# CITY OF SAN JOSÉ

## APARTMENT RENT ORDINANCE

### SAN JOSÉ MUNICIPAL CODE—CHAPTER 17.23

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# Chapter 17.23
# RENTAL DISPUTE MEDIATION AND ARBITRATION FOR DWELLING UNITS EXCLUDING MOBILEHOMES AND MOBILEHOME PARKS

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### 17.23.010 Title.

This chapter shall be known as the "San José rental dispute mediation and arbitration ordinance."

(Ord. 19696.)

### 17.23.020 Policy and purposes declaration.

It is found and declared that there is a growing shortage of and increasing demand for housing in the

city of San José. This circumstance, coupled with increasing inflation, the rising cost of developing new housing, and other factors have put substantial upward pressure on residential rents.

In order to protect the health, safety and welfare of the citizens of San José, this chapter is a necessary measure designed to alleviate some of the more immediate needs created by San José's housing situation. These needs include but are not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the assurance to landlords of a fair and reasonable return on the value of their property.

(Ord. 19696.)

**17.23.030 Notice provided to tenants upon commencement of tenancy.**

A. In addition to any other notice required to be given by law, any landlord who owns a rental unit subject to this chapter shall provide to tenants thereof, (1) written notice that the rental unit is subject to this chapter and, (2) a copy of the current city of San José rental rights and referrals program tenant information brochure, if such brochure is available from the city of San José. The requirements set forth herein shall become effective on March 16, 2002.

B. For leases that begin on or after March 16, 2002, landlords shall distribute the information required herein no later than the date upon which they receive the first payment of rent from the tenant. For month-to-month tenancies in existence prior to March 16, 2002, landlords shall distribute the information required herein no later than the day following the expiration of the current month of the tenancy. For leases with terms longer than one month in existence prior to March 16, 2002, landlords shall distribute the information required herein no later than the day after the expiration of the currently existing term of the tenancy, if the tenant subject thereto remains in possession of the rental unit.

C. For purposes of this section, landlords shall be required to distribute the information required herein to tenants one time. Landlords must distribute such information to each signatory of a lease or, if no written lease exists, to the person or persons who make the oral agreement to rent the unit.

(Ord. 26559.)

## Part 2
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**17.23.040 General.**

Unless the context otherwise requires, the definitions set forth in this part govern the construction of the chapter.

(Ord. 19696.)

**17.23.050 Capital improvements.**

"Capital improvements" are those improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses, and which are required to be amortized over the useful life of the improvement of the building pursuant to the straight line depreciation provisions of the Internal Revenue Code, and the regulations issued pursuant thereto.

(Ord. 19696.)

**17.23.060 Commission.**

"Commission" means the San José advisory commission on rents and the rental dispute mediation and arbitration hearing process.

(Ord. 19696.)

**17.23.070 Costs of operation and maintenance.**

"Costs of operation and maintenance" shall mean all expenses, exclusive of costs of debt service,

costs of capital improvements, and costs of rehabilitation incurred in the operation and maintenance of the rental unit and the buildings or complex of buildings of which it is a part together with common areas, including but not limited to real estate taxes, business taxes and fees (including fees payable by landlords under this chapter), insurance, sewer service charges, utilities, janitorial services, professional property management fees, interest costs of variable interest rate mortgages, pool maintenance, exterior building and grounds maintenance, supplies, equipment, refuse removal, elevator service, and security services or systems.

(Ords. 19696, 20607.)

**17.23.080 Costs of debt service.**

"Costs of debt service" shall mean the periodic payment or payments due under any security financing device which is applicable to the rental unit or the building or complex or other real property of which it is a part, including any fees, commissions, or other charges incurred in obtaining such financing which are required to be amortized for a period exceeding sixty months pursuant to the Internal Revenue Code and the regulations issued pursuant thereto. Nevertheless, costs of debt service shall not include adjustments in the interest costs of a variable interest rate mortgage after the indebtedness secured thereby is incurred.

(Ords. 19696, 21970, 21999, 22019.)

**17.23.090 Costs of rehabilitation.**

"Cost of rehabilitation" shall mean the costs of any rehabilitation or repair work done on or in a rental unit or common area of the housing complex containing the rental unit and which work was done in order to comply with an order issued by the San José building department, San José director of neighborhood preservation, or the fire department, or to repair damage resulting from fire, earthquake, or other natural disaster.

(Ords. 19696, 20607.)

**17.23.100 Hearing officer.**

"Hearing officer" shall mean a person designated by the commission and the rules thereof who mediates or arbitrates rental increase disputes pursuant to the provisions of this chapter.

(Ord. 19696.)

**17.23.110 Housing services.**

"Housing services" are those services provided and associated with the use or occupancy of a rental unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges or facilities.

(Ord. 19696.)

**17.23.120 Landlord.**

"Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit or portion thereof, and the agent, representative, or successor of any of the foregoing.

(Ord. 19696.)

**17.23.125 Notice to vacate.**

"Notice to vacate" shall refer to a notice to vacate given by a landlord to a tenant pursuant to California Civil Code Section 1946 and California Code of Civil Procedure Section 1162.
(Ord. 26767.)

**17.23.126 Offer to arbitrate.**

An "offer to arbitrate" shall refer to the offer to arbitrate the termination date of a tenancy served upon a tenant by a landlord pursuant to Section 17.23.615 of this chapter.
(Ord. 26767.)

**17.23.130 Rent.**

"Rent" is the consideration, including any bonus, benefit or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, or the assignment of a lease for such a unit, including housing services or subletting.

(Ord. 19696.)

**17.23.140 Rent increase.**

A "rent increase" is any additional rent demanded of or paid by a tenant for a rental unit including any reduction in housing services without a corresponding reduction in the moneys demanded or paid for rent.

(Ord. 19696.)

**17.23.141 Rental rights and referrals program.**

"Rental rights and referrals program" shall refer to the section of the department of housing that provides staff services to the advisory commission on rents.
(Ord. 26792.)

**17.23.150 Rental unit.**

A "rental unit" is a dwelling unit other than a mobilehome or mobilehome lot offered or available for rent in the city of San José together with the land and appurtenant buildings thereto, and all housing

services, privileges, and facilities supplied in connection with the use or occupancy thereof, which unit is located in a multiple dwelling or guesthouse as those terms are defined and used in Title 20 of this code. The term "rental unit" shall not include:

A. Rooms or accommodations in hotels or guesthouses which are rented to transient guests for a period of less than thirty days;

B. Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, asylum, nonprofit home for the aged, fraternity house, or sorority house, or in dormitories owned and operated by an institution of higher education, a high school or elementary school;

C. Rental units owned or operated by any government agency or whose rent is subsidized by any government agency;

D. Rental units located in a building containing two or fewer dwelling units.

(Ords. 19696, 22019, 22675.)

**17.23.155 Severe rental housing shortage.**

"Severe rental housing shortage" shall refer to any period in which the director of housing determines, pursuant to Section 17.23.695, that there is a vacancy rate in all city rental housing of three percent or less.
(Ord. 26767.)

**17.23.160 Tenant.**

A "tenant" is a person entitled by written or oral agreement or by sufferance to occupy a rental unit to the exclusion of others.

(Ord. 19696.)

**17.23.161 Termination arbitration.**

"Termination arbitration" shall be the arbitration conducted pursuant to Sections 17.23.615 through 17.23.680.
(Ord. 26767.)

## Part 3
## RENTAL DISPUTE MEDIATION AND ARBITRATION HEARING PROCESS

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### 17.23.170 Hearing process.

There is hereby established the San José rental dispute mediation and arbitration hearing process, consisting of two phases: The mediation phase and the arbitration phase. Collectively, the two phases shall be referred to as the "hearing process."

(Ord. 19696.)

### 17.23.180 Increases subject to review.

Except as hereinafter provided, any rent increase or combination of increases occurring after March 31, 1979, and prior to the effective date of this chapter, and any increase after the effective date of this chapter, which taken together with any increase which took effect in the twelve-month period immediately preceding such increase, exceeds an aggregate of eight percent shall be subject to review under the hearing process.

(Ord. 19696.)

### 17.23.190 Exceptions.

The provisions of this chapter shall not apply to the following:

A. Rent or rent increases for new rental units first rented after the effective date of this chapter.

B. The rent of a rental unit following:

1. A vacancy arising from the voluntary vacation of the rental unit on the part of a prior tenant, or

2. A vacancy occurring because the prior tenant was evicted for nonpayment of rent, issuance by tenant of checks drawn against insufficient funds or closed accounts, chronically late payment of rent, or other material violation of a written rental agreement. A voluntary vacation of a rental unit shall not include situations where the vacancy arises from the landlord issuing a tenant a notice to vacate, which notice does not state a reason for eviction that would legally entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure.
(Ords. 19696, 26792.)

**17.23.200 Limitations on rent increases.**

After the effective date of this chapter, the rent of any rental unit may not be increased more than once in any twelve-month period except as allowed under Section 17.23.190.B, Section 17.23.205, or Section 17.23.325.

(Ords. 19696, 23028, 23340.)

**17.23.205 Pass through of certain charges.**

A. A landlord may pass through to the tenants charges imposed on the landlord by governmental agencies or by public utilities subject to regulation by the public utilities commission where all of the following conditions are met:

1. The charge is a new charge as opposed to an increase in an existing charge, which the governmental agency or the public utility requires the landlord to pay; and

2. Such pass through has been authorized by resolution of the city council; and

3. The landlord passes through the charge in accordance with rules and regulations adopted by resolution of the city council.

B. No charge may be passed through to any tenant pursuant to this section unless all of the following conditions are satisfied:

1. The aggregate amount passed through to the tenants does not exceed fifty percent of the total amount paid by the landlord; and

2. No tenant shall be required to pay any amount of such charge which is attributable to any period of time during which the tenant was not entitled to occupy the rental unit; and

3. No tenant shall be required to pay any portion of the charge which would have been paid by a tenant of a vacant rental unit had such rental unit not been vacant; and

4. No tenant shall be required to pay more than his or her pro rata share of the portion of the charge to be passed through to the tenants.

C. No charge may be passed through to any tenant pursuant to this section unless such charge is clearly listed on the rent bill as a separate line item or is billed to the tenant separately from the rent, and the bill to the tenant for such charge is accompanied by a true and correct copy of the invoice or bill paid by the landlord for such charge.

D. No charge which is passed through to the tenant pursuant to this section shall be included in the rent for any calculation of rent increase percentages.

E. In the event a tenant disputes the pass through of a charge or the calculation of the tenant's share of the charge, the tenant or the landlord may refer the dispute to the rental rights and referrals program staff for a determination as to whether such charge may be passed through pursuant to this section and whether the calculation of the tenant's share comports with this section and the rules and regulations governing such pass through. The determination of the rental rights and referrals program staff may be appealed to arbitration pursuant to the provisions of this chapter for any of the following reasons:

1. There exists a dispute as to the genuineness of the bill.
2. There exists a dispute as to whether the tenant was a tenant of the rental unit during the billing period or any portion of the billing period.
3. Mathematical errors in the relevant calculations.

(Ords. 23340, 26792.)

**17.23.210 Exceptions to the eight percent limitation.**

If a landlord has not raised rent for more than twelve months prior to the latest increase, rental increases of greater than eight percent shall not be subject to this chapter provided that such increases satisfy the following criteria: If the last increase was more than twenty-four months prior to the current increase, a rental increase of up to twenty-one percent shall be allowed.

(Ords. 19696, 19892, 20609.)

**17.23.220 Petitions by tenants.**

Any tenant who is subject to a rent increase which is not exempt under the provisions of this chapter may invoke the rental dispute mediation and arbitration hearing process by filing a petition with the commission.

(Ord. 19696.)

**17.23.230 Petitions by landlord.**

Any landlord whose rental units are subject to the provisions of this chapter and who seeks to increase the rent of any rental unit or units by an amount subject to the provisions of this chapter may invoke the hearing process by a petition filed with the commission which shall be processed and heard in the same manner as provided herein for tenant applications, provided that the landlord shall notify, in writing, all tenants subject to such rental increase and shall include in his filing with the commission a list of names and addresses of all such tenants.

(Ord. 19696.)

**17.23.240 Petition, form of - Service reduction - Burden of proof.**

The application for review must be filed on a petition form prescribed by the commission and must be accompanied by such supporting material as the commission shall prescribe, including but not limited to, a copy of the landlord's notice of rent increase. Allegations of service reductions shall be submitted in

writing. The burden of proof regarding such service reductions shall be on the person alleging such reductions.

(Ords. 19696, 20608.)

**17.23.250 Petition - Time of filing.**

Except as provided hereinafter, a petition must be filed prior to the effective date of the increase stated in the notice to tenant; provided, however, that a tenant shall have at least ten days after receipt of notice of rent increase from the landlord in which to file a petition.

(Ord. 19696.)

**17.23.260 Petitions - Consolidation of.**

As soon as possible after a petition has been filed with respect to rental units which are under common ownership or management and which are operated as a single housing complex, the city shall, to the greatest extent possible, consolidate petitions involving rental units which are under common ownership or management and which are operated as a single housing complex.

(Ords. 19696, 20607.)

**17.23.270 Rent increases - Notice of.**

Whenever a landlord notifies a tenant or tenants of a proposed rent increase which exceeds eight percent of the then current rent of such tenant, the landlord shall notify the tenant by the same type of notice or, at the landlord's option, in the same notice in a conspicuous manner of the:

A. Tenant's right to utilize the rental dispute mediation and arbitration hearing process;

B. Tenant's time limits within which to file his/her petition as indicated in Section 17.23.250 of this chapter;

C. Current address and telephone number of the city's program offices.

(Ords. 19696, 21131.)

**17.23.280 Effect of timely filing of petition.**

Providing that a completed petition is timely filed, concerning a rent increase subject to this chapter, that portion of the requested rental increase (and only that portion) which exceeds eight percent shall not take effect unless and until such time as a hearing officer allows such increase or portion thereof pursuant to the provisions of this chapter.

(Ord. 19696.)

**17.23.290 Hearing officer.**

A hearing officer shall be assigned to initially mediate any petition which is filed with the commission. During this phase, such hearing officer shall be known as the mediation hearing officer.

(Ord. 19696.)

**17.23.300 Hearing - Notice of.**

Written notice shall be given to the parties at least seven days prior to the hearing.

(Ords. 19696, 20607.)

**17.23.310 Hearing - Time of.**

The hearing shall be held within twenty-one days of the filing of the petition or within such additional time as may be set by the city.

(Ords. 19696, 20607.)

**17.23.320 Hearing - Conduct of.**

The hearing shall be conducted by the hearing officer. Any party or their counsel may appear and offer such documents, testimony, written declaration, or other evidence as may be pertinent to the proceeding. A record of the proceedings shall be maintained for purposes of the arbitration phase or judicial review, as hereinafter provided.

(Ords. 19696, 20607.)

**17.23.325 Voluntary agreements.**

At any time during the mediation phase or the arbitration phase of the hearing process the parties may enter into a written voluntary agreement to resolve the dispute. Such voluntary agreement may include a term in excess of twelve months and may include provisions for a phase-in rent increase. The agreed upon rent in the final month of the term of the agreement shall be the rent used for the calculation of the next allowable rent increase.

(Ord. 23028.)

**17.23.330 Mediation hearing officer - Determination by.**

Based upon the evidence presented at the hearing, the mediation hearing officer shall make a determination whether or not, in light of all the evidence presented, the proposed rent increase is reasonable under the circumstances, in accordance with the standards set forth in Section 17.23.440. The burden of proof regarding such reasonableness shall be on the landlord unless otherwise indicated.

(Ord. 19696.)

**17.23.340 Hearing - Findings and determination.**

Within ten days of the hearing, the mediation hearing officer shall make his determination in writing that the proposed rent increase is reasonable under the circumstances or not, and shall make written findings of fact upon which such determination is based. Copies of the determination and the findings shall be mailed to the parties.

(Ord. 19696.)

**17.23.350 Procedure where rent increase not reasonable.**

If the mediation hearing officer's determination is that the proposed rental increase is not reasonable under the circumstances, he shall require that a thirty-day mediation process be undertaken to resolve the areas of dispute. In such circumstances, the portion of the proposed rent increase (and only such portion) which exceeds the amount as allowed by the mediation hearing officer's determination shall be suspended during the period of mediation and subsequent arbitration, if any.

(Ords. 19696, 21162.)

**17.23.360 Mediation process.**

Where required, the mediation process shall mean that all parties and the mediation hearing officer shall meet at least twice during the thirty-day period in an effort to resolve the dispute by mutual agreement. In the event that the parties agree to a specific rental increase, the mediation hearing officer shall prepare a memorandum of agreement so specifying between the landlord and the affected tenants. If the mediation process fails to establish a mutually agreed amount of rental increase within thirty days or sooner as hereinafter provided, the mediation hearing officer shall request a best offer from each party, shall prepare a written report on the mediation process which includes all documentation and the records brought to that process by landlord and tenant, and shall make a determination as to a reasonable rent increase. The case may then be referred to arbitration as hereinafter provided. At any time during the mediation process, the mediation hearing officer may determine that there is an impasse, a substantial failure to mediate in good faith on the part of either party, or that further mediation is impractical or not likely to be of further value, in which event the mediation hearing officer shall issue a fact-finding report.

(Ords. 19696, 21162.)

**17.23.365 Mediator - Decision final unless appealed.**

The decision of the mediation hearing officer rendered in accordance with this chapter shall be final, unless appealed through arbitration within seven days of the mediation hearing officer's decision.

(Ords. 20604, 21162.)

**17.23.370 Proceedings in the event that rent increase is reasonable.**

If the mediation hearing officer determines that all or a portion of the proposed rent increase is reasonable under the circumstances, the mediation hearing officer shall grant all or such portion of the rent increase to be effective as of the time such increase would have been otherwise effective without reference to the provisions of this chapter, pending the outcome of arbitration, if any. Any party may

appeal the amount of the increase allowed to arbitration, but the tenant or tenants must pay the allowable rent increase pending resolution of the dispute. If neither party appeals within seven days of the mediation hearing officer's determination, his determination shall be final.

(Ord. 19696.)

**17.23.380 Arbitration - Invocation of.**

Arbitration may be invoked under this chapter by either party. The appeal of any party shall be in writing to the city and shall be delivered within seven days of the determination.

(Ords. 19696, 20607, 21162.)

**17.23.385 Single hearing under specific circumstances.**

Landlords may request that the matter of a rent increase based on debt service cost be referred directly to arbitration without the necessity of a mediation hearing, under the following circumstances:

1. Increase is based entirely on debt service cost;

2. Owner has notified tenant of the proposed rent increase and of his intent to refer the matter directly to arbitration; and

3. The rent units subject to the rent increase have been acquired within ninety days of the proposed rent increase.

(Ord. 20606.)

**17.23.390 Arbitration - Process.**

Within seven days of an appeal by either party or the mediation hearing officer's referral to arbitration, an arbitrator shall be appointed who shall conduct a hearing with all parties within thirty days of such appeal. At this hearing, the report of the mediation hearing officer shall be reviewed, the concerns of each party shall be discussed, and the arbitrator shall indicate the amount and nature of further documentation or evidence he will need from any party in order to reach a determination. The burden of proof regarding the reasonableness of the rent increase shall be on the landlord unless otherwise indicated. Each party shall comply with the arbitrator's request for any information within ten days of the hearing. The arbitrator may proceed under this part regardless of whether any party defaults in the providing of any requested information.

(Ords. 19696, 20607.)

**17.23.400 Arbitrator - Determination of.**

After reviewing the record and any additional evidence requested of the parties which has been provided, the arbitrator shall determine the amount of allowable rental increase, if any, in accordance with the standards of section 17.23.440.

(Ord. 19696.)

**17.23.410 Arbitrator - Decision final.**

The determination of the arbitrator shall be final and shall be delivered to the parties in writing, together with written findings of fact supporting such determination within seventeen days of the hearing provided in Section 17.23.390. The arbitrator's allowance or disallowance of any rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter.

(Ord. 19696.)

**17.23.420 Hearing officers.**

Hearing officers may serve as either mediation hearing officers or arbitrators but to the extent possible shall not be assigned to serve in both capacities with respect to petitions consolidated as the result of one particular increase for a rental unit or a series of units operated as a single housing complex.

(Ord. 19696.)

**17.23.430 Determination - Applicability of.**

No determination made under the provisions of this chapter shall be effective with respect to any rental unit unless the tenant of such unit is a party to the proceeding.

(Ord. 19696.)

**17.23.440 Standards of reasonableness to be applied to rent increases.**

Hearing officers shall determine whether rent increases are reasonable under the circumstances, taking into consideration that the purpose of this chapter is to permit landlords a fair and reasonable return on the value of their property while protecting tenants from arbitrary, capricious, or unreasonable rent increases, and under certain circumstances, unjustified economic hardship. The hearing officer's determination shall be made with reference to the following standards:

A. Increases Deemed Reasonable. Where the amount of the proposed rental increase consists only of passing through one or more of the following:

1. Costs of capital improvements;

2. Increased costs of maintenance and operation; or

3. Costs of rehabilitation; plus no more than five percent of the monthly rent, they shall be deemed reasonable, and the hearing officer shall allow the entire rental increase provided that:

a. Cost figures have been established to his reasonable satisfaction;

b. The costs of capital improvements if any are averaged on a per-unit basis and are amortized over a period not less than sixty months;

c. The costs of rehabilitation if any are averaged on a per-unit basis and are amortized over a period not less than thirty-six months;

d. Each of the costs proposed to be passed through to tenants, whether it be costs of capital improvements, increased costs of operation and maintenance, or costs of rehabilitation, bears a reasonable relationship to the purposes for which such costs were incurred and the value of the real property to which they are applied.

B. When Costs of Debt Service Deemed to be Reasonable. For purposes of this subsection, loan-to-value ratio (LV) shall mean the aggregate amount of debt divided by a lender's appraised value of the property, and factor shall mean the percentage of increased debt service cost. Increased costs of debt service shall be deemed reasonable and allowed by the hearing officer if the LV is seventy percent or less, and no more than eighty percent of the cost of such debt service is being passed through to the tenants. If the LV is greater than seventy percent, the increased costs of debt service arising from that proportion of the aggregate amount of debt not exceeding seventy percent of the value of the property shall be deemed reasonable and allowed by the hearing officer to be passed through to tenants pursuant to the following LV factor schedule:

**SCHEDULE**

| LV | Factor |
|---|---|
| 71 | 79.5% |
| 72 | 79.0% |
| 73 | 78.5% |
| 74 | 78.0% |
| 75 | 77.5% |
| 76 | 76.5% |
| 77 | 75.5% |
| 78 | 74.5% |
| 79 | 73.5% |
| 80 | 72.5% |
| 81 | 71.5% |
| 82 | 70.5% |
| 83 | 69.5% |
| 84 | 68.5% |
| 85 | 67.5% |
| 86 | 66.5% |
| 87 | 65.5% |
| 88 | 64.5% |

| | |
|---|---|
| 89 | 63.5% |
| 90 | 62.5% |
| 91 | 61.5% |
| 92 | 60.5% |
| 93 | 59.5% |
| 94 | 58.5% |
| 95 | 57.5% |
| 96 | 56.5% |
| 97 | 54.5% |
| 98 | 53.5% |
| 99 | 51.5% |
| 100 | 0.0% |

Where no lender's appraisal is available, the hearing officer may secure such appraisal to be paid for by the landlord as a cost of maintenance and operation. Except in cases of hardship to a landlord, as defined in Section 17.23.451, costs of debt service shall be passed through to tenants only to the extent that the debt upon which service was paid was incurred to further the maintenance or upkeep of the tenant's rental unit, the building and/or premises containing the rental unit.

C. Standards Applicable to Rent Increases Which Exceed the Foregoing. In order to assure to landlords a fair and reasonable return on the value of their property, the hearing officer shall, when the amount of any rent increase or portion thereof exceeds any of the foregoing standards under subsections A or B of this section, determine what is reasonable under the circumstances, taking into account any of the following factors on which he or she has received information:

1. In the case of increased costs of debt service due to a sale or refinancing of the rental units or the building or property of which the units are apart within twelve months of the increase:

a. The arm's-length nature of the transaction;

b. The landlord's rate of return on the investment;

c. The frequency of past resale or refinances;

d. The extent to which prior rental increases have made provisions for appreciation of asset value.

2. The rental history of the unit or the complex of which it is a part, including:

a. The presence or absence of past increases;

b. The frequency of past rent increases;

c. The landlord's response to Proposition 13 savings;

d. The occupancy rate of the complex in comparison to comparable units in the same general area.

3. The physical condition of the rental unit or complex of which it is a part, including the quantity and quality of maintenance and repairs performed during the last twelve months.

4. Any increases or reduction of housing services during the last twelve months before the effective date of the proposed rent increase.

5. Other financial information which the landlord is willing to provide.

6. Existing market value of rents for units similarly situated.

7. The hardship to a tenant, as provided in Section 17.23.450.

(Ords. 19696, 21133, 21134, 21509, 21575, 26649.)

**17.23.450 Hardship to tenants.**

In the case of a rent increase or any portion thereof which exceeds the standards set in Section 17.23.440A or B, then with respect to such excess and whether or not to allow same to be part of the increase allowed under this chapter, the hearing officer shall consider the economic and financial hardship imposed on the present tenant or tenants of the unit or units to which such increases apply. If, on balance, the hearing officer determines that the proposed increase constitutes an unreasonably severe financial or economic hardship on a particular tenant, he may order that the excess of the increase which is subject to consideration under paragraph C of Section 17.23.440, or any portion thereof, be disallowed. Any tenant whose household income and monthly housing expense meet the criteria established by the Housing Assistance Payments Program under Section 8, existing housing provisions of the Housing and Community Development Act of 1974 (P.L. 93-383) and the regulations pertaining thereto, shall be deemed to be suffering under financial and economic hardship which must be weighed in the hearing officer's determination. The burden of proof in establishing any other economic hardship shall be on the tenant.

(Ord. 19696.)

**Editor's note-**It should be noted that Ord. 22467, effective March 11, 1987, suspended Section 17.23.450 "pending the decision of the United States Supreme Court in *Pennell v. City of San José* and [Section 17.23.450] shall have no force or effect until such time as said Court shall have issued its decision in this matter."

**17.23.451 Hardship to landlords.**

In the case of pass-through of debt service, a landlord may be permitted to pass-through debt service to a tenant in situations where the debt was not incurred to pay for maintenance or upkeep of the tenants' rental unit or complex if, on balance, the hearing officer determines that denying the landlord such pass-through would constitute an unreasonably severe financial or economic hardship on the landlord.

(Ord. 26649.)

### 17.23.460 Quality of rental units.

In any determination of what constitutes a reasonable rent increase under the circumstances, the hearing officer shall consider and weigh evidence establishing the nature and extent of any violations by either landlord or tenant of the San José Housing Code or the provisions of Sections 1941.1 and 1941.2 of the California Civil Code. Any rent increase may be disallowed, reduced, or made subject to reasonable conditions, depending on the severity of such violations.

(Ord. 19696.)

### 17.23.470 Retrospective application of chapter.

This chapter shall operate retrospectively as to all rent increases in excess of eight percent which became effective after September 7, 1979, and which would have been reviewable pursuant to this chapter but for the provisions of Section 17.23.210 as it read prior to enactment of this chapter.

The retroactive application of this chapter shall only apply to any amount which exceeds eight percent.

The retrospective application provided herein shall operate as follows:

A. The hardship provision of Section 17.23.445C shall not apply to the costs of debt service arising from a good faith contract of sale or refinancing agreement after September 7, 1979, and prior to the effective date of this ordinance which shall be allowed as any other cost of maintenance and operation, plus up to five percent.

B. Under no circumstances shall a landlord be required to refund rents collected between September 7, 1979, and the effective date of this ordinance. However, an arbitrator may establish a gross monthly rent at a decreased level pursuant to the guidelines of Section 17.23.440A, B and C. Such lower rent shall be effective for a period of twelve months after the date on which the increase to which this ordinance applies retrospectively would have otherwise been effective.

C. Any review of a rent increase effective after September 7, 1979, and prior to the effective date of this ordinance shall be instituted no later than ninety days after the effective date of this ordinance.

Any tenant affected by the retrospective application of this amendment shall have sixty days from and after the adoption of this ordinance to petition for review under the provisions of the said Chapter 17.23.

In the event the retroactive application of Section 17.23.210 provided hereinabove in this ordinance is declared invalid, such retrospective application shall be deemed not to have been enacted and any persons coming within such application shall be allowed the percentage increase provided in the section as it read prior to the adoption of this ordinance, it being the express intention and purpose of the Council that in the event of such invalidity, the provisions of the section as it existed prior to amendment shall continue in full force and effect as if such attempted amendment had never been enacted.

(Ords. 19696, 19892.)

# Part 4
# FEES

**Sections:**

**17.23.480** **Fee - Rental unit.**

**17.23.490** **Fee - Penalty for late payment.**

### 17.23.480 Fee - Rental unit.

The costs of providing and administering the San José rental dispute mediation and arbitration hearing process shall be reimbursed to the general fund by imposition of a fee chargeable against each rental unit in the city of San José subject to the provisions of this chapter.

(Ord. 19696.)

### 17.23.490 Fee - Penalty for late payment.

A. There is hereby imposed on each rental unit which is subject to provisions of this chapter, a rental dispute mediation fee. Said fee shall be paid once annually at the time at which the residential occupancy permit fee, if applicable, is due and paid under Title 17 of this code. Said rental dispute mediation fee may be included as a cost of maintenance and operation under the definition contained in Section 17.23.070. The city manager and the commission shall report to the council no less than once each year their recommendation as to the amount of such fee necessary to recover the costs of administering this chapter. The amount of the fee shall be determined by resolution of the city council adopted from time to time. The fee shall not exceed the amount found by the city council to be necessary to administer the costs of this chapter, and the council's finding in this regard shall be final. Payment by the landlord of the rental dispute mediation fee shall be made at the same time and in conjunction with the residential occupancy permit fee and the director of finance is hereby authorized to collect said fees in this manner.

B. Whoever fails, for more than thirty days after date of notice, to pay the rental dispute mediation fee required hereunder shall, in addition to said fee, pay an additional penalty assessment as determined by resolution of the city council adopted from time to time.

C. In the event the residential occupancy permit is transferred to a subsequent owner of the rental unit for which the rental dispute mediation fee has been paid, the subsequent owner shall be deemed to have paid said fee for the rental unit.

(Ords. 19696, 20200, 21183, 22675.)

# Part 5
# ENFORCEMENT

**Sections:**


**17.23.500** **Penalties.**

**17.23.505** **Retaliatory eviction.**

**17.23.510** **Nonwaiver.**

**17.23.515** **Waiver of rights.**

**17.23.520** **Retaliation.**

**17.23.530** **Excessive rents or demands therefor - Misdemeanor.**

**17.23.540** **Excessive rents - Civil penalties.**

**17.23.550** **Civil action for wrongful eviction.**

**17.23.560** **Disclosure.**


### 17.23.500 Penalties.

A. In addition to all other remedies provided by law, including those set forth in Chapter 1.08 of Title 1 of the San José Municipal Code, and as part of any civil action brought by the city, a court may assess a civil penalty in an amount up to the greater of two thousand five hundred dollars per violation per day, or ten thousand dollars per violation, payable to the city, against any person who commits, continues, operates, allows, suffers or maintains any violation of a provision of this chapter.

B. The prevailing party in any civil action brought pursuant to this chapter shall be entitled to the reasonable costs of bringing such civil action, including court costs and attorneys' fees.

(Ord. 26649.)

### 17.23.505 Retaliatory eviction.

Possession of a rental unit shall not be recovered by a landlord from a tenant who is not otherwise in default as to the terms of occupancy of said unit, if either:

A. The landlord's dominant motive in seeking to recover possession of such rental unit is retaliation against the tenant for exercising his rights under this chapter; or

B. The dominant motive of the landlord in Seeking to recover possession of such rental unit is to evade the purposes of this chapter.

(Ords. 19696, 26649.)

### 17.23.510 Nonwaiver.

Any waiver or purported waiver by a tenant of rights granted under this chapter prior to the time when such rights may be exercised shall be void as contrary to public policy.

(Ord. 19696.)

**17.23.515 Waiver of rights.**

It shall be unlawful for a landlord to attempt to waive or to waive, in a rental agreement or lease, the rights granted a tenant under this chapter prior to the time when such rights may be exercised.

(Ords. 21132, 21735.)

**17.23.520 Retaliation.**

It shall be unlawful for any landlord to evict a tenant:

A. In retaliation for tenants' organizing and/or tenants' petitioning government for rent relief; or

B. If the landlord's dominant motive in seeking to recover possession of such rental unit is retaliation against the tenant for exercising his rights under this chapter; or

C. If the dominant motive of the landlord in seeking to recover possession of such rental unit is to evade the purposes of this chapter.

(Ords. 19696, 20605, 21735.)

**17.23.530 Excessive rents or demands therefor -Misdemeanor.**

Any landlord found to have demanded, accepted, received or retained any rent in excess of the maximum rent allowed by the decision of a hearing officer under this chapter shall be guilty of a misdemeanor.

(Ord. 19696.)

**17.23.540 Excessive rents - Civil penalties.**

Any person found to have demanded, accepted, received or retained any payment of rent in excess of the maximum rent allowed by the decision of a hearing officer under this chapter or in violation of the notice provisions of Section 17.23.270 shall be liable to the tenant from whom such payment was demanded, accepted, received or retained, for the amount such payment exceeded the maximum rent, plus damages as determined, not to exceed five hundred dollars or three times the amount by which such payment exceeded the maximum rent, whichever is greater. Remedies provided in this paragraph are in addition to any other legal remedies and are not intended to be exclusive.

(Ord. 19696.)

**17.23.550 Civil action for wrongful eviction.**

In addition to any other remedies provided by law, any landlord found to have evicted a tenant from a rental unit in violation of this chapter shall be liable to each such tenant for a fine of up to ten thousand dollars and the reasonable costs incurred by the tenant as a result of the eviction, including the costs of moving that tenant's household and reasonable costs of bringing such suit, including court costs and attorneys' fees.

(Ord. 26649.)

**17.23.560 Disclosure.**

A. Any owner of a rental unit shall disclose to a potential buyer in writing, prior to the close of escrow that such unit is subject to rental regulations set forth in this chapter. Upon request by the city, such owner or former owner, shall make a copy of such written disclosure available to the city.

B. Failure of a seller to make the disclosure set forth in subsection A. shall in no way excuse a purchaser of rent-controlled units of any of its obligations under this chapter.

(Ord. 26649.)

## Part 6
## EVICTIONS

Sections:


**17.23.600 Notices of termination of tenancy - Mandatory notice to city.**
**17.23.610 Grounds for termination of tenancy.**
**17.23.615 Additional exception - Notices to vacate served with offers to arbitrate.**
**17.23.620 General exceptions.**
**17.23.630 Termination arbitration scheduling.**
**17.23.640 Issues decided by arbitrator.**
**17.23.650 Hearing - Notice of.**
**17.23.660 Hearing - Time of.**
**17.23.670 Hearing - Conduct of.**
**17.23.680 Hearing - Decision.**
**17.23.690 Hearing - Voluntary agreements.**
**17.23.695 Finding by director of housing of severe rental housing shortage.**
**17.23.699 Effective date.**


**17.23.600 Notices of termination of tenancy - Mandatory notice to city.**

A. A copy of each and every notice to vacate issued to a tenant that does not state a reason for eviction that would legally entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure shall be filed with the rental rights and referrals program of the city of San José within five days after the service thereof on the tenant.

B. The copy of the notice to vacate provided to the city shall be accompanied by a "filing statement" from the landlord or property manager, made under penalty of perjury, setting forth all of the following information:

1. The amount of rent that the tenant being evicted is currently paying each month;

2. The date of the most recent rent increase of the tenant who has received the notice to vacate;
3. The physical address of the rental unit being vacated; and
4. The name, mailing address and current phone number of the tenant being evicted, if available to the landlord.

C. Additionally, the filing statement provided to the city pursuant to subsection B. above shall provide a statement from the landlord or property manager, made under penalty of perjury, that the landlord is not evicting the tenant in order to evade the purposes of this chapter or any other applicable ordinance, law, or regulation.

D. Where a tenant has vacated a rental unit after receipt of such notice to vacate, which does not contain a cause for the eviction that would otherwise entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure, a landlord shall be required, upon city request, to provide the city, in writing, with the following information:

1. The amount of rent that the subsequent tenant is currently paying each month; and
2. The physical address of the rental unit; and
3. The name, mailing address and phone number of the subsequent tenant if available to the landlord; and
4. Copies of the written lease agreement (if any) between the landlord and tenant; and
5. Copies of all rent receipts held by the landlord for the subsequent tenant and that tenant's predecessor.

E. Personal information about tenants received by the city pursuant to subsections B. and D. of this section shall be used for investigation and prosecution of violations of the San José Municipal Code or other applicable laws. Unless the city receives permission from such tenants, city staff shall not otherwise provide such information to third parties unless required to do so by law or court order.

F. For purposes of assessing civil and criminal penalties, violations of the requirements set forth in this section shall be considered separate violations of this chapter.

(Ords. 26649, 26767, 26792.)

### 17.23.610 Grounds for termination of tenancy.

A. Except as further set forth in this section and in Sections 17.23.615 and 17.23.620, below, notices to vacate served upon tenants who have lived for one or more years in a rental unit shall allow such tenants at least ninety days to vacate the rental unit. If the notice to vacate fails to grant a tenant ninety days to vacate a rental unit and the tenant's landlord otherwise fails to comply with the provisions of this Part 6, the landlord shall take no action to terminate the tenancy, including the bringing of any action to recover possession, or be granted recovery of possession of a rental unit.

B. Any notice to vacate a rental unit covered by this chapter, which grants the tenant less time to vacate the rental unit than the period specified in Sections 17.23.610A. or 17.23.695A., if applicable, shall state a reason for the termination that would otherwise entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure. The provisions of this Section 17.23.610B. shall only apply if the notice to vacate is not served simultaneously with an offer to arbitrate as set forth in Section 17.23.615B.

C. In any action brought to recover possession of a rental unit covered by this chapter, possession shall not be granted to the landlord unless the landlord alleges and proves that cause for the termination that would otherwise entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure or otherwise alleges and proves compliance with, or exemption from, the requirements set forth in this Part 6.

(Ord. 26767.)

### 17.23.615 Additional exception - Notices to vacate served with offers to arbitrate.

A. Where a tenancy has existed for one year or more, a landlord shall be permitted to take action to terminate a tenancy, including service of a sixty-day notice to vacate, or bring any action to recover possession or be granted recovery of possession of a rental unit, without regard to the requirements of Section 17.23.610, if the landlord serves upon the tenant, in addition to his or her notice to vacate, an offer to arbitrate the termination date of the tenancy. The offer to arbitrate shall be served in the same manner as the notice to vacate and shall indicate that tenant acceptance of the offer to arbitrate will rescind the notice to vacate and that the decision of the arbitrator will be binding on both the landlord and the tenant. It shall also state that tenant failure to respond or tenant refusal to arbitrate will result in the notice to vacate remaining valid. The offer to arbitrate shall state that the tenant shall have the right to accept the offer to arbitrate within five business days after service, and that the tenant shall communicate such acceptance to the city of San José's rental rights and referrals program in writing. The offer to arbitrate shall be in a form prescribed by the rental rights and referrals program of the city of San José.

B. Notices given to a tenant with an offer to arbitrate shall indicate that the offer to arbitrate was given simultaneously with the notice to vacate. In any action brought to recover possession of a rental unit, the landlord shall allege and prove compliance with this section.

C. Tenant acceptance of the landlord's offer to arbitrate shall be given by the tenant's notifying the city of San José's rental rights and referrals program in writing. If the tenant fails to file a timely acceptance, the landlord may proceed with the notice to vacate previously served upon the tenant.

D. Unless the landlord agrees in writing, the city shall not schedule a termination arbitration if the tenant accepts the offer to arbitrate later than the fifth business day after service of the offer to arbitrate.

E. If the city receives the tenant acceptance ten or more working days after initial service of the offer to arbitrate, the city shall be under no obligation to provide such termination arbitration, even if both parties have agreed to such termination arbitration.

(Ord. 26767, 26792.)

### 17.23.620 General exceptions.

A. With the exception of the provisions of Section 17.23.600, the provisions of this Part 6 do not apply to notices to vacate in situations where a landlord would otherwise be entitled to file an unlawful detainer: (1) after three days notice to cure the default or vacate the premises pursuant to California Code of Civil Procedure Sections 1161(2) through 1161(4); (2) where the person whose occupancy is terminated became the occupant of the rental unit as an employee, agent or licensee and the relationship between the employer and employee or principal and agent or licensor and licensee has been lawfully terminated; (3) where the tenant has continued in possession without permission of the landlord after a time fixed for occupancy by agreement between the parties has expired, as long as such agreement was not entered into for purposes of evasion of this chapter; (4) where the tenant has given written notice as provided in Section 1946 of the California Civil Code of his or her intention to terminate the hiring of the rental unit or made a written offer to surrender which is accepted in writing by the landlord, but the tenant has failed to deliver up possession at the time specified in the written notice without permission of the landlord or successor in estate of the landlord, if applicable; or (5) as otherwise set forth in Section 17.23.615.

B. With the exception of the provisions of Section 17.23.600, the provisions of this Part 6 shall not apply to notices to vacate given to a tenant of any residential property with the following characteristics:

1. The sale is of a building or complex containing four dwelling units or less for which a bona fide purchaser for value has contracted to purchase or exchange (pursuant to Internal Revenue Code section 1031); or the parties to the sale have established an escrow for the sale and purchase of the property through a licensed real estate broker or agent, as defined in Section 10131 of the California Business and Professions Code, or a licensed escrow agent, as defined in Sections 17004 and 7200 of the California Financial Code; and

2. The sale is being made by natural persons or corporate entities, except for purchases by real estate investment trusts or "C Corporations," established pursuant to Subchapter C, Chapter 1, Subtitle A of the Internal Revenue Code; and

3. The seller gave the tenant a notice to vacate no less than one hundred twenty days after the escrow was established; and

4. The seller had not previously given the tenant a notice to vacate.

(Ord. 26767.)

**17.23.630 Termination arbitration scheduling.**

If the tenant accepts the landlord's offer to arbitrate, the city shall promptly inform both parties of its receipt of the tenant's acceptance of the offer to arbitrate and of the date that such termination arbitration shall occur.

(Ord. 26767.)

**17.23.640 Issues decided by arbitrator.**

The scope of the termination arbitration shall be limited to those issues relevant to a final determination of the termination date of the tenant's occupancy of the rental unit.

(Ord. 26767.)

**17.23.650 Hearing - Notice of.**

Written notice of the termination arbitration shall be mailed by the city to the parties at least seven calendar days prior to the hearing.

(Ord. 26767.)

**17.23.660 Hearing - Time of.**

The city shall make reasonable efforts to schedule the termination arbitration within twenty-one days of the filing of the request for a termination arbitration by the tenant.

(Ord. 26767.)

**17.23.670 Hearing - Conduct of.**

A. No less than three calendar days prior to the hearing, the parties shall provide the city's rental rights and referrals program with an arbitration statement, which statement shall be on a form provided by the city's rental rights and referrals program. The arbitration statement form will allow the parties to state the grounds on which they believe that the arbitrator should rule in their favor.

B. The termination arbitration shall be conducted by the arbitrator. The parties shall appear without counsel at the termination arbitration. The arbitrator shall attempt first to mediate a resolution between the parties. If no resolution can be attained through mediation, the dispute regarding the appropriate date of termination of the tenancy shall be arbitrated.

C. The termination date set by the arbitrator shall maintain the tenant's right to terminate the tenancy earlier, (subject to the tenant's responsibility to give the landlord a thirty-day notice of termination), if the tenant so chooses.

D. Parties shall be permitted to state their cases and present such documentary evidence and witnesses as they and the arbitrator feel appropriate. The arbitrator shall indicate the nature of any additional

documentary evidence he or she will need from any party in order to reach a determination and the time frame that such evidence will need to be presented to the arbitrator.
(Ords. 26767, 26792.)

**17.23.680 Hearing - Decision.**

A. In determining whether to grant a tenant up to ninety days to vacate a unit, the arbitrator shall balance the degree of hardship to the tenant in being required to move within the period stated in the notice to vacate against the degree of hardship to the landlord in further delaying the termination of the tenancy.
B. In determining whether to grant a tenant between ninety-one and one hundred twenty days to vacate a unit, the arbitrator shall base his or her decision exclusively on a balancing of the tenant hardship criteria set forth in subsection B.1. below against the landlord hardship criteria set forth in subsection B.2. below.
1. Criteria indicating tenant hardship shall include the following:
a. Tenancies of greater than three years;
b. Recent job loss (within the thirty days prior to receipt of the notice to vacate) on the part of any of the tenants receiving the notice;
c. Illness or physical condition of the tenant or any person lawfully residing in the tenant's home that would significantly impair the tenant's ability to move;
d. The presence of minor children in the tenant's home who would be negatively impacted by a move;
e. Retaliation, discrimination or other illegal harassment or any attempt to evade the provisions of this chapter on the part of the landlord;
f. Illegal, fraudulent or bad faith activities on the part of the landlord that would otherwise deny the landlord equitable relief under the doctrine of unclean hands.
g. The tenant can show that he or she has received an offer to rent a rental unit from a third party, which rental agreement begins no later than one hundred twenty days after the tenant received the notice to vacate, and there are no other suitable units for lease within ninety days.
2. Criteria indicating landlord hardship shall include the following:
a. The tenant, members of the tenant's household and/or the tenant's guests are wasting the rental unit, or permitting the rental unit to be wasted;
b. Criminal activity on the part of the tenant or members of the tenant's household or the tenant's guests;
c. Nuisance activity on the part of the tenant, members of the tenant's household and/or the tenants' guests;
d. The tenant's presence in the rental unit is subjecting the landlord to unreasonable financial burden;
e. Illegal, fraudulent or bad faith activities on the part of the tenant that would otherwise deny the tenant equitable relief under the doctrine of unclean hands.
C. The burden of proof as to the reasonableness of a termination date shall be on the tenant.
D. In making his or her determination, the arbitrator shall state the reasons for his or her decision. The arbitrator's decision shall calculate the period of time granted to the tenant to vacate the rental unit from the date the landlord served the original notice to vacate on the tenant.
E. In order to assist the city in gathering statistics, the arbitrator shall also separately indicate if credible evidence of any of the following was presented in the termination arbitration: 1. Retaliation by the landlord for a tenant's, or member of the tenant's household's lawful exercise of his or her rights;
2. Threats or actual physical harm by the landlord against the tenant or any member of the tenant's household;

3. Discrimination or sexual harassment by the landlord against the tenant or members of the tenant's household;
4. An attempt by the landlord to circumvent his or her responsibilities under this chapter;
5. Criminal activity by the tenant;
6. Activities by the tenant such as to constitute a nuisance to the tenant's neighbors;
7. Threats or actual physical harm by the tenant against the tenant's neighbors, the landlord, or persons hired by the landlord to manage or maintain the rental unit or landlord's property.

F. The arbitrator's decision shall constitute a binding agreement of a fixed termination not requiring further notice of termination pursuant to California Code of Civil Procedure Section 1161.

G. The arbitrator's decision shall be mailed to the parties no later than seven days after the completion of the termination arbitration.

(Ord. 26767.)

### 17.23.690 Hearing - Voluntary agreements.

At any time before the termination arbitration, the parties may enter into a written voluntary agreement to resolve the dispute. Notice of the existence of said agreement shall be presented to the city of San José and the parties shall both indicate immediately to the city of San José that the termination arbitration should be canceled.

(Ord. 26767.)

### 17.23.695 Finding by director of housing of severe rental housing shortage.

A. Upon a finding pursuant to subsection B., below, by the city's director of housing, that the city is suffering from a severe rental housing shortage, the ninety-day notice requirement of Section 17.23.610A. shall be extended by thirty days to one hundred twenty days.

B. The director of housing shall make biannual findings, as set forth in subsection C., below, determining whether the city is experiencing a severe rental housing shortage. Said finding shall be based on credible evidence that, on the date of the finding, the vacancy rate for market rate apartment complexes in the city of San José is three percent or less. In making these findings, the director shall be guided by the criteria used by the "RealFacts" quarterly survey from the fourth quarter of 1993 through the first quarter of 2001.

C. The noticing requirements set forth in subsections A. and D. of this section, as appropriate, shall become effective on June 1 and December 1 of each year. The director of housing's first report shall be made public by December 20, 2002. The director of housing's subsequent reports shall be made public by May 1 and November 1 of each year thereafter.

D. The report of the director of housing shall be deemed to have been made public upon publication in a newspaper or other periodical of general circulation distributed in the city of San José.

(Ords. 26767, 26792.)

### 17.23.699 Effective date.

The provisions of this Part 6 shall become effective on January 1, 2003.

(Ord. 26767.)

## Part 7
## EVICTIONS FROM CERTAIN UNITS BUILT AFTER THE EFFECTIVE DATE

# OF THIS CHAPTER

**Sections:**


**17.23.700** **Non-binding mediation with mandatory attendance.**
**17.23.710** **Definitions.**
**17.23.720** **Applicability.**
**17.23.730** **Mediation process.**
**17.23.740** **Retaliation prohibited.**
**17.23.750** **Notice of tenant's rights.**
**17.23.760** **Filing of notices.**
**17.23.770** **Effective date.**


## 17.23.700 Non-binding mediation with mandatory attendance.

All persons (landlords and tenants) residing in, owning, or managing residential rental property which contains three or more units, and which would not otherwise be subject to this chapter because such units were first rented after the effective date of thischapter, shall participate in the mediation of rental housing disputes as provided in Section 17.23.730 herein.
(Ord. 26767.)

## 17.23.710 Definitions.

For the purpose of this Part 7 the following terms are defined as follows:
A. "Conciliation" means a confidential telephone call or other contacts by a mediator or city staff with a landlord and tenant for the purpose of resolving a rental housing dispute.
B. "Mediation" means a meeting in which a landlord and tenant have the opportunity to communicate with a mediator and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute under ground rules designed to protect the confidentiality and neutrality of the communications.
C. "Mediator" means a person who is certified to have completed at least forty hours of basic mediation training, with subsequent advanced training, and who has also participated as a mediator or co-mediator in at least ten mediations conducted under the auspices of a recognized community or commercial mediation program, and who has agreed (in a form acceptable to the city's director of housing) to a statement of mediation ethics and principles, including an acknowledgment of the duty to disclose any conflicts of interest in any specific case.
D. All other defined terms used in this chapter have the meanings set forth in Part 2 of this chapter.
(Ord. 26767.)

## 17.23.720 Applicability.

A. The requirements of this Section 17.23.720 do not apply to notices to vacate in situations where a landlord would otherwise be entitled to file an unlawful detainer: (1) after no notice or after a three-day notice to cure the default or vacate the premises, pursuant to California Code of Civil Procedure Section 1161; (2) where the person to be removed became the occupant of the rental unit as an employee, agent or licensee and the relationship between the employer and employee or principal and agent or licensor and licensee has been lawfully terminated; (3) where a tenant has continued in possession without permission of the landlord after the expiration of a fixed term agreement without the permission of the landlord pursuant to California Code of Civil Procedure Section 1161(1), as long as the fixed term

agreement was not entered into for purposes of evading of this Part 7; or (4) where the tenant has given written notice as provided in Section 1946 of the California Civil Code of his or her intention to terminate the hiring of the rental unit or made a written offer to surrender which is accepted in writing by the landlord, but the tenant has failed to deliver up possession at the time specified in the written notice without permission of the landlord or successor in estate of the landlord if applicable.
B. The mandatory mediation provisions of Section 17.23.730 shall not apply in situations where the tenant has continuously rented from the landlord for less than one year.
(Ord. 26767.)

**17.23.730 Mediation process.**

A. City staff or the designated mediator shall give telephone notice of the initial mediation to each party to the mediation within five business days following referral of the matter for mediation. If either party does not have a telephone, said notice shall be given by first class mail postmarked no later than five business days following referral of the matter for mediation. The notice of the mediation shall inform each party of their obligation to appear at the mediation and participate in the mediation in good faith. The mediator may attempt conciliation with the parties prior to the mediation.
B. One or more tenants affected by a notice to vacate may simultaneously participate in the same mediation proceeding with the consent of a landlord.
C. The mediation shall take place within thirty days of the service of the notice to vacate.
D. The mediator shall make an opening statement, explaining the nature of the process and the ground rules. Thereafter, the mediator will determine the manner and course of the session, including the timing of each party's opening statement and whether to meet with the parties in caucus, provided that the general guiding principle will always be to provide the parties with full opportunity to air the concerns giving rise to the dispute.
E. The landlords and tenants involved in the dispute shall be obligated to appear personally at a mediation session scheduled by a mediator.
F. All parties shall participate in the mediation until the completion of the opening statements of the mediators and the other party or parties.
G. All parties appearing shall have the legal authority to resolve disputes arising under this chapter.
H. The mediator may, with the consent of all parties, schedule additional sessions as needed.
I. Failure of any party to appear and participate in a mediation as set forth herein shall be a violation of this chapter.
J. Participation in mediation shall be voluntary in all respects after the opening statement of the mediator and the other party or parties. No party shall be obligated to reach any specific agreement, or to reach any agreement at all, as a result of participating in the mediation. If an agreement is reached, it will be stated in writing by the mediator or by the parties. Any such agreement shall be confidential and will not be enforceable or usable for any purpose outside the dispute resolution process, unless all signatories agree that the document can be disclosed or used in other proceedings.
K. At the end of the mediation, the mediator shall offer the parties an opportunity to fill out evaluations of the mediation that the mediator shall provide to the city rental rights and referrals program, along with a record as to whether a mediated settlement was reached.
(Ords. 26767, 26792.)

**17.23.740 Retaliation prohibited.**

No landlord or tenant who has been a party to conciliation and/or mediation of rental housing disputes pursuant to this chapter may undertake or cause any type of retaliatory act or omission against another party as a result of the other party having invoked or participated in the dispute resolution process.

(Ord. 26767.)

### 17.23.750 Notice of tenant's rights.

A. Every notice to vacate subject to the provisions of this Part 7 shall be accompanied by the following notice:

"Part Seven of Section 17.23 of the San Jose Municipal Code gives you the right to request a mediation related to the termination of your tenancy within five business days of receipt of the notice of termination of your tenancy. Please contact the city of San Jose's rental rights and referrals program for further details or to schedule a mediation."

The notification shall be provided in English, Spanish and Vietnamese, in the translated form prepared by the city's rental rights and referrals program. The landlord may provide an accurate translation of the notification in other languages as well.

B. Failure to provide the notification shall be a violation of this chapter.

(Ords. 26767, 26792.)

### 17.23.760 Filing of notices.

Landlords serving a notice to vacate covered by this Part 7 shall send a copy of such notice to the city of San José rental rights and referrals program. Failure to file such notice shall be a violation of this chapter.

(Ords. 26767, 26792.)

### 17.23.770 Effective date.

The provisions of Part 7 shall become effective July 1, 2003.

(Ord. 26767.)

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