

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

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
PART 3 OF CHAPTER 17.23 OF TITLE 17 OF THE SAN  
JOSE MUNICIPAL CODE TO EXPRESSLY PROHIBIT  
PASS THROUGH OF UTILITY CHARGES AND TO  
PROVIDE FOR A ONE-TIME RENT INCREASE FOR  
UNITS WITH EXISTING PASS THROUGH AGREEMENTS.**

**WHEREAS**, on November 14, 2017, City Council approved the updated Apartment Rent Ordinance, Parts 1-9 of Chapter 17.23, Title 17 of the San José Municipal Code, and deferred implementation of proposed language clarifying that pass throughs to tenants of utilities separate from rent was not allowed and directed Staff to return to Council with information on submetering, options for potential action related to utility pass throughs, and how existing pass through contracts could be addressed, if utility pass throughs are not allowed.

**WHEREAS**, the purposes of the Apartment Rent Ordinance include promoting stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare and to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the opportunity for landlords to earn a fair return.

**WHEREAS**, to protect tenants from excessive and unreasonable rent increases, the Apartment Rent Ordinance generally limits annual rent increases, requires notices be provided to the City, regulates how much and what types of costs may be passed through to tenants, provides for monitoring rents, and provides for an administrative review process for housing-related disputes

**WHEREAS**, the original Apartment Rent Ordinance was intended to regulate rent as a single unvarying charge for all housing services associated with the use or occupancy of an apartment but over the years some landlords have been unbundling various

housing services from rent, including imposing charges which can fluctuate on a monthly basis, despite the limits in the Apartment Rent Ordinance.

**WHEREAS**, the research conducted by staff shows that while submetering of multifamily buildings is an effective conservation tool, there are few subsidies available and submetering is currently more expensive than the savings it produces, making it an unlikely investment for landlords.

**WHEREAS**, staff's research also indicates that the annual rent increase of five percent allowed under the Apartment Rent Ordinance is sufficient to absorb significant increases in utility costs in future years.

**WHEREAS**, in order to address concerns regarding existing utility pass through agreements, staff has proposed amending the Apartment Rent Ordinance to allow a petition for an additional one time rent increase for landlords with existing pass through agreements that will become void on the adoption of the amendment.

**WHEREAS**, the Council of the City of San José wishes to approve and adopt amendments to the Apartment Rent Ordinance to clarify that the pass through of utility charges is not allowed and to allow a one time rent increase for units with existing pass through agreements by means of a petition process.

**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:

### **17.23.315 Limits on All Fees and Pass Through Charges**

A. Limitation on Pass Through Charges. No pass through of charges to Tenants is authorized except as expressly provided in this Chapter. Without altering the generality of the foregoing sentence, no charges for utility services (such as electricity, natural gas, telephone, water, waste water, sewer and refuse or waste management services) may be passed through to Tenants by Landlord. No charges may be passed through that are assigned to Tenants by virtue of ratio utility billing or similar unmetered allocation arrangements. This section is not intended to prohibit the government entity or nonprofit administering the voucher from imposing conditions based on regulations with respect to utility payments on Rental Voucher Units.

1. Existing Agreements. Existing rental agreement provisions for payment or pass through of utility service or similar charges or for ratio utility billing to the Tenant (“Passthrough Agreements”) are void.
2. Landlord Petition for One-time Offset Increase. If a Landlord has a written Passthrough Agreement for water, sewer and/or trash executed by the existing Tenant prior to January 1, 2018, the Landlord may file a petition with the City at or prior to the initial registration of the unit for a one-time increase in rent (“Offset Increase”) which increase, if awarded, shall not be subject to the one (1) increase in any twelve (12) month period limitation in Section 17.23.310. The petition process shall be in accordance with the Regulations.

3. Landlord Petition for One-time Offset Increase for Unmetered Gas and Electricity. If the units in the Landlord's building are not metered for gas and electricity due to the age or type of the building, the Landlord has complied with the requirements of Civil Code Section 1940.9 at the commencement of tenancy and Landlord has a written Passthrough Agreement for gas and/or electricity executed by the existing Tenant prior to January 1, 2018, the Landlord may file a petition with the City at or prior to the initial registration of the unit for a one-time increase in rent for gas and electricity ("Gas/Electricity Offset Increase") which increase, if awarded, shall not be subject to the one (1) increase in any twelve (12) month period limitation in Section 17.23.310. The petition process shall be in accordance with the Regulations.
4. If the pass through or Passthrough Agreement has been the subject of a Hearing Officer Decision or Voluntary Agreement that disallowed the pass through, no Offset Increase is allowed. If the unit is a Rental Voucher Unit no Offset Increase is allowed.
5. The Offset Increase amount will be the lesser of: (i) the average of the monthly charges paid by the Tenant in 2017 under the Passthrough Agreement for water, sewer and/or trash, or (ii) \$86 for a studio, \$91 for a one-bedroom, \$102 for a two-bedroom and \$149 for a three bedroom.

6. The Gas/Electricity Offset Increase amount will be the lesser of: (i) the average of the monthly charges paid by the Tenant in 2017 under the Passthrough Agreement for gas and/or electricity, or (ii) \$36 for a studio, \$58 for a one-bedroom, \$70 for a two-bedroom and \$84 for a three bedroom.
7. The Petition for One-Time Offset Increase can be challenged by the Tenant as provided in the Regulations.

B. Limitation on Fees. The following fees may not be charged to Tenants except as provided:

1. Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars (\$10.00) unless approved by Petition or the Regulations.
2. Excess Bounced Check Service Fees. No Landlord shall charge a Tenant a service charge for a dishonored ("bounced") check that exceeds the amount allowed under California Civil Code Section 1719 (a)(1), as amended. Landlord need not provide Tenant with a third party invoice for this service charge.
3. Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.

4. Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section 1950.6 (b), as amended.

C. Separate Line-Item Required. No Landlord may pass through any charge to any Tenant allowed under this Part unless the charge is clearly listed on the rental agreement and the Rent invoice (if any) and is accompanied by a true and correct copy of the invoice or bill paid by the Landlord for such charge.

D. Tenant Petitions Authorized. In the event a Tenant disputes the pass through of a charge or the calculation of the Tenant's share of the charge, the Tenant may file a Petition for a determination as to whether such charge may be passed through pursuant to this Section and whether the calculation of the Tenant's share comports with this Section and any Regulations governing such pass through. Any of the following reasons provide grounds for such a Petition:

1. There exists a dispute as to the genuineness of the bill or the amount of the charge.
2. The pass through of the charge is not authorized under this Chapter.
3. There exists a dispute as to whether the Tenant had the right to use and occupy the Rental Unit during the billing period or any portion of the billing period.
4. Mathematical errors in the relevant calculations.
5. Copies of the Landlord's invoice or bill were not provided as required.

- E. Security Deposit. Except as provided in Section 17.23.320.C, a Security Deposit, once established, cannot be raised for the duration of the tenancy. For purposes of this Section only, where several Tenants occupy one (1) Rental Unit, the Tenancy shall be deemed to continue so long as any one (1) of the Tenants who occupied the Rental Unit when the deposit was set continues to occupy the Rental Unit.

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