

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 EXTEND THE TENANT PROTECTION ORDINANCE TO INCLUDE DUPLEXES, TO REQUIRE POSTING A NOTICE AT THE PREMISES ADVISING TENANTS OF THE TENANT PROTECTION ORDINANCE, TO PROVIDE FOR A TENANT'S RIGHT TO RETURN TO THE RENTAL UNIT IF ACQUITTED OR DISMISSED FROM THE CRIMINAL ACTION, TO REQUIRE SPECIFIC LANGUAGE IN THE NOTICE OF TERMINATION THAT THE NOTICE IS SERVED IN GOOD FAITH AND REFERS TENANTS TO THE RENT STABILIZATION PROGRAM FOR INFORMATION ON HOMELESS PREVENTION, AND TO INCLUDE A PROVISION STATING THAT NOTHING IN ORDINANCE SHALL ABROGATE THE PROTECTIONS UNDER CALIFORNIA AND FEDERAL LAW TO SURVIVORS OF VIOLENCE**

**WHEREAS**, on May 9, 2017, the City Council adopted the Tenant Protection Ordinance that provided causes for eviction that landlords may use to terminate a tenancy. The Tenant Protection Ordinance was later amended on November 14, 2017 and April 24, 2018 to include a thirteenth cause for eviction. The Tenant Protection Ordinance applies to Rental Units in any Multiple Dwelling (considered three units or more), Rent Stabilized Units, Unpermitted Units, and Guest Rooms in any Guesthouse; and

**WHEREAS**, on April 24, 2018, the City Council approved amendments to the Tenant Protection Ordinance regarding immigration and criminal activity. The City Council directed staff to return with amendments to include duplexes under the Tenant Protection Ordinance and consider additional amendments regarding immigration, domestic violence and the right to return for Tenants who are acquitted or dismissed from a criminal action; and

**WHEREAS**, City housing staff conducted research and community outreach to evaluate the impact of adding duplexes to the Tenant Protection Ordinance. Staff research determined that duplexes amount to approximately 9,460 rented apartments, housing approximately 29,326 tenants; and

**WHEREAS**, staff further researched other cities' inclusion of duplexes in their just cause ordinances and determined that Los Angeles, San Francisco, Oakland, Berkeley, Richmond, East Palo Alto, Santa Monica, and West Hollywood all include duplexes; and

**WHEREAS**, no-cause evictions have a negative, destabilizing impact on the peace, health and safety of tenants and on the City as a whole. Displacement through eviction destabilizes the living situation of tenants and impacts the health of San José's residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

**WHEREAS**, prohibiting no-cause evictions for approximately 29,326 Tenants will provide additional stability within the residential rental market, thereby serving the public peace, health, safety, and public welfare; and

**WHEREAS**, adding duplexes to the Tenant Protection Ordinance promotes fair dealings between Landlords and Tenants in recognition of the importance of residential housing and the Landlord-Tenant relationship; and

**WHEREAS**, since the Tenant Protection Ordinance took effect, the City has received over 9,000 termination notices served upon the Tenants, of which over 96% are due to nonpayment of rent. Thus, providing resources to tenants under threat of eviction with homelessness referral information and connecting them with housing staff will assist in mitigating the destabilizing effects of eviction and the imminent threat of homelessness; and

**WHEREAS**, studies reveal a link between domestic violence and homelessness as domestic violence survivors are particularly at risk of homelessness because these individuals often lack the financial resources for housing due to limited employment history or dependable income. The City recognizes this problem and the importance of existing federal and state law in protecting these victims from homelessness and bringing awareness to both Landlords and Tenants of these federal and state protections; and

**WHEREAS**, providing a right to return to the household for a Tenant who has been acquitted or dismissed from a criminal action promotes family stability and furthers the interest of due process;

**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. “Duplex” shall have the meaning provided in Sections 20.200.330 of the San José Municipal Code.

CD. “Ellis Act Ordinance” means Part 11 of Chapter 17.23 of Title 17 of the San José Municipal Code.

DE. “Just Cause Protections” means those protections afforded to a Tenant Household under Section 17.23.1240.

EF. “Just Cause Termination” shall have the meaning provided in Section 17.23.1250.

FG. “Guesthouse” shall have the meaning provided in Sections 20.200.470 and 20.200.480.

GH. “Guest Room” shall have the meaning provided in Section 20.200.460.

HI. “Habitual” shall have the meaning provided in regulations adopted by the City Manager for administration of this Part.

IJ. “Hotel or Motel” shall have the meaning provided in Section 20.200.540.

JK. “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.

KL. “Multiple Dwelling” means “Dwelling, Multiple” as defined in Section 20.200.340.

LM. “Notice of Termination” shall have the meaning provided in Section 17.23.1260.

**MN.** “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.

**NO.** “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.

**OP.** “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 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.

**PQ.** “Security Deposit” means shall mean funds deposited with the Landlord for the purposes described in California Civil Code section 1950.5, as amended.

**QR.** “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.

~~RS~~. “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.

~~SI~~. “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 17.23.1230 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

**17.23.1230 Scope: Regulations**

A. Subject to any exceptions, additions, and clarifications included in the regulations that may be adopted by the City Manager for administration of this Part, this Part applies to the following:

1. Rent Stabilized Units;

2. Rental Units in any Multiple Dwelling, excepting permitted Hotels and Motels;

3. Rental Units in any Duplex;

~~34~~. Guest Rooms in any Guesthouse; and

~~45~~. Unpermitted Units.

B. The City Manager may adopt regulations for the administration and implementation of this Part. The Director of Housing, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of this Part.

- C. Tenants of a unit or guestroom described in subsection A. above, shall be entitled to Just Cause Protections commencing on the first day of tenancy.

SECTION 3. Section 17.23.1240 of Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended to read as follows:

**17.23.1240 Just Cause Protections**

A. A Landlord may not terminate the tenancy of a Tenant unless the Landlord can demonstrate:

1. that the Landlord served a Notice of Termination to the Tenant Household and delivered a copy of the Notice of Termination to the City in accordance with Section 17.23.1260; and
2. that the termination qualifies as a Just Cause Termination in compliance with Section 17.23.1250.

B. Nothing under this Part shall abrogate the protections afforded to survivors of violence consistent with California Code of Civil Procedure Section 1161.3, as amended, and the Violence Against Women Act, Public Law 103-322, as amended.

C. Each Landlord shall post a written notice and maintain such posting, on a form approved by the Director in the three most commonly spoken languages, of the applicability and requirements of the Tenant Protection Ordinance, placed in a conspicuous location within each building containing one (1) or more Rental Units. The Landlord shall have complied with this requirement by posting a Notice of the Tenant Protection Ordinance in the same location as a notice to

Tenants posted in accordance with subsections (1) or (2) of California Civil Code Section 1962.5(a) or immediately adjacent to the posting of the Residential Occupancy Permit in compliance with Section 17.20.630.

D. A notice terminating tenancy shall include a statement of the following: 1) The notice is being served in good faith; and 2) That information regarding the notice terminating tenancy, including information on homeless prevention, is available from the Rent Stabilization Program, 200 E. Santa Clara St., 12<sup>th</sup> Floor, San José, CA 95112, phone (408) 975-4480.

SECTION 4. 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, a minor in the Tenant's care, the spouse, domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), 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 Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, a minor in the Tenant's care, spouse, domestic partner, or parent 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 José 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.
13. Criminal Activity.

- a. The Tenant Household, after receiving a written notice to cure (which notice shall include the return provisions listed in subsection d below) by removing the Violating Tenant (as defined below) from the household, and, where necessary, amending the lease to remove the Violating Tenant's name, fails to do so within a reasonable time, by one of the following methods as further described in the regulations:
  - i. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.
  - ii. Removing the Violating Tenant from the household and providing written notice to the Landlord that the Violating Tenant has been removed.
- b. For purposes of this subsection 13, a "Violating Tenant" shall mean an adult Tenant that is indicted by a grand jury or held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within 1,000 feet of the premises on which the Rental Unit is located. The term "premises" shall mean "Lot", as defined in Section 20.200.660 of the San José Municipal Code.
- c. The past criminal history of a Tenant shall not be a factor in determining whether the Tenant is a Violating Tenant.

d. If a Violating Tenant, as defined above, is acquitted from the charges or the charges are dismissed or reduced, he or she may return to the Rental Unit as a Tenant, so long as: 1) the Tenant Household still resides in the Rental Unit; and 2) the Tenant Household consents to the Violating Tenant's return.

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