapproved demolitions of RSO rental units, or a finding of a pattern of continued violation of the City’s Tenant Anti-Harassment Ordinance.

Penalties for Demolition/Non-Compliance

The LAMC provides that if a landlord demolishes an RSO unit without filing the Ellis forms they are subject to a penalty to be adopted by the Council. This could occur either when a landlord exceeds the scope of a renovation permit or demolishes without permits. There is currently no penalty adopted by the Council. A financial penalty will deter property owners from demolishing RSO units without filing required Ellis forms or exceeding the scope of renovation permits. Also, if a property is demolished without the filing of the Ellis, then any new construction built on the same land should be denied RSO exemptions even if the properties would have qualified for them under existing LAMC provisions. LAHD will report back on recommended financial penalties.

FISCAL IMPACT

There is no impact to the General Fund arising from the recommendations in this report.

Approved By:



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