COUNCIL AGENDA: 12/3/19
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ITEM: 4.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: **SEE BELOW**

DATE: December 3, 2019

Approved D. DSyL Date 12/3/19

SUPPLEMENTAL

SUBJECT: AMENDMENTS TO THE ADMINISTRATIVE CITATION SCHEDULE OF FINES FOR VIOLATIONS OF THE APARTMENT RENT ORDINANCE, TENANT PROTECTION ORDINANCE, AND ELLIS ACT ORDINANCE

REASON FOR SUPPLEMENTAL

The reason for this supplemental memo is to update the Administrative Citation Manual to provide a Rent Stabilization Program Compliance Class for first time violations that cannot be cured.

ANALYSIS

The Director of the Housing Department is authorized to issue administrative citations for violations of the Apartment Rent Ordinance, Tenant Protection Ordinance, and Ellis Act Ordinance. The Administrative Citation Manual provides the procedures for the administration of administrative citations by the Housing Department.

The Administrative Citation Manual **(Attachment B)** has been amended to include an additional procedure to address first time violations that cannot be cured. For a first time violation that cannot be cured, violators will be permitted to attend a Rent Stabilization Program Compliance Class. Completion of this class will avoid the issuance of a citation. This option will only apply to non-curable violations under the Apartment Rent Ordinance and Tenant Protection Ordinance. Ellis Act Ordinance violations will not be entitled to take this Compliance Class, since those violations are one-time in nature and results in tenant displacement.

/s/
JACKY MORALES-FERRAND
Director of Housing

For questions, please contact Rachel VanderVeen, Deputy Director, at (408) 535-8231.

Attachment B – Administrative Citation Manual (from memo submitted November 15, 2019)

ATTACHMENT B

City of San José Housing Department

Rent Stabilization Program
Administrative Citation Manual

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I. Introduction

Chapter 1.15 of the San José Municipal Code ("SJMC") governs the use of Administrative Citations by the City. This manual provides guidance to staff regarding the administration of Administrative Citations by the Housing Department, in conformance with Chapter 1.15.

The primary use of citations by the Department is for violations of the Apartment Rent Ordinance (Municipal Code Chapter 17.23). The Housing Department's Rent Stabilization Program is responsible for administering the Apartment Rent Ordinance, Ellis Act, and Tenant Protections. This includes administering the fair return, capital improvement, and service reduction petition processes, as well as issuing administrative citations for violations of these Ordinances.

The City Council authorized the Director of Housing to use administrative citations to enforce all the aforementioned ordinances managed by the Housing Department.

II. Purpose

The purpose of the Housing Department's Administrative Citation process is to elicit compliance with the Apartment Rent Ordinance (ARO) in an expeditious and cost-effective manner. The citation process can also be helpful in resolving issues between owners and tenants.

Section 17.23 encompasses the Apartment Rent Ordinance (ARO), the Tenant Protection Ordinance (TPO), and the Ellis Act Ordinance. Therefore, the use of Administrative Citations applies to violations of the ARO, TPO and Ellis Act Ordinance. SJMC section17.23.570, cited below, authorizes the use of administrative citations for the Apartment Rent Ordinance.

> *17.23.570 - Administrative Citations; Injunctive Relief.*
>
> *A. The Director may enforce the rights and responsibilities created by this Chapter 17.23 and the Regulations, including issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.*
> *B. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter or the Regulations.*

In terms of the ARO, Administrative Citations are not intended to be used in lieu of, or to supplement, the existing petition process established under SJMC 17.23 and their Regulations for resolving petitions initiated by tenants and owners for fair return, service reduction, or other violations of Parts 1-9 of SJMC 17.23. These issues will continue to be addressed by the Rent Stabilization Program Hearing Officer and Petition Examiners. As stated, citations will be used to address violations of Chapter 17.23 that would otherwise require resolution through the courts. Unlike the petition-driven hearings, administrative citations are initiated by the City. Staff may initiate this process by use of Compliance Notices, with a subsequent issuance of a citation if the violation is verified and unresolved after warning.

The TPO and Ellis Act Ordinance do not contain a petition process for violations like the ARO. Accordingly, administrative citations are to be used as a primary method for enforcement of their provisions.

It is important to emphasize that the use of an Administrative Citation for violations does not preclude the City from pursuing other available remedies, such as civil or criminal actions, for the same types of violations.

III. Schedule of Fines

According to SJMC 1.15.040, all fine amounts shall be established as part of the Schedule of Fines approved by City Council.

1.15.040 - Amount of fines.
A. The amounts of the fines for code violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the city council.

The schedule of fines are established in the Resolution. As was the case with this schedule, all substantive changes to the Schedule of Fines pertaining to the Apartment Rent Ordinance shall be taken before the Housing and Community Development for input and public comment prior to seeking approval from City Council.

Rationale for Setting Fine Amounts

Unlike fees which are intended to cover the City staff time for providing a specific service, a fine does not tie specifically to the amount of work entailed by staff. At a minimum, the fine should cover the staff time plus a financial penalty. The financial penalty is based on the following factors: Severity of the Violation; Deterrence Against Future Action; Application to the Property or the Individual Household; and Escalation of Fines per SJMC Section 1.15.040.

- **Severity of the Violation** – Fine amounts should be proportional to the severity of the violation and the impact on the public. Violations that have a relatively minor impact on the public should be reflected in the fine amount; whereas, violations that have a major impact on the public will carry a larger fine. An example of this is provided below.

  17.23.050 - Notice of Apartment Rent Ordinance to Tenant Households.

  Each Landlord shall post a written notice and maintain such posting, on a form approved by the Director, of the applicability of the Apartment Rent Ordinance in a conspicuous location within each building containing one (1) or more Rent Stabilized Units. The Landlord shall have complied with this requirement by posting a Notice of the Apartment Rent 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.

  In this case, a tenant has not been immediately impacted by the failure to post the sign. If the situation can be demonstrated to be remedied after the issuance of a warning notice, then the citation does not have to be issued.

- **Deterrence Against Future Violations** – A citation can act as a financial penalty for violations of the Ordinance and deterrence against future violations. There are situations when citations may be issued to property owners for a violation which caused a tenant to

vacate an apartment. An example of this would be where a tenant has been evicted pursuant to the Ellis Act, but has not received the required relocation payment(s). In this instance, the citation will not prevent what already occurred, but could be deterrent against similar violations in the future. In such cases, citation amounts are intended to be substantial to act as a deterrent to dissuade the property owner from violating the Ordinance and/or repeating the illegal activity in the future.

Therefore, it is important that the fine amount for such violations be set at an amount which would exceed the financial benefit that the owner would receive by violating the Ordinance. Again, the Ellis Act Ordinance provides a pertinent example. It is important that the penalty for not providing relocation benefits to a household be greater than the financial benefit the owner would receive if they chose to violate the Ordinance and not provide relocation benefits to the household.

- **Applicability to the Property or Individual Household –** It should be noted that fine amounts are based on whether the violation affects one tenant household or the entire apartment complex or property. In general, most fines will likely apply to violations against individual household or "unit". Thus, citations can be issued for each unit or household that is impacted, or a citation may include multiple units. In some cases, fines will be applicable to each property – regardless of how many units it contains. An example is provided below:

  17.23.560 A Disclosure to Purchasers of Real Property

  In this case, the fine for failure to "disclose to a potential buyer in writing, prior to the close of escrow that the Rent Stabilized unit is subject to this Chapter 17.23 and implementing regulations" would be assessed per property – not for each unit, since the violation impacts the entire property.

- **Escalation of Fines per SJMC Section 1.15.040 –** The San José Municipal Code Section 1.1.5.4 provides the guidelines for establishing administration citation fine amounts. The Ordinance calls for an escalation of fines for repeat violations of the same code provision. The specific language is provided below.

  1.15.040 - Amount of fines.
  A. The amounts of the fines for code violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the city council.
  B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within thirty-six months from the date of an administrative citation.
  C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

  The Housing Department will adhere to the following text contained in the adopted Schedule of Fines.

SECTION 3. Except as otherwise specifically set forth in Section 2 (of the Schedule of Fines), the fine amount for a second violation of the same Municipal Code section by the same person within a thirty-six (36) month period shall be and equal one hundred twenty-five percent (125%) of the fine amount listed in this Resolution for a first violation of that Municipal Code section at the time of the second violation.

SECTION 4. Except as otherwise specifically set forth in Section 2 above, the fine amount for a third and subsequent violation of the same Municipal Code section by the same person within a thirty-six (36) month period shall be and equal one hundred fifty percent (150%) of the fine amount listed in this Resolution for a first violation of that Municipal Code section at the time of the third or, as applicable, subsequent violation.

SECTION 5. Any fine amount imposed pursuant to Chapter 1.15 of the San José Municipal Code and this Resolution shall be deemed delinquent if it is not paid in accordance with the terms and provisions of Chapter 1.15. Any person who fails to pay to the City the amount of any fine imposed pursuant to the provisions of Chapter 1. 15 of the San José Municipal Code and this Resolution on or before the date that fine amount is due shall be liable for the payment of an additional delinquency penalty. The delinquency penalty is equal to ten percent (10%) of the amount of the fine due to the City, or ten percent (10%) of the amount of the fine remaining unpaid to the City if a portion of the fine amount was timely paid. Interest shall accrue on all delinquent fine amounts, exclusive of delinquency penalties, at the rate of one half of one percent per month, pro rata, of the total delinquent fine amount, from the date the fine amount becomes delinquent until the date that all delinquent fine amounts are paid to the City.

IV. Utilization of Administrative Citations

Administrative Citations are intended to address discrete, transitory, and time-sensitive issues which have clear facts that can be more easily adjudicated by an Administrative Citation Hearing Officer. An example of this would include:

> *17.23.1260 - Notice of Termination to the Tenant and City.*
>
> *A Landlord must mail or deliver to the City a true and accurate copy of any summons and complaint delivered to a Tenant or Tenant Household for unlawful detainer to pursuant to California Code of Civil Procedure Section 1161, as amended, within 3 days of delivering such summons and complaint to a Tenant or Tenant Household.*

In this example, determining if there is a violation is very straightforward. Either the City has received the notice, or it has not. If there is a dispute as to whether or not the City received or misplaced the notice, the owner can provide a copy of the notice and proof that it was delivered to the City.

- **Compliance Notices** – The primary objective of using Administrative Citations is to obtain compliance. Therefore, Compliance Notices should be issued to first-time offenders of the ARO in cases where the alleged illegal activity can be addressed expeditiously through the use of a Compliance Notice.
  There are situations in which the Department may decide not to issue a Compliance Notice to an owner prior to issuing an Administrative Citation for a violation of the ARO, TPO or Ellis act in which there is "no opportunity to remedy" the situation. An example of this is where an owner has not properly followed the Ellis Act process and a has already been illegally displaced. In such instances, a Compliance Notice would not enable a tenant to return to their former residence. A citation will convey the gravity of the violation and compel future compliance with the Ordinance.

  Another situation where staff may choose not to issue a Compliance Notice, would be when an owner has already received a written warning or citation for the same violation for a different tenant. In this case, staff may proceed directly with the issuance of a citation. Staff should provide a note in the Salesforce database noting the reason why a citation was issued without a.

- **Review of Compliance Notices and Administrative Citations –** It should be noted that all Notices and Citations should be reviewed and approved by the Rent Stabilization Program Manager prior to the signing and issuance of the citation by the Director of Housing. The Director or delegated Deputy Director(s) will sign all citations. The City Attorney will review all templates for general language, but will not typically review individual Compliance Notices for specific violation(s) of the Ordinance. The City Attorney should review all Administrative Citation cases pertaining to the Tenant Protection Ordinance and Ellis Act before a citation is issued. City Attorney review of citations for improper noticing or filing under the ARO will typically not require City

Attorney review prior to issuance. Additional information regarding the review process is covered in section 7 of this manual - Procedure for Issuing Administrative Citations.

- **Administrative Citation - Required Content** – Per SJMC Section 1.15.030.B, each Citation shall contain the following information:

    1. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;
    2. The address or a definite description of the location where the violation occurred;
    3. The section of this code violated and a description of the violation;
    4. The amount of the fine for the code violation;
    5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
    6. An order prohibiting the continuation or repeated occurrence of the code violation described in the Administrative Citation;
    7. A description of the Administrative Citation review process, including the time within which the Administrative Citation may be contested and the place from which a request for hearing form to contest the Administrative Citation may be obtained; and
    8. The name and signature of the citing enforcement officer.

- **Rent Stabilization Program Compliance Class In Lieu of Fine for First Time Violations That Cannot Be Cured –** For first time violations that cannot be cured, violators will be permitted to attend a Rent Stabilization Program Compliance Class. Completion of this class will prevent the issuance of a citation. Ellis Act Ordinance violations will not be entitled to take the class.

- **Completing for an Administrative Hearing –** Any Administrative Citation can be contested. Therefore, it is best to prepare the citation presuming that it will be challenged. If contested, the Citation will be reviewed by a Hearing Officer. It is important to remember that the Hearing Officer is not expected to be an expert on the ARO, TPO or Ellis Act. Therefore, citations should contain all of the information required under SJMC 1.15.030 in a clear, discernable manner that is incontrovertible and not easily disproved. For example, in the case of a withdrawal of a rent-stabilized apartment from the market, owners are required to provide relocation assistance to each tenant as stated below.

    17.23.1150 - Relocation assistance.
    A. Relocation Assistance Benefits. When an owner withdraws a building containing a covered unit from the residential rental market and in connection with the withdrawal causes one or more tenancies to be terminated, the owner must provide, and each tenant household residing in a covered unit is entitled to receive from the owner, notice of and access to an application for all vacant residential rental unit(s) owned by the owner and located within the City of San José, as well as the following:

1. The owner must pay and the tenant household must receive relocation assistance. The base assistance required pursuant to Subsection C of Section 17.23.1150 must be deposited into escrow at the time of delivery of the notice of intent to withdraw to the tenants. Any qualified assistance due pursuant to clauses (a) - (d) of Subsection C.2 of Section 17.23.1150, must be deposited into escrow as soon as the completed tenant qualification form has been verified by the relocation specialist and approved by the director. The owner is neither responsible for nor liable to divide the relocation assistance among the tenant(s) that comprise a tenant household entitled to relocation assistance.

While the actual relocation benefit may be complicated by tenants' unique circumstances, failure to pay for relocation benefits, provide relocation services, or deposit funds into an escrow account are requirements that can be easily verified or disputed. On the other hand, determination of qualified assistance can be more involved, as demonstrated in the example below.

17.23.1150 - Relocation assistance.

2. Qualified assistance for tenant households that qualify under one or more of the following categories:

a. Tenant households that are lower income households, as defined in California Health and Safety Code Section 50079.5, as amended, and annually listed, as adjusted for household size, by the regulations of the state housing and community development department for the County of Santa Clara.

In this case, staff can still proceed with a Citation if the relocation benefit calculation can be shown to be significantly flawed. City Attorney's Office approval should be obtained prior to proceeding with more complex violations. In some complex instances, the preferred approach may be to attempt to address issues through communications with owner and staff to avoid the Administrative Citation process altogether. Compliance Notices can be used as part of this approach. Documentation regarding the written warning could also be a likely consideration by the Hearing Officer.

- **Request for Hearing** – If the property owner wishes to contest the citation, they will need to complete the Hearing Request Application to contest the violation in a hearing with the City's Administrative Citation Hearing Officer. This document can be found at the Finance Department website. The specific text from the website is provided below.

Contest a citation and request a hearing
If you received a citation and believe there is an error, you may contest the citation by completing the form to request a hearing. Forms must be returned to the City within 30 days of receiving the citation along with an advance deposit of the fine or an advance deposit hardship waiver. Please see hardship qualifications for required documentation.

Even if a hearing is requested, payment of the citation is still required within the

timeframe stated in the citation unless the requestor can demonstrate hardship. The Hearing Request Application contains information regarding the hardship requirements. The Hearing Officer shall conduct the hearing in accordance with Chapter 1.15 of the San José Municipal Code.

V. Completing the Administrative Citation Process

Up until the time a Citation is issued, the RSP staff can close the violation and note in the database. The Administrative Citation should be closed upon payment of the fine and once staff has confirmed that the date for filing a request for hearing has passed. Information on where to pay the fine is found on the Finance Department website. It is also listed below.

Where to Pay
Request forms, payments and/or advanced deposit hardship waiver can be paid by mail or in person.

By Mail:
City of San José – Finance Department
Attention: Payment Processing
200 E. Santa Clara St.
13th Floor
San José, CA 95113

In Person:
City of San José - Cashiering
200 E. Santa Clara St.
1st Floor
San José, CA 95113

It is important to note that the underlying issue which prompted the citation may still be unresolved even if the citation is paid. If the Citation is paid, and the issue is still unresolved, note in the database and discuss with the Program Manager. The City cannot issue a new citation for the exact issue i.e. – the same address, tenant, violation, and violation date. In these cases, the City will need to determine if it wishes to take other enforcement actions.

If payment is not received by due date, the RSP staff will notify the RSP Program Manager. The Program Manager will then contact the City Attorney to determine the appropriate course of action.

VI. Procedure for Processing Administrative Citations

This section sets forth a process that Rent Stabilization Program (RSP) staff should use as a general guide for processing Administrative Citations.

1. Staff becomes aware of a potential violation of Municipal Code Section 17.23. Potential violations can be brought forward by a tenant, concerned citizen or Housing Department staff. When a potential violation is discovered, the RSP staff person with knowledge of the potential violation should make an entry into the RSP database noting the date the potential violation was identified, the potential code violation from the Schedule of fines, and a detailed written description of the offense.

2. RSP staff should attempt to verify the complaint through some type of corroborating information. This could be in the form of documentation substantiating the complaint, comparing information against prior entries in the RSP database, statements from a third party, or by obtaining confirmation from the property owner via a phone call.

3. Staff should then draft a Compliance Notice via the RSP database, and provide to the RSP manager for review. The Compliance Notice should contain the property owner name and property violation address, specific code violation, the corrective action, the date of the letter, the deadline for corrective action to avoid a citation, and a requirement that proof be provided that the corrective action occurred.

4. The RSP manager signs the Compliance Notice and returns to the RSP staff for mailing.

5. Issue the Compliance Notice by certified mail. Generate the letter from the database and/or document the action. The letter must be served in accordance with section 1.04,140 of the Municipal Code.

6. For first time violations that cannot be cured, RSP staff will issue a letter providing violators with an option to attend a Rent Stabilization Program Compliance Class to avoid the issuance of a citation. Completion of this class will avoid issuance of a citation.

~~6.~~7. If the corrective action date has not been met by the date provided in the Compliance Notice, prepare the Administrative Citation through the RSP database. The Citation must contain the information required in Chapter 1.15. of the Municipal Code as described above. Provide the RSP manager with Citation for review (or provide the relevant information regarding the citation).

~~7.~~8. The RSP Manager should then review the Citation to determine if it should be reviewed by the City Attorney's Office. See Section 3 of this manual for guidance on when to seek review by the City Attorney.

~~8.~~9. The RSP Manager will then direct staff to print the Administrative Citation for the Director's signature via the database.

~~9.~~10. Director Issues the Citation. The System will note the date that the owner must file a request for hearing and/or pay the fee. The Citation and all notices shall be served on the responsible party in accordance with the provisions of Section 1.04.140 of the Municipal Code.

~~10.~~11. If the owner files a Request for Hearing, staff will be notified by the Finance Department. Record hearing information in the database and prepare for the hearing.

~~11.~~12. Attend hearing and record hearing result in the database.

~~12.~~13. Once payment of the Citation is verified, note in the database and change the status of the citation to closed. (Note: Note: Citation Payments are made with Finance Department. Therefore, RSP staff may need to check with the Finance Department regularly regarding the status of fine payments). If payment is not received by the due date, notify the RSP Program Manager.

VII. Chapter 1.15 of the San José Municipal Code - Administrative Citations

Chapter 1.15 - ADMINISTRATIVE CITATIONS

1.15.010 - Applicability.

A. This chapter provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this code.

B. The administrative citations process set forth in this chapter does not apply to continuing violations of this code that pertain to building, plumbing, electrical, or other similar structural or zoning issues.

C. Use of this chapter shall be at the sole discretion of the city, subject to Section 1.15.010.B.

(Ords. 24725, 25055.)

1.15.020 - Enforcement officer - Defined.

For purposes of this chapter, "enforcement officer" shall mean any city employee or agent of the city with the authority to enforce any provision of this code.

(Ord. 24725.)

1.15.030 - Administrative citation.

A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.

B. Each administrative citation shall contain the following information:

1. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;
2. The address or a definite description of the location where the violation occurred;
3. The section of this code violated and a description of the violation;
4. The amount of the fine for the code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;

7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and

8. The name and signature of the citing enforcement officer.

(Ords. 24725, 25870.)

1.15.040 - Amount of fines.

A. The amounts of the fines for code violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the city council.

B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within thirty-six months from the date of an administrative citation.

C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

(Ord. 24725.)

1.15.050 - Payment of the fine.

A. The fine shall be paid to the city within thirty days from the date of the administrative citation.

B. Any administrative citation fine paid pursuant to subsection A. shall be refunded in accordance with Section 1.15.100 if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

C. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

(Ord. 24725.)

1.15.060 - Hearing request.

A. Any recipient of an administrative citation may contest that there was a violation of the code or that he or she is the responsible party by completing a request for hearing form and returning it to the city within thirty days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 1.15.070.

B. A request for hearing form may be obtained from the department specified on the administrative citation.

C. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

D. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

(Ord. 24725.)

1.15.070 - Advance deposit hardship waiver.

A. Any person who intends to request a hearing to contest that there was a violation of the code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section 1.15.060.A. may file a request for an advance deposit hardship waiver.

B. The request shall be filed with the department of finance on an advance deposit hardship waiver application form, available from the department of finance, within fifteen days of the date of the administrative citation.

C. The requirement of depositing the full amount of the fine as described in Section 1.15.06.A. shall be stayed unless or until the director of finance makes a determination not to issue the advance deposit hardship waiver.

D. The director may waive the requirement of an advance deposit set forth in Section 1.15.060.A. and issue the advance deposit hardship waiver only if the cited party submits to the director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director the person's actual financial inability to deposit with the city the full amount of the fine in advance of the hearing.

E. If the director determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the city within ten days of the date of that decision or thirty days from the date of the administrative citation, whichever is later.

F. The director shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the director shall be final.

G. The written determination of the director shall be served upon the person who applied for the advance deposit hardship waiver.

(Ords. 24725, 25837.)

1.15.080 - Hearing officer.

The city manager shall designate the hearing officer for the administrative citation hearing.

(Ord. 24725.)

1.15.090 - Hearing procedure.

A. No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with Section 1.15.060 or an advance deposit hardship waiver has been issued in accordance with Section 1.15.070.

B. A hearing before the hearing officer shall be set for a date that is not less than fifteen days and not more than sixty days from the date that the request for hearing is filed in accordance with the provisions of this chapter.

C. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

E. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.

F. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.

(Ord. 24725.)

1.15.100 - Hearing officer's decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.

B. If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the city shall be retained by the city.

C. If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

D. If the hearing officer determines that the administrative citation should be canceled and the fine was deposited with the city, then the city shall promptly refund the amount of the deposited fine, together with interest at the average rate earned on the city's portfolio for the period of time that the fine amount was held by the city.

E. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.

F. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.

(Ord. 24725.)

1.15.110 - Late payment charges.

Any person who fails to pay to the city any fine imposed pursuant to the provisions of this chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

(Ord. 24725.)

1.15.120 - Recovery of administrative citation fines and costs.

The city may collect any past due administrative citation fine or late payment charge by use of all available legal means. The city also may recover its collection costs pursuant to Section 1.17.120.

(Ord. 24725.)

1.15.125 - Right to judicial review.

Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the municipal court in Santa Clara county in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

(Ord. 25055.)

1.15.130 - Notices.

A. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party in accordance with the provisions of Section 1.04.140 of this title.

B. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

(Ord. 24725)

VIII. Municipal Code Section 1.01.140 – Notices: Services Procedure

1.04.140 - Notices - Service procedure.

Whenever a notice is required to be given under this code, unless different provisions herein are otherwise specifically made, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(Prior code § 1307.)

IX. Hearing Request Application and Advance Deposit Hardship Waiver

HEARING REQUEST APPLICATION
ADVANCE DEPOSIT HARDSHIP WAIVER QUALIFICATIONS:

IF YOU CHOOSE TO APPLY, YOU MUST PROVIDE THE INFORMATION REQUESTED.

Failure to provide sufficient information will result in a determination of ineligibility for this waiver.

The information you provide will assist the City in deciding whether you qualify for a waiver of advance deposit for your hearing request.

PROOF OF INCOME DOCUMENTATION:

You MUST include the current Federal Income Tax Return (form 1040, 1040A), a copy of your Schedule C (if applicable) and copies of all the following that apply for the individual(s) cited.

Additional current proof of income required

1. Letter 1722 from IRS for non-income adults 1-800-829-1040
2. Verification of Social Security Benefits (SSA) 1-800-772-1213
3. Verification of Supplemental Security Income (SSI) 1-800-772-1213
4. Welfare of General Assistance eligibility (Notice of Action/ Income Verification)
5. Documentation of Unemployment from Employment Development Department (EDD) 408-436-5600

GENERAL QUALIFICATIONS:

Deposit Waiver Guidelines for 2019 (Multiplied by 3)	
2019	$37,470

Residential Advance Deposit Waiver Guidelines for 2019:	
Total No. of Dependents	Annual Gross Income
1	$37,470
2	$50,730
3	$63,990
4	$77,250
5	$90,510
6	$103,770
7	$117,030
8	$130,290
For each additional person, add	$13,260

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY OF SAN JOSE
ADMINISTRATIVE CITATION
HEARING REQUEST APPLICATION

Please note only the person(s) listed on the administrative citation may request a hearing.
*If the cited party wishes a tenant, relative or other designated proxy to attend the hearing they must list that person(s) under "person attending hearing".

REQUEST FOR HEARING

(This request is due within 30 calendar days of citation date with the advance deposit of the full citation amount)

Citation Issued To:	Phone No. ( )
Citation No(s):	Citation Date(s):
Violation Address:	
*Person Attending Hearing:	Phone No: ( )
Mailing Address:	
Please explain your reason for believing this citation(s) was issued in error:	

I declare under penalty of perjury that I am the cited individual and the foregoing statement and information provided by me is true and correct.

Signature: **Date:**

Cited individual(s)

HARDSIDP PAYMENT INFORMATION FOR HEARING ONLY

If you are contesting the citation and are unable to pay the advance deposit, you may request an advance deposit hardship waiver **within 15 calendar days of the citation date**. Please complete the sections below once you have reviewed the qualification on the back of this form. Any form submitted without all proper documentation will be denied.

CONTACT INFORMATION

Mail form and payment to: City of San Jose - Finance

Revenue Management - Support Staff
200 E. Santa Clara St., 13th Floor
San Jose, CA 95113

Phone 408-535-7055 Option #5 / Fax 408-292-6480

FOR OFFICE USE ONLY (Below)

Signature _____ **Date:** _ _ _ _ _ _ _ _

Deposit Waiver: **Granted** D **Denied** D

Reason for denial _____

Updated 12/13/2017

X. Curability Chart

The chart below lists citable violations under Parts 1-12 of Chapter 17.23 of the Municipal Code. The City of San José's Housing Department has determined the following violations to be either curable or incurable, as described below:

Section	Offense	Is Item Curable?
17.23.050(A)	Notice of Apartment Rent Ordinance to Tenant Households – Posting Notice on Building	Curable
17.23.050(B)	Notice of Apartment Rent Ordinance to Tenant Households – Written Notice Prior to Lease	Curable
17.23.060	Limit on Electronic Payment	Curable
17.23.300(A)	Initial Rent and Vacancy Decontrol – Valid Decontrol	Curable
17.23.310(A, B)	Limits on Rent Increases – Annual Rent Increase Limit	Curable
17.23.310(C)	Limits on Rent Increases – Rent Increase Frequency Limit	Curable
17.23.520(B)	Waivers – Attempt to Waive Tenant Rights	Curable
17.23.560(A)	Disclosure to Purchasers of Real Property	Non-Curable, if property is sold
17.23.600(B)	Notices of Termination of Tenancy Mandatory Notice to City	Curable
17.23.600(C)	Notices of Termination of Tenancy – Notice of Re-Rental to the City	Curable
17.23.705	Tenant Buyout	Non-Curable, if Tenant no longer occupies unit
17.23.900(A)	Rent Registry – Failure to Register – Registration	Curable
17.23.900(B)	Rent Registry – Failure to Register – Copy of Registration to Tenant	Curable
17.23.900(E)	Rent Registry – Failure to Register – Collusion	Non-Curable
17.23.900(F)	Rent Registry – Failure to Register	Curable
17.23.1130(B)	Copies of Forms – Failure to provide forms to Tenants	Curable, if Tenant still occupies unit
17.23.1130(C)	New Tenants During the Withdrawal Process – Failure to provide withdrawal notice to the new Tenants	Curable, if Tenant still occupies unit
17.23.1130(E)	Notices of Tenants Right to Extend Tenancy – Failure to provide notice of right to extend	Curable, if Tenant still occupies unit

17.23.1130(F)	Withdrawal of less than an entire building –	Curable
17.23.1130(H)	Non-Rent Stabilized Properties – Failure to meet requirements to withdraw	Curable
17.23.1140(A)	Notices of Intent to Withdraw – Service on Tenants	Curable
17.23.1140(B)	Notices of Intent to Withdraw – Service on City	Curable
17.23.1140(C)	Notices of Intent to Withdraw – Contents	Curable
17.23.1145	Recording of Memorandum – Failing to record with the County Clerk's Office *Note: Fine is levied per Property*	Curable
17.23.1150(A)	Relocation Assistance – Failing to pay to a tenant household	Curable
17.23.1150(B)	Relocation Assistance – Depositing Relocation Benefits in Escrow Account	Curable
17.23.1150(C)	Relocation Assistance – Failing to pay entire relocation assistance entitled to tenant household	Curable
17.23.1150(E)	Relocation Assistance – Relocation Specialist Services	Curable, if Tenant still occupies unit
17.23.1151(A)	Voluntary Alternative Relocation	Curable
17.23.1151(C)	Voluntary Alternative Relocation – Failing to pay relocation benefits if alternative housing not accepted	Curable
17.23.1160(A)	One Hundred Twenty (120) Day Notice Required to Tenant Household	Curable
17.23.1160(B)	Provide Notice of Right to Extend Tenancy up to One Year	Curable
17.23.1160(C)	Effective date of withdrawal; extension of tenancy	Curable
17.23.1180(A)	Right to Return Offered to Former Tenant Households	Curable
17.23.1180(B)	Re-Control of New-Construction	Curable
17.23.1180(C)	Affordable Housing Requirement	Curable
17.23.1240(A)	Just Cause Required in Notice	Curable, if Tenant still occupies unit
17.23.1240(C)	Just Cause Protections – notice of rights	Curable, if Tenant still occupies unit
17.23.1240(D)	Termination Notice Statement	Curable, if Tenant still occupies unit
17.23.1250(B)	Just Cause Termination – Relocation Assistance	Curable, if tenant still

		occupies or can be reached.
17.23.1260(D)	Notice of Termination to the Tenant and City	Curable
17.23.1260(E)	Summons and Complaint sent to the Tenant and City	Curable