

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 11 OF CHAPTER 17.23 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO ADD THREE UNIT BUILDINGS, TO MODIFY RE-CONTROL PROVISIONS, AND TO PROVIDE THAT OTHER MULTIFAMILY BUILDINGS ARE DEEMED TO HAVE MET OBLIGATIONS UNDER THIS PART AFTER COMPLIANCE WITH NOTICE AND RELOCATION SPECIALIST OBLIGATIONS**

**WHEREAS**, the purpose of the Apartment Rent Ordinance, parts 1-9 of chapter 17.23, Title 17 of the San José Municipal Code is to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare and to protect tenants from excessive and unreasonable rent increases.

**WHEREAS**, on May 10, 2016, as part of the policies adopted to strengthen the Apartment Rent Ordinance, the City Council directed staff to develop a local Ellis Act Ordinance to address the removal of rent stabilized properties from the rental market.

**WHEREAS**, on April 18, 2017, City Council approved an Ellis Act Ordinance that established a process by which a property owner can remove their apartments subject to the Apartment Rent Ordinance from the rental market and procedures for re-control - subjecting apartments returned to the rental market or apartments constructed on the property after demolition (“replacement apartments”) within five years of withdrawal to the Apartment Rent Ordinance.

**WHEREAS**, the City Council provided directed staff to return with additional research regarding other jurisdiction’s Ellis Act Ordinances and the impact of subjecting all replacement apartments to re-control.

**WHEREAS**, staff conducted public meetings and individual stakeholder meetings, engaged a consultant to complete a study on potential impacts of re-control on development, and completing research on Ellis Act provisions from other jurisdictions

**WHEREAS**, staff's study concluded that the Apartment Rent Ordinance's allowed annual general increase of 5% was not likely to have an impact on first mortgage lenders, but that some junior lenders were concerned about unpredictability and some jurisdictions that re-controlled all replacement apartments were more likely to have demolished rent stabilized apartments replaced by other uses such as for-sale units that would not be subject to re-control.

**WHEREAS**, staff's research also indicated that both tenants and lenders prefer the certainty of affordability restricted apartments, and thus staff is recommending adding a provision which allows a developer to avoid the re-control requirements by voluntarily complying with the on-site affordable rental requirement of the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5, and voluntarily agreeing to provide additional restricted rental units on-site.

**WHEREAS**, experience with the current Ellis Act Ordinance and the Tenant Protection Ordinance, Part 12 of Chapter 17.23 of Title 17 of the San José Municipal Code, which limits causes of eviction indicated that in order to allow owners of three unit apartments subject to the Apartment Rent Ordinance to use the Tenant Protection Ordinance's Ellis Act just cause for eviction, and to allow all tenants of rent stabilized units to enjoy the same protections, the Ellis Act's threshold should be set at three, rather than four units.

**WHEREAS**, experience with the current Ellis Act Ordinance and the Tenant Protection Ordinance, indicated that it would be helpful to allow owners of apartment buildings that are not subject to the Apartment Rent Ordinance to voluntarily comply with the Ellis Act Ordinance's provisions regarding notice and a relocation specialist.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** Section 17.23.1130 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

**17.23.1130 General**

- A. Fees. The City shall establish fees for City-incurred costs which shall be paid by any Owner who exercises the privilege to withdraw Covered Units from rent or lease. The City shall set the fee so as to recover all costs of administering this Part. The fees shall be paid to the City prior to the service of the Notice of Intent to Withdraw on any Tenant. Failure to pay the fees prior to service of the Notice of Intent to Withdraw shall invalidate such notice.
- B. Copies of Forms. Owner shall make copies of notices and forms available if a Tenant indicates the items have been misplaced or lost or are otherwise needed.
- C. New Tenants During the Withdrawal Process. If the Owner desires to rent a Covered Unit to a new occupant after delivery of the Notice of Intent to Withdraw, the Owner shall comply with this subsection). Owner shall first comply with all requirements of this Part 11, including but not limited to the delivery of notices to the City and Tenants, and the provision of Relocation Assistance in accordance with Section 17.23.1150 with respect to the unit to be rented. Prior to such rental, Owner shall also provide a Notice of Pending Withdrawal on a City approved form to any new potential occupant of the Covered Unit for acknowledgement. If the Owner complies with this subsection, the new

occupant shall not be entitled to Relocation Assistance or other benefits under this Part. If the Owner fails to comply, the new occupant of the Covered Unit shall be entitled to Relocation Assistance under this Part.

D. City Approved Forms. Director may adopt such forms as are necessary or convenient for the administration of this Part 11, subject to review and approval of the City Attorney.

E. Every Owner must provide to each Tenant of a Covered Unit a notice of Tenant rights to extend the tenancy on a form specified by the City, which may include contact information for the City and shall include the following statement:

“In accordance with the State’s Ellis Act, the City of San José requires landlords to allow certain tenants to extend their tenancy beyond the minimum one hundred twenty (120) day notice period when a landlord intends to withdraw the dwelling unit from the residential rental market. The elderly, disabled, and households with a child enrolled in kindergarten through 12th grade may be eligible for extended tenancies if requested.”

F. Withdrawal of less than an entire building is not allowed under this Part.

G. The City Manager may adopt regulations for the administration of this Part.

H. ~~Three Unit Properties. Notwithstanding any other provision of this Part, this Part shall not apply to properties with a total of no more than three (3) Covered Units. Non-Rent Stabilized Properties. Buildings with three (3) or more units that does not contain any Covered Units may be permanently withdrawn from the residential rental market. Such a permanent withdrawal of a building will be consistent with this Part if the Owner has completed all of the following as~~

described this Part and the Regulations: (i) served Notices of Intent to Withdraw on the Tenants and the City, (ii) complied with the provisions of Section 17.23.1160 requiring 120 day notice for all Tenants and Extended Notice for certain Tenants prior to termination of tenancy, and (iii) paid the filing fee including the fee for Relocation Specialist Services described in Section 17.23.1150.E. Upon completion of these requirements for the entire building and expiration of the notice periods, the Owner will be considered to have met the relocation obligations of this Part for the purposes of evaluation for demolition permits under Section 20.200.460 and for the purposes of satisfying the requirements for relocation under the Tenant Protection Ordinance, Sections 17.23.1250.A.9 and 17.23.1250.B.2. These properties shall not be subject to the requirement to pay Base or Qualified Assistance, to provide the Tenant Qualification forms, to record a memorandum regarding re-control, or to provide a right of return.

**SECTION 2.** Section 17.23.1180 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

**17.23.1180 Re-Control**

- A. If a building containing a Covered Unit is withdrawn from the residential rental market and is returned by an Owner to the residential rental market within five (5) years, then that unit must be offered and rented or leased at the lawful rent in effect at the time the Notice of Intent to Withdraw was delivered to the City, plus any annual adjustments authorized by Title 17, Chapter 23 of this Code. This Section applies regardless of the occupancy status of each Covered Unit when the building was withdrawn from the residential rental market and regardless of whether a displaced Tenant exercises a Right to Return.

- B. If a building containing a Covered Unit is demolished and new unit(s) are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building containing the Covered Unit, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance, Title 17, Chapter 23 of this Code. Any new units made subject to the Apartment Rent Ordinance which are in excess of the number of demolished Covered Units shall remain subject to the Annual General Increase limit of the monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%) in the event that Section 17.23.310.B is amended to change the Annual General Increase limit. The City Council may, by resolution, adopt a rule to exempt some or all of the new units in excess of the number of demolished Covered Units from the requirement for re-control.
- C. Waiver for Projects with On-Site Affordable Units. If at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:
- (i) develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San Jose Municipal Code and its implementing guidelines; and
  - (ii) develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.

RD:SSG  
4/11/2018

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI TABER, CMC  
City Clerk