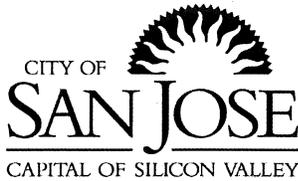


REPLACEMENT



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: TENANT PROTECTION
ORDINANCE

DATE: June 15, 2017

Approved

Date

6/15/17

INFORMATION

This memo replaces the prior memos to clarify numbers 21 and 22 on the attachment “Tenant Protection Ordinance Frequently Asked Questions.”

BACKGROUND

On May 9, 2017, the City Council passed the Tenant Protection Ordinance and Urgency Ordinance, making immediate changes to the requirements for serving notices to vacate in San José. The Tenant Protection Ordinance outlines twelve reasons for eviction that may be used by a property owner to legally evict tenants.

The Housing Department held its first community meeting on May 31, 2017 at the Roosevelt Community Center to educate the public on the Tenant Protection Ordinance. Since then, there has been an increased number of questions from property owners and tenants on their new rights and responsibilities under the Ordinance. To respond to these questions and concerns, a Frequently Asked Question sheet has been updated and included as **Attachment A**. Additionally, the operation of specific provisions in the Tenant Protection Ordinance will be addressed in greater detail in the Tenant Protection Ordinance Regulations when finalized in the Fall.

ANALYSIS

Some property owners have expressed specific concerns about the Material or Habitual Violation of the Tenancy provision in the Tenant Protection Ordinance.

Just Cause #2: Material or Habitual Violation of the Tenancy

This provision states when a property owner can use a Material or Habitual Violation of the Tenancy as a reason for a notice to vacate and also provides an exception where that provision may *not* be used.

The following is the exception language:

Section 17.23.1250 (A)(b) Material or Habitual Violation of the Tenancy

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.*

The effect of this provision is that where a tenant allows an immediate family member to come live in the apartment with them, the property owner may not use this as good cause to evict the tenant.

Some property owners have expressed concerns that this provision inhibits their ability to manage the number of tenants living in the apartments and erodes their responsibilities as property owners to effectively manage their properties.

Cost Burden to Families in the City of San José

The City of San José has long been one of the most expensive cities in the country in which to live. 47% of all rental households are cost burdened (pay over 30% of their income on housing.) 25% of renters are severely cost burdened (pay over 50% of income on housing). San José continues to have a severe housing affordability crisis with one of the highest rates of rent increases in the nation. The rent burden caused by the high cost of rent in San José leads to challenges for families affording necessities including food, clothing and medical care.

The purpose of the exclusion is to prevent displacement of families living together to afford rent or address other familial hardships. For example, if an adult tenant living in a one bedroom

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apartment needs to move her elderly mother into the apartment to provide care for her parent, her housing should not be placed in jeopardy due to her change in family needs.

Public Process

The Material or Habitual Violation of the Tenancy exception provision was included in the draft Tenant Protection Ordinance since it was made public on January 18, 2017 and was available for public comment up until the Ordinance was heard by Council on May 9 for a total of 219 days. Up until that date, staff received no public objections to the provision. The exception language is now a part of the Tenant Protection Ordinance as adopted by City Council.

The City Council asked staff to consider an amendment to the Tenant Protection Ordinance to consider the issue of adding an additional just cause to criminal activity and to address retaliatory actions based on immigration status. This additional research will be brought forward to City Council for consideration in the Fall.

/s/

JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8310.

Attachment A: Tenant Protection Ordinance Frequently Asked Questions

RENTAL RIGHTS AND REFERRALS PROGRAM

Tenant Protection Ordinance (Chapter 17.23 Part 12)

FREQUENTLY ASKED QUESTIONS (FAQ)

COVERED VS. NON-COVERED PROPERTIES

1. Q: What is the Tenant Protection Ordinance?

A: The Tenant Protection Ordinance specifies requirements for providing notices to vacate for tenants living in apartments with three units or more in San José. The ordinance eliminates no-cause notices and requires a just cause for all notices to vacate.

2. Q: What is Just Cause?

A: It is a requirement that any notice to vacate (any action to recover possession) state a just cause for eviction. Notice to vacate must be based on a cause included in the list of twelve 12 just-cause terminations listed in the Tenant Protection Ordinance. *See Section 17.23.1240.* The following is a summary of the twelve (12) causes:

<p><u>I. Just Cause Terminations</u></p> <p>The reasons for no-cause notice to vacate that signify fault on the part of the tenant are:</p>	1. Nonpayment of rent
	2. Material or habitual violation of the lease
	3. Substantial damage to the apartment
	4. Refusal to agree to a like or new rental agreement
	5. Nuisance behavior
	6. Refusing access to the apartment, requested in accordance in law
	7. Unapproved holdover subtenant
<p><u>II. No-Fault Just Causes</u></p> <p>Relocation benefits must be paid when a Tenant is being removed from an apartment for reasons 8-12.</p>	8. Substantial rehabilitation of the apartment
	9. Ellis Act removal or demolition
	10. Owner move-in
	11. Order to vacate
	12. Leaving an unpermitted apartment

3. Q: What is the Urgency Ordinance?

A: The Urgency Ordinance allowed the Tenant Protection Ordinance to take effect immediately following the May 9, 2017 City Council meeting. Notices given on May 10, 2017 and after require a just cause for eviction. *See Section 17.23.1240.*

4. Q: What are “covered” buildings?

A: Properties covered: 1) properties subject to Apartment Rent Ordinance; 2) other multifamily dwellings with at least three units; 3) units built without a permit, or operating illegally; 4) rental apartments with a condo map; and 5) guesthouses. *See Section 17.23.1230.*

FOR TENANTS

5. Q: What does it mean if I live in a covered building?

A: These buildings are now covered by Just Cause and any 30-60-90 day notice to vacate must list one of the twelve (12) just-cause reasons for eviction. *See Section 17.23.1250.*

6. Q: Am I covered if I live in any of these buildings: duplex, single-family home, townhouse, or condo?

A: No, only apartment buildings with three units or more are covered. Duplexes, single-family homes, condos, and/or second units are not covered except when the rental unit is unpermitted. A landlord who owns a building that is not covered does not need to list one of the twelve (12) just causes and can provide a no-cause notice. *See Section 17.23.1230.*

7. Q: What if I receive a no-cause notice?

A: No-cause notices received after May 10, 2017 are no longer valid. Contact the Rental Rights and Referrals Program immediately to learn about your rights. *See Section 17.23.1260.*

8. Q: The Tenant Protection Ordinance states tenants may have new family members move into the apartment including a child, spouse, domestic partner, parent, brother or sister. What documentation can be asked for to prove the familial relationship?

A: Different forms of documentation can be used to demonstrate a family relationship such as a marriage certificate, a birth certificate (the tenant and his or her sibling(s)), and a Certificate of Registration of Domestic Partnership. Birth certificates from any country can also be used to establish the familial relationship. These verifications must be provided upon the request of the owner.

9. Q: How is a domestic partner defined?

A: A domestic partnership is established when persons meeting the criteria specified by California Family Code section 297 and file either a Declaration of Domestic Partnership or a Confidential Declaration of Domestic Partnership with the California Secretary of State. A copy of the declaration and a Certificate of Registration of Domestic Partnership will be returned to the partners after the declaration is filed.

10. Q: Are non-minor children part of the household?

A: Yes, non-minor children are included in the definition of household.

FOR OWNERS

11. Q: What if I give my tenants a no-cause notice?

A: As of May 10, 2017, no-cause notices are not allowed. You must rescind the notice immediately. *See Ordinance Number 29912.*

12. Q: May I evict a tenant for subleasing when the lease clearly states subleasing is a lease violation when they are renting to a family member?

A: The Tenant Protection Ordinance states that if a tenant is subleasing to the following family members: child, spouse, siblings, domestic partner or parent, the tenant may not be evicted. *See Section 17.23.1250.*

13. Q: What is the maximum number of tenants allowable?

A: The maximum number of tenants allowable is dependent on the square footage of the apartment, as defined in the Municipal Code: two persons may occupy each bedroom, and each additional fifty square feet will provide for an additional occupant (*see Section 17.20.270*). Below is an example for a 2-bedroom, 900 square foot apartment:

	Total	Bedroom ft ²	Common Space ft ²	Person(s) per 50 ft ²	Maximum # of Tenants
2 Bedroom Apartment	900 ft ²	200 ft ²	700 ft ²	2 x 2 bedrooms = 4 700 ft ² / 50 = 14	4 + 14 = 18

14. Q: When the original tenant household on the lease moves out voluntarily, and a family member who moved into the apartment but was never approved by you wants to stay, do you have to let them stay in the apartment?

A: No, you do not need to let the unapproved family member stay. According to the Tenant Protection Ordinance Just Cause #7, unapproved holdover subtenants may be given a notice to vacate. *See Section 17.23.1250A.7.*

15. Q: I have given a just-cause notice to vacate that requires that relocation assistance be provided. How much do I need to pay to tenant?

A: The required relocation assistance to the tenant household for Just Cause # 8 (Substantial Rehabilitation of the Apartment), Just Cause #10 (Owner Move-in), and/or Just Cause #12 (Converting an Unpermitted Apartment for Permitted Use) is determined by bedroom size:

	Studio	1BR	2BR	3R
Base Relocation Assistance	\$6,925	\$8,400	\$10,353	\$12,414

16. Q: I have given a notice under Just Cause #9 for Removal of Apartments from the Rental Market under the Ellis Act. How much do I need to pay to the tenant?

A: The required relocation assistance to the tenant household under the Ellis Act includes one or more of the following based on bedroom size (*see Section 17.23.1100*):

	Studio	1BR	2BR	3R
Base Relocation Assistance	\$6,925	\$8,400	\$10,353	\$12,414
Qualified Assistance Levels	\$2,770	\$3,360	\$4,141	\$4,966
Special Assistance	\$1,200	\$1,400	\$1,700	\$2,000

17. Q: I have given a notice under Just Cause #11 for City Code Enforcement Actions Requiring a Move Out. How much do I need to pay to the tenant for relocation costs?

A: The required relocation assistance to the tenant household will include the cost of temporary housing, transportation costs, provision of furnishings if needed in the temporary housing, and storage of the tenant's belongings, until the tenant returns to apartment. *See Section 17.20.2060.*

18. Q: I have given a notice under Just Cause #10 because my family member is moving into the apartment. What documentation should be provided document the familial relationship?

A: Different forms of documentation can be used to demonstrate a family relationship such as: a marriage certificate, a birth certificate (the tenant and his or her sibling(s)), and a Certificate of Registration of Domestic Partnership. Birth certificates from any country can also be used to establish the familial relationship. These verifications must be provided to the City.

19. Q: Who will be responsible for the additional utility costs incurred when additional family members move in to the apartment?

A: If the apartment is not rent-stabilized, the landlord may raise the rent in accordance with State law. For apartments subject to the Apartment Rent Ordinance, if the apartment is submetered, the tenant on the lease will continue to be responsible for the cost of utilities. For rent-stabilized apartments with utilities that are not submetered, the owners will be responsible for the additional utility costs.

20. Q: Is there any compensation to the rental-housing provider for the extra wear and tear to the apartment from more residents living in the apartment?

A: If the apartment is not rent-stabilized, the landlord may raise the rent in accordance with State law. For apartments subject to the Apartment Rent Ordinance, there is no additional compensation. Damages to the apartment may be deducted from the security deposit.

21. Q: If my apartment is rent-stabilized, when can I increase the rent when additional family members move into the apartment?

A: Rent may not increase more than 5% every 12 months.

22. Q: If my apartment is *not* rent-stabilized, can I increase the rent?

A: Yes, you may increase the rent consistent with the requirements of State law. Landlord can see the Department of Consumer Affairs (<http://www.dca.ca.gov/publications/landlordbook/index.shtml>) for additional information.

The provisions in the Tenant Protection Ordinance will be addressed in greater detail in the Regulations when finalized.

For more information, please visit www.sanjoseca.gov/housing