

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

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 12 TO CHAPTER 17.23 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY THE DEFINITION OF RENTAL UNIT, TO MODIFY THE SCOPE OF THE EXCEPTION TO THE MATERIAL OR HABITUAL LEASE VIOLATION CAUSE FOR EVICTION, AND TO REPEAL SECTION 17.23.1290, WHICH SUSPENDED PART 6 AND PART 7 OF THIS CHAPTER**

**WHEREAS**, on April 19, 2016, the Council of the City of San José (“City”) considered changes to the rent stabilization ordinance known as San José rental dispute mediation and arbitration ordinance which is currently located in Chapter 17.23 of the City of San José Municipal Code (the “Apartment Rent Ordinance”) and directed staff to return with changes to the Apartment Rent Ordinance (the “New Apartment Rent Ordinance”) by the end of the year; and

**WHEREAS**, on May 9, 2017, the City Council adopted the Tenant Protection Ordinance, which provided twelve specific causes for eviction that landlords may use to terminate a tenant’s tenancy; and

**WHEREAS**, in the public outreach meetings for the New Apartment Rent Ordinance the public requested that, in connection with the joint petitions for additional occupants, the Housing Department accelerate the consideration of changes to the exemption for addition of certain family members in the Material or Habitual cause for eviction in the Tenant Protection Ordinance; and

**WHEREAS**, thus the proposed amendments to the Tenant Protection Ordinance addressing these issues have been prepared; and

**WHEREAS**, thus the proposed amendments to the Tenant Protection Ordinance respond to these comments and comments made by the Housing and Community

Development Commission by removing brother and sister from the family members covered by the exemption to the Material or Habitual causes for eviction, and limiting the protection for adult family members added under the exemption to circumstances where the number of adults do not exceed the greater of the number permitted under the lease or two adults per bedroom.

**WHEREAS**, the proposed amendments also end the suspension of Part 6 and 7 of Chapter 17.23 of Title 17 of the San Jose Municipal Code, since the New Apartment Rent Ordinance will adopt new versions of such Parts 6 and 7; and

**WHEREAS**, the proposed amendments also add an exemption for apartments with recorded affordability restrictions and government owned or operated apartments from the Tenant Protection Ordinance, which was originally intended to be implemented in the regulations, since those apartments are already required to have good cause policies; and.

**WHEREAS**, the City wishes to approve and adopt amendments to the Tenant Protection Ordinance by modifying the definition of Rental Unit to exempt restricted affordable or government operated units, removing the suspension of Part 6 and 7, and modifying the scope of the exemption to the Material or Habitual lease violation of tenancy by removing the exception for the addition of a brother or sister to a tenant household and reducing the maximum occupancy limit on that protection.

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

**SECTION 1.** Section 17.23.1220 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

17.23.1220 Definitions

Subject to any exceptions, additions, and clarifications included in regulations that may be adopted by the City Manager for administration of this Part, the below listed terms are defined as follows:

- A. "Apartment Rent Ordinance" means Parts 1-10 of Chapter 17.23 of Title 17 of the San José Municipal Code.
- B. "Director" means the Director of the Housing Department or the Director's designee.
- C. "Ellis Act Ordinance" means Part 11 of Chapter 17.23 of Title 17 of the San José Municipal Code.
- D. "Just Cause Protections" means those protections afforded to a Tenant Household under Section 17.23.1240.
- E. "Just Cause Termination" shall have the meaning provided in Section 17.23.1250.
- F. "Guesthouse" shall have the meaning provided in Sections 20.200.470 and 20.200.480.
- G. "Guest Room" shall have the meaning provided in Section 20.200.460.
- H. "Habitual" shall have the meaning provided in regulations adopted by the City Manager for administration of this Part.
- I. "Hotel or Motel" shall have the meaning provided in Section 20.200.540.

- J. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.
- K. “Multiple Dwelling” means “Dwelling, Multiple” as defined in Section 20.200.340.
- L. “Notice of Termination” shall have the meaning provided in Section 17.23.1260.
- M. “Owner” means a fee owner of the property where the Rental Unit is located who holds at least a fifty (50) percent interest in the property.
- N. “Rent Stabilized Units” means Rental Units that are subject to rent stabilization under the City’s Apartment Rent Ordinance, which includes rooms or accommodations occupied for thirty (30) days or more in a Guesthouse and units in any Multiple Dwelling building for which a certificate of occupancy was received on or prior to September 7, 1979, as those terms are defined in Sections 20.200.340, 20.200.470, and 20.200.480 of the San José Municipal Code.
- O. “Rental Unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays Rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the San José Municipal Code. For purposes of this Part, Rental Unit includes Guest Rooms in any Guesthouse and, subject to any requirements in the Regulations, does not include Rental Units that owned or operated by any government agency, or any individual Rental Unit for which the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053,

for lower income households pursuant to legally binding restrictions recorded for the benefit of a government agency.

- P. "Security Deposit" means shall mean funds deposited with the Landlord for the purposes described in California Civil Code section 1950.5, as amended.
- Q. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to the use or occupancy of a Rental Unit.
- R. "Tenant Household" means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.
- S. "Unpermitted Unit" means a structure or parts of a structure that are being rented as a home, residence, or sleeping place, where the use as a home, residence, or sleeping place is not authorized, permitted, or otherwise approved by the City.

**SECTION 2.** Section 17.23.1250 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

17.23.1250 Just Cause Termination

- A. Just Cause Terminations. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as a "Just Cause Termination."
1. Nonpayment of Rent. After being provided with written notice of the identity and mailing address of the Landlord, and the amount of rent due, the Tenant has failed to pay rent to which the Landlord is legally entitled

pursuant to any written or oral rental agreement and under the provisions of state or local law, unless the Tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the Tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. Material or Habitual Violation of the Tenancy.

a. The Tenant has failed to cure a violation of any material term of the rental agreement within a reasonable time after receiving written notice from the Landlord of the alleged violation or has committed Habitual violations of the rental agreement, but only if either clause (i) or (ii) applies:

i. The demand to cure is based on terms that are legal and have been accepted in writing by the Tenant or made part of the rental agreement; or

ii. The demand to cure is based on terms that were accepted by the Tenant or made part of the rental agreement after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

b. The following potential violations of a tenancy can never be considered material or Habitual violations:

- i. An obligation to surrender possession on proper notice as required by law.
  - ii. An obligation to limit occupancy when the additional Tenant(s) who join the Tenant Household are any of the following: a dependent child or foster child, the spouse, ~~or~~ domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), parent, parent, ~~brother, or sister~~ of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom, or in the case of a studio unit, two adults~~the number permitted by the City under subsection B of Section 17.20.270.~~ The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, spouse, ~~or~~ domestic partner, or parent, ~~or parent, brother, or sister~~ of a Tenant, provided that the approval is not unreasonably withheld.
3. Substantial Damage to the Rental Unit. The Tenant, after written notice to cease and a reasonable time to cure, causes substantial damage to the Rental Unit, or common area of the structure or rental complex containing the Rental Unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such damage and to cease engaging in the conduct identified in the notice to cease.
4. Refusal to Agree to a Like or New Rental Agreement. Upon expiration of a prior rental agreement the Tenant has refused to agree to a new rental agreement that contains provisions that are substantially identical to the

prior rental agreement as may be further described in the regulations adopted by the City Manager, and that complies with local, state and federal laws.

5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.
6. Refusing Access to the Unit. The Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code section 1954, as amended.
7. Unapproved Holdover Subtenant. The Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.
8. Substantial Rehabilitation of the Unit. The Landlord after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, provided that:



- a. The repairs costs not less than the product of ten (10) times the amount of the monthly rent times the number of Rental Units upon which such work is performed. For purposes of this subsection, the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and
  - b. The repairs necessitate the relocation of the Tenant Household because the work will render the Rental Unit uninhabitable for a period of not less than thirty (30) calendar days; and
  - c. The Landlord gives advance notice to the Tenant of the ability to reoccupy the unit upon completion of the repairs at the same rent charged to the Tenant before the Tenant vacated the unit or, if requested by Tenant, the right of first refusal to any comparable vacant Rental Unit which has been offered at comparable rent owned by the Landlord; and
  - d. In the event the Landlord files a petition under the Apartment Rent Ordinance within six (6) months following the completion of the work, the Tenant shall be party to such proceeding as if he or she were still in possession, unless the Landlord shall submit with such application a written waiver by the Tenant of his or her right to reoccupy the premises pursuant to this subsection; and
  - e. The Landlord shall have provided relocation assistance as required by subsection B of Section 17.23.1250, below.
9. Ellis Act Removal. The Landlord seeks in good faith to recover possession of the Rental Unit to remove the building in which the Rental Unit is located permanently from the residential rental market under the

Ellis Act and, having complied in full with the Ellis Act and Ellis Act Ordinance, including the provision of relocation assistance as required by subsection B of Section 17.23.1250, below.

10. Owner Move-In. The Owner seeks in good faith, honest intent, and without ulterior motive to recover possession for: (a) the Owner's own use and occupancy as the Owner's principal residence for a period of at least 36 consecutive months commencing within three months of vacancy; or (b) the principal residence of the Owner's spouse, domestic partner, parent(s), child or children, brother(s), or sister(s) (each an "authorized family member") for a period of at least 36 consecutive months and commencing within three months of vacancy, so long as the Rental Unit for the Owner's authorized family member is located in the same building as the Owner's principal residence and no other unit in the building is vacant. It shall be a rebuttable presumption that the Owner has acted in bad faith if the Owner or the Owner's qualified relative for whom the Tenant was evicted does not move into the Rental Unit within three months from the date of the Tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least thirty-six (36) consecutive months. The Owner shall have provided relocation assistance as required by subsection B of Section 17.23.1250, below.
  
11. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the San Jose Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided

relocation assistance as required by subsection B.3 of Section 17.23.1250, below.

12. Vacation of Unpermitted Unit. The Landlord seeks in good faith to recover possession of an Unpermitted Unit in order to end the unpermitted use. The Landlord shall have provided relocation assistance as required by subsection B.3 of Section 17.23.1250, below.

B. Relocation Assistance\_

1. Tenants who receive a Notice of Termination that relies on subsections A.8 or A.10 of Section 17.23.1250 as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide the following relocation assistance to the Tenant Household. The relocation assistance must be provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.
  - a. Relocation Assistance. An amount equal to the Base Assistance provided for in the Ellis Act Ordinance, as set by resolution of the City Council.
  - b. Refund of Security Deposit. Owner must refund to the Tenant Household any security deposit paid by the Tenant Household, provided, however, that the Owner may withhold any properly itemized deductions from the security deposit pursuant to California Civil Code section 1950.5, as amended.
2. Tenants who receive a Notice of Termination that relies on subsection A.9 of Section 17.23.140 as the just cause rationale to terminate the tenancy

must have received, and the Landlord must have provided, all applicable Relocation Assistance provided for in the Ellis Act Ordinance.

3. Tenants who receive a Notice of Termination that relies on subsection A.11 or A.12 of Section 17.23.1250 as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide, Relocation Assistance as defined in Part 11 of Chapter 17.20, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance.

**SECTION 3.** Section 17.23.1290 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby repealed.

17.23.1290 Notices to Vacate; Chapter 17.23 Suspended

~~As of the effective date of this Tenant Protection Ordinance, eviction of Tenants may not be accomplished by service of a notices to vacate (as defined in Section 17.23.125) [confirm this definition is there] may be served on Tenants. Part 6, Evictions, or Part 7, Evictions from Certain Units Built After the Effective Date of this Chapter, shall be suspended and no arbitration or mediation hearings shall be held, unless they are for evictions where notices to vacate were properly served or given before the effective date of this Tenant Protection Ordinance.~~

RD:CAO  
10/31/17

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017, 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