

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 per habitable room of the apartment, as defined in the Municipal Code (*see Section 17.20.270*).

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