

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE ADDING
PART 12 CHAPTER 17.23 TO TITLE 17 OF THE SAN JOSE
MUNICIPAL CODE AND SETTING FORTH THE FACTS
CONSTITUTING SUCH URGENCY**

WHEREAS, on April 18, 2017, Council of the City of San José (“City”) voted to request staff to return with a Tenant Protection Ordinance without enrollments that limits the cause for eviction for tenants of multifamily dwellings, guesthouses and unpermitted apartments to the twelve (12) listed just cause termination grounds (“Just Cause Protections”; and

WHEREAS, if adopted, upon its effective date the Tenant Protection Ordinance will provide the Just Cause Protections commencing at the beginning of the tenancy and end the practice of using no-cause notices to evict tenants of multifamily dwellings, guesthouses and unpermitted apartments; and

WHEREAS, staff was also directed to prepare this urgency ordinance to allow the protections to be implemented immediately; and

WHEREAS, pursuant to section 605 of the City Charter, this urgency ordinance must be “adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency”; and

WHEREAS, the Tenant Protection Ordinance is intended to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City to petition for regarding their grievances, request correction of code violations and necessary repairs,

and exercise all of their rights under local, state, and federal laws without fear of retaliation; and

WHEREAS, the Tenant Protection Ordinance regulates landlord and tenant relations by promoting fair dealings between landlords and tenants in recognition of the importance of residential housing and the landlord-tenant relationship as components of a healthy, safe, and vibrant city; 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; and

WHEREAS, 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, studies have shown students who have moved multiple times are more likely to have lower engagement in school, poorer grades in reading, and have a higher risk of dropping out, thus impacting the City as a whole; and

WHEREAS, displacement through eviction creates undue hardship for low-income residents through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

WHEREAS, the City's Rental Rights and Referrals Program staff receive some copies of no-cause eviction notices to terminate, and copies of eighty-eight (88) no-cause notices have currently been received so far in 2017; and

WHEREAS, since the Council's discussion of the Tenant Protection Ordinance on April 18, 2017, the City has received nine (9) no-cause notices, six were all in one building, which is an unusual number of notices in a seven (7) day period;

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

SECTION 1. Adding Part 12 to Chapter 17.23 to Title 17 to read as shown in Exhibit A.

SECTION 2. The City Council of the City of San José hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above and in the memorandum to the City Council from the Director of Housing dated on or about April 25, 2017.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth in Section 2 of this Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José and shall remain in effect until the effective date of a duly adopted superseding ordinance.

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

Part 12

Tenant Protection Ordinance

17.23.1200 Title

This Part shall be known as the “Tenant Protection Ordinance.”

17.23.1210 Policy and Purposes Declaration

The purposes of this Part 12 are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. This Part is intended to enable tenants in the City to participate in the petition process provided in Parts 1-9 of this Chapter 17.23, (“Apartment Rent Ordinance”), request correction of code violations and necessary repairs, and exercise their rights under local, state, and federal laws without fear of retaliation. This Part 12 regulates landlord and tenant relations by promoting fair dealings between landlords and tenants in recognition of the importance of residential housing and the landlord-tenant relationship as components of a healthy, safe, and vibrant city. The rights and obligations created by this Part 12 for landlords and tenants are created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and are in addition to any rights and obligations under state and federal law.

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.
- 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 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

17.23.1230 Scope; Regulations

A. Subject to any exceptions, additions, and clarifications included in 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. Guest Rooms in any Guesthouse; and
4. 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.

17.23.1240 Just Cause Protections

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

A. 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

B. that the termination qualifies as a Just Cause Termination in compliance with Section 17.23.1250.

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 (which terms may be further defined in the regulations adopted by the City Manager), 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 number of individuals authorized in the rental agreement or 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,

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 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. The Landlord shall have provided relocation assistance as required by subsection B 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.

17.23.1260 Notice of Termination to the Tenant and City

A. A Notice of Termination means the notice informing a Tenant Household of the termination of its tenancy in accordance this Section and with California Civil Code section 1946.1 and California Code of Civil Procedure section 1162, as amended.

B. Each Notice of Termination delivered to a Tenant or to a Tenant Household residing in a Rent Stabilized Unit must use the form approved by the Director or such other notice in compliance with the requirements of this Part.

- C. The Notice of Termination provided to Tenants must contain the reason for the termination of tenancy in accordance with subsection A of Section 17.23.1260 on a form approved by the Director.
- D. A Landlord must mail or deliver to the City a true and accurate copy of any Notice of Termination delivered to a Tenant within 3 days of delivering such notice to a Tenant or Tenant Household.
- E. 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.

17.23.1270 Anti-Retaliation Protections

- A. No Landlord may threaten to bring, or bring, an action to recover possession, cause the Tenant to quit the Rental Unit involuntarily, serve any notice to quit or Notice of Termination, reduce any housing services, or increase the rent where the Landlord's intent is retaliation against the Tenant for the Tenant's assertion or exercise of rights under this Part.
- B. Any such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the Tenant for actual and punitive damages and injunctive relief. In an action by or against a Tenant, evidence of the assertion or exercise by the Tenant of rights under this Part within six months prior to the alleged act of retaliation shall create a rebuttable presumption that the Landlord's act was retaliatory. For purposes of this subsection, "rebuttable presumption" means that the Court must find the existence of the fact presumed unless and until its nonexistence is proven by a

preponderance of the evidence. A Tenant may assert retaliation affirmatively or as a defense to the Landlord's action without the aid of the rebuttable presumption regardless of the period of time which has elapsed between the Tenant's assertion or exercise of rights under this Part and the alleged act of retaliation.

17.23.1280 Affirmative Defense to Eviction; Penalties and Remedies

A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of a Tenant must comply with this Part. Non-compliance with any applicable component of this Part shall constitute an affirmative defense for a Tenant against any unlawful detainer action under California Code of Civil Procedure section 1161, as amended.

B. Criminal Penalties. Any Landlord found by a court of competent jurisdiction to be guilty of violating any provision or failing to comply with any requirements of this Chapter shall be guilty of a misdemeanor punishable by up to a \$500 fine for a first offense and up to a \$1000 fine for any subsequent offenses.

C. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Part may be subject to civil proceedings for displacement of Tenant(s) initiated by the City or the Tenant Household for actual and exemplary damages.

2. Whoever is found to have violated this Part shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.

3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Part.

4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

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) 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.