



Apartment Rent Ordinance

Amendments to the Apartment Rent Ordinance Regarding Utility
Pass Throughs To Tenants

San José City Council • Item 4.3 • May 22, 2018

Council Direction

- **April 24, 2018: Provided clarity stating RUBS will no longer be allowed**
- **Upon the effective date of the ordinance amendment:**
 1. All verbal RUBS agreements are void.
 2. All pre-existing written RUBS Agreements will be void following the decision of a Petition Examiner. Existing written RUBS shall be void after October 31, 2018.
 3. Petition filing period will be July 1, 2018 to October 31, 2018, and no longer linked to the rent registry process.
 4. All **NEW** written RUBS agreements executed after January 1, 2018 are void.
 5. Landlords who can demonstrate a standing business practice of requiring pass throughs for all tenants since June 2017 may participate in the petition process.

Transition Process for Existing Utility Pass Through Agreements

- 1 Landlord submits petition**
 - Based on the average of 2017 utility charges
 - Limited by the cap
- 2 Tenant sent a copy of the petition**
- 3 Petition examiner reviews petition, sends decision to landlord & tenant**
- 4 10 day comment period, decision final**
- 5 Written agreement will end upon the petition examiner decision**

Established Business Practice – Documentation Required

Agreements entered between 1/1/2018 – 5/1/2018

- 1 Landlord submits petition**
 - Based on average utility charges from initial tenancy to May 1, 2018
 - Limited by cap
- 2 Tenant sent a copy of the petition**
- 3 Petition examiner reviews petition, sends decision to landlord & tenant**
- 4 10 day comment period, decision final**
- 5 Written agreement will end upon the petition examiner decision**

Recommendation

1. Approve an Ordinance amending Section 17.23.315 of the Apartment Rent Ordinance, Chapter 17.23 of Title 17 of Municipal Code to modify the date on which existing written Ratio Utility Billing Systems (RUBS) pass through agreements are no longer effective and changing the timing regarding petitions for the one-time offset rent increase, specifically:
 - a) All verbal utility pass through agreements are void upon the effective date of the ordinance amendment;
 - b) All written utility pass through agreements with new tenants executed after January 1, 2018 are void upon the effective date of the ordinance amendment;
 - c) The petition filing period for offset petitions will be July 5, 2018 to October 31, 2018, no longer linked to the rent registry process;
 - d) All pre-existing written utility pass through agreements will be void following the decision of a Petition Examiner determining the outcome of the offset petition. If the landlord does not file a petition, the existing written utility pass through agreement shall be void after October 31, 2018; and
 - e) If the landlord has a written utility pass through agreement with a new tenant executed prior to May 1, 2018 and the landlord can prove that he/she has prior to June 30, 2017 required utility pass through agreements with the same terms for all tenants in the building, the landlord may continue, on the same terms as for a pre-January 1, 2018 pass through agreement, to apply that pass through agreement and to petition for an offset rent increase.
2. Direct staff to submit to the City Manager for approval a proposed amendment adding a Chapter 13 to the Apartment Rent Ordinance Regulations, which describes the offset petition process.

Landlords with Current Written Agreements

As of Effective Date of ARO Amendment



Offset Petitions

May charge RUBS until date of decision is made after petition filed



Established Business Practices

If can demonstrate tenants had RUBS before 7/1/2017, then may file petition for new tenants between 1/1/2018 to 5/1/2018



New Written Agreements on or after 1/1/2018 cannot charge RUBS



Verbal agreement void