CITY OF SAN JOSÉ, CALIFORNIA

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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 30032",** the original copy of which is attached hereto, was passed for publication of title on the **14th day of November, 2017,** was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **28th day of November, 2017,** by the following vote:

AYES: ARENAS, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: CARRASCO, PERALEZ.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of **29th day of December, 2017.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **1st day of December, 2017.**

(SEAL)_____
TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

RD:SSG:KML
11/17/2017

ORDINANCE NO. 30032

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PARTS 1 THROUGH 8 AND ADDING A NEW PART 9 TO CHAPTER 17.23 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO REVISE THE APARTMENT RENT ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Parts 1 through 8 of Chapter 17.23 of Title 17 of the San José Municipal Code are hereby amended in their entirety to read as follows:

Part 1

General

17.23.010 Title

Parts 1 through 9 of this Chapter 17.23 shall be known as the "Apartment Rent Ordinance."

17.23.020 Policy and Purposes Declaration

The purposes of the Apartment Rent Ordinance are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. The Apartment Rent Ordinance recognizes the value of residential rental units as a critical resource amid the continuing shortage of and persistent demand for housing in the City of San José. In July 1979, the City enacted a rent control ordinance to alleviate some of the more immediate needs created by San José's housing situation: including but not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the opportunity for landlords to earn a fair return. To further protect tenants from excessive and unreasonable rent increases, the Apartment Rent Ordinance generally limits annual rent increases, requires notices be provided to the City, regulates how much and what types of costs may be passed through to tenants, provides for monitoring of

rents, and provides for an administrative review process for housing-related disputes. The rights and obligations created by the Apartment Rent Ordinance for landlords and tenants are created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and are in addition to any rights and obligations under state and federal law.

17.23.030 Scope and Application

Parts 1 through 9 of the Apartment Rent Ordinance apply to each Rent Stabilized Unit, as defined in Section 17.23.167 and, as applicable, to each Covered Property as defined in Section 17.23.123.

17.23.040 Regulations; Forms Authorized

The City Manager may adopt or amend regulations for the administration and implementation of the Apartment Rent Ordinance. The Director, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of the Apartment Rent Ordinance. All forms and notices called for in this Chapter and the Regulations shall be adopted by the Director unless otherwise indicated.

17.23.050 Notice of Apartment Rent Ordinance to Tenant Households

A. Each Landlord shall post a written notice and maintain such posting, on a form approved by the Director, of the applicability of the Apartment Rent Ordinance in a conspicuous location within each building containing one (1) or more Rent Stabilized Units. The Landlord shall have complied with this requirement by posting a Notice of the Apartment Rent Ordinance in the same location as a notice to tenants posted in accordance with subsections (1) or (2) of California Civil Code Section 1962.5(a) or immediately adjacent to the posting of the Residential Occupancy Permit in compliance with Section 17.20.630.

B. Each Landlord shall notify the Tenant Household of the applicability of the Apartment Rent Ordinance prior to entering an oral or written rental agreement for a Rent Stabilized Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section by providing (1) written notice that the Rent Stabilized Unit is subject to this Chapter and, (2) a copy of the current City informational notice or handbook for Tenants of Rent Stabilized Units ("Informational Notice"), if such notice is available from the City of San José, to the Tenant upon entering an oral or written rental agreement for the Rent Stabilized Unit.

17.23.060 Limit on Electronic Payment

It shall be unlawful for any Landlord to demand or require either cash or an electronic funds transfer or online internet payment as the exclusive method of payment of Rent or Security Deposits, except that cash may be required for a limited period of time under the conditions allowed by California Civil Code Section 1947.3(a)(2), as amended.

17.23.070 Reasonable Accommodation; Fair Housing

A. Nothing in this Chapter is intended to authorize a Landlord to deny a request for reasonable accommodation required under state or federal law, or to impose a charge for that accommodation where no charge is allowed by law.

B. Nothing in this Chapter is intended to authorize a Landlord to avoid obligations imposed by federal, state or local fair housing law.

Part 2

Definitions

17.23.100 General

Unless the context otherwise requires, the definitions set forth in this Part govern the construction of the Apartment Rent Ordinance.

17.23.105 Administrative Decision

"Administrative Decision" means a Petition Examiner's final written determination on a Landlord or Tenant Petition.

17.23.110 Affordable Rental Unit

"Affordable Rental Unit" means each Rental Unit that is owned or operated by any government agency, or any individual Rental Unit for which the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053, for lower income households pursuant to legally binding restrictions recorded for the benefit of a government agency. However, if the ownership or operation, or the Rent limitation ceases, then the Rental Unit will no longer be considered an Affordable Rental Unit. The presence of one (1) or more Affordable Rental Units in a Multiple Dwelling shall not exempt any other Rental Unit in the same building that does not also meet the definition of Affordable Rental Unit.

17.23.112 Annual General Increase

"Annual General Increase" shall have the meaning provided in Section 17.23.310.

17.23.115 Base Year

"Base Year" shall have the meaning provided in Section 17.23.810.B.

17.23.116 Buyout Agreement

"Buyout Agreement" shall have the meaning provided in Section 2.01.3 of the Regulations.

17.23.117 Buyout Offer

"Buyout Offer" shall have the meaning provided in Section 2.01.4 of the Regulations.

17.23.120 Capital Improvements

"Capital Improvements" means building, unit or property additions or modifications that replace or enhance an existing physical feature of a Rent Stabilized Unit or of a building containing a Rent Stabilized Unit or that provides new Housing Services to the Tenants as compared to the level of services as previously provided.

17.23.121 Commission

"Commission" means the Housing and Community Development Committee or successor.

17.23.122 Consumer Price Index

"Consumer Price Index" means the Consumer Price Index For All Urban Consumers in the San Francisco-Oakland-San Jose all items index (1982-84 equals 100), as reported by the Bureau of Labor Statistics of the United States Department of Labor. In the event a successor index to the Consumer Price Index for all urban consumers for all items for the San Francisco-Oakland-San Jose area or comparable area is established by the Bureau of Labor Statistics, this definition may be updated accordingly in the Regulations.

17.23.123 Covered Property

"Covered Property" means an individual building or complex of buildings containing one (1) or more Rent Stabilized Units, together with any common areas.

17.23.124 Current Year

"Current Year" shall have the meaning provided in Section 17.23.810.C.

17.23.125 Director

"Director" means the City's Director of the Department of Housing or the Director's designee.

17.23.126 Ellis Act Ordinance

"Ellis Act Ordinance" means the ordinance codified in Part 11 of Chapter 17.23.

17.23.127 For-Cause Termination

"For-Cause Termination" is the termination of a tenancy based on a reason for eviction that would legally entitle a Landlord to evict a Tenant Household on three (3) days' notice under California Code of Civil Procedure Sections 1161(2) (for Tenant's nonpayment of Rent), 1161(3) (for Tenant's failure to perform a material term of rental agreement), or 1161(4) (for Tenant allowing a nuisance or other unlawful activity).

17.23.130 Gross Income

"Gross Income" shall have the meaning provided in Section 17.23.820.A.

17.23.131 Guest Room

"Guest Room" shall have the meaning provided in Section 20.200.460.

17.23.132 Guesthouse

"Guesthouse" shall have the meaning provided in Sections 20.200.470 and 20.200.480.

17.23.135 Hearing Officer

"Hearing Officer" shall have the meaning provided in Section 2.01.11 of the Regulations.

17.23.136 Housing Services

"Housing Services" means 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, pest control, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, storage, and any other benefits, privileges, or facilities.

17.23.137 Initial Rental Rate

"Initial Rental Rate" means the actual amount paid by the Tenant for the use and occupancy of the Rent Stabilized Unit at the commencement of the tenancy, or in the case of a Rental Voucher Unit, the sum of the rent paid by the Tenant and government agency.

17.23.140 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. For purposes of this Chapter, Landlord does not include an individual who is a member of the Tenant Household whose primary residence is the same Rental Unit as the Tenant.

17.23.145 Multiple Dwelling

"Multiple Dwelling" means a multiple dwelling as that term is defined and used in Title 20 of this Code and includes all units subject to Part 8 of Chapter 17.20.

17.23.146 Municipal Code

"Municipal Code" means the San José Municipal Code.

17.23.150 Net Operating Income

"Net Operating Income" shall have the meaning provided in Section 17.23.810.A.

17.23.151 Notices

The following notices are defined terms for purposes of this Chapter with the following meanings.

A. "Informational Notice" shall have the meaning provided in Section 17.23.050.B.

B. Notice of the Apartment Rent Ordinance" shall have the meaning provided in Section 17.23.050A.

C. "Notice of Re-Rental" shall have the meaning provided in Section 17.23.600.

D. "Notice of Termination" means the notice informing a Tenant of the termination of its tenancy including but not limited to a notice to quit or vacate, a notice in accordance with California Civil Code Section 1946.1 or California Code of Civil Procedure Section 1162, as amended.

17.23.155 Operating Expenses

"Operating Expenses" shall have the meaning provided in Section 17.23.820.C.

17.23.160 Petition

"Petition" shall have the meaning provided in Section 2.01.14 of the Regulations.

17.23.161 Petition Examiner

"Petition Examiner" shall have the meaning provided in Section 6.06.05 of the Regulations.

17.23.165 Regulations

"Regulations" means the regulations adopted by the City Council or pursuant to Section 17.23.040.

17.23.166 Rent

"Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, including Housing Services, or for the assignment of a lease or rental agreement for a Rental Unit, including subletting.

17.23.167 Rent Stabilized Unit

A. "Rent Stabilized Unit" means a Rental Unit in any Guesthouse or in any Multiple Dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979 or that was offered or available for rent on or before this date.

B. The following shall not be considered Rent Stabilized Units:

1. Rooms or accommodations in hotels, motels, or Guesthouses which are legally rented to transient guests for a period of less than thirty (30) days consistent with the Municipal Code, except those rooms or accommodations subject to Part 2.5 of Chapter 20.80;

2. Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), fraternity house or sorority house, or in dormitories owned and operated by an institution of higher education, a high school or elementary school;

3. Affordable Rental Units; and

4. Rental Units in a building containing only one (1) or two (2) dwelling units.

17.23.168 <u>Rental Unit</u>

"Rental Unit" means a structure or part of a structure (including but not limited to a Guest Room in a Guesthouse) offered or available for rent as a home, residence, or sleeping place, whether or not the residential use is a conforming use permitted under the San José Municipal Code, together with the land and appurtenant buildings thereto, and all Housing Services, privileges, and facilities supplied in connection with the use or occupancy thereof. A Rental Unit shall not include a Mobilehome or Mobilehome Lot as defined in Section 17.22.160 and 17.22.170.

17.23.169 <u>Rental Voucher Unit</u>

"Rental Voucher Unit" means a Rental Unit that is restricted to occupancy by lower income households by a contract where the Tenant pays no more than 35% of their income towards the Rent, the remainder being paid with a government agency or a nonprofit administering government agency's funds, and where the rent is not increased on an annual basis, but only where allowed under the rules of the government agency.

17.23.170 Section

"Section" means a numbered section in Municipal Code Chapter 17.23 unless otherwise indicated.

17.23.171 Security Deposit

"Security Deposit" shall have the meaning provided in California Civil Code Section 1950.5, as amended.

17.23.172 Specified Capital Improvements

"Specified Capital Improvements" shall have the meaning provided in Section 17.23.330.

17.23.175 Tenant

"Tenant" means a person or persons entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Rental Unit.

17.23.176 Tenant Household

"Tenant Household" means all Tenant(s) who occupy any individual Rental Unit, and each minor child of any Tenant whose primary residence is the Rental Unit.

17.23.177 Tenant Protection Ordinance

"Tenant Protection Ordinance" means the ordinance codified in Part 12 of Chapter 17.23.

Part 3

Initial Rent and Rent Increases; Petition and Hearing Process

17.23.300 Initial Rent and Vacancy Decontrol

A. Valid Decontrol. The Initial Rental Rate for a new tenancy in a Rent Stabilized Unit may be set by the Landlord if the Rent Stabilized Unit was vacant due to one (1) of the following two (2) circumstances.

1. Voluntary Vacancy. The prior Tenant Household voluntarily terminated the tenancy.

2. For-Cause Termination. A Landlord legally terminated the prior tenancy as a For-Cause Termination.

B. Exceptions to Decontrol. Only the Rent charged consistent with this Chapter to the former Tenant, plus any annual adjustment authorized by this Chapter, may be charged for a Rent Stabilized Unit in the following circumstances.

1. No Cause Termination. A Landlord terminated a tenancy without cause in accordance with Section 1946.1 of the California Civil Code or Section 827 of the California Civil Code.

2. Continuing Tenancy. An existing Tenant or existing member of the Tenant Household, (including individuals who are not listed on an existing rental agreement), has entered into a new oral or written rental agreement for the same Rent Stabilized Unit.

3. Unlawful Landlord Activity. A Landlord effectively terminated a tenancy without cause by encouraging the Tenant to terminate the tenancy through unlawful activities prohibited under the Tenant Protection Ordinance, the Apartment Rent Ordinance, or state law.

4. Any Other Illegal Evasion. A Tenant terminated a tenancy because of illegal conduct by the Landlord or any other means by which a Landlord fraudulently seeks to set a new Initial Rental Rate.

17.23.310 Limits on Rent Increases

A. Annual Rent Increase Limit. The Rent of any Rent Stabilized Unit may not be increased by more than the Annual General Increase unless otherwise authorized by Petition. If the Landlord has not substantially complied with the City's request to register or re-register a Rent Stabilized Unit pursuant to the procedures in the Regulations, the Landlord may not increase the Rent for the Rent Stabilized Unit.

B. The "Annual General Increase" is limited to:

The monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%).

C. Rent Increase Frequency Limit. Not more than one (1) Rent increase, including the Annual General Increase, any increase allowed under Chapter 13 of the Regulations, and any increase authorized by a final decision after a Petition may be imposed in any twelve (12)-month period. An increase in Rent authorized by a decision on a Petition filed pursuant to Section 17.23.350.C or Part 8 of this Chapter may be imposed after notice has been provided pursuant to California Civil Code Section 827, if the decision states that the initial increase is exempt from the 12 month interval requirement under this Section.

D. Rental Voucher Unit - Rent Increases. During the time a Rental Unit serves as a Rental Voucher Unit, the Initial Rent shall be subject to this Chapter, but its Rent may be adjusted annually consistent with the published rules of the applicable government agency in lieu of the Rent adjustments allowed under this Chapter.

17.23.315 Limits on All Fees and Pass Through Charges

A. Reserved.

B. Limitation on Fees. The following fees may not be charged to Tenants except as provided:

1. Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars ($10.00) unless approved by Petition or the Regulations.

2. Excess Bounced Check Service Fees. No Landlord shall charge a Tenant a service charge for a dishonored ("bounced") check that exceeds the amount allowed under California Civil Code Section 1719 (a)(1), as amended. Landlord need not provide Tenant with a third party invoice for this service charge.

3. Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.

4. Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section 1950.6 (b), as amended.

C. Separate Line-Item Required. No Landlord may pass through any charge to any Tenant allowed under this Part unless the charge is clearly listed on the rental agreement and the Rent invoice (if any) and is accompanied by a true and correct copy of the invoice or bill paid by the Landlord for such charge.

D. Tenant Petitions Authorized. 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 may file

a Petition 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 any Regulations governing such pass through. Any of the following reasons provide grounds for such a Petition:

1. There exists a dispute as to the genuineness of the bill or the amount of the charge.

2. The pass through of the charge is not authorized under this Chapter.

3. There exists a dispute as to whether the Tenant had the right to use and occupy the Rental Unit during the billing period or any portion of the billing period.

4. Mathematical errors in the relevant calculations.

5. Copies of the Landlord's invoice or bill were not provided as required.

E. Security Deposit

Except as provided in Section 17.23.320.C, a Security Deposit, once established, cannot be raised for the duration of the tenancy. For purposes of this Section only, where several Tenants occupy one (1) Rental Unit, the Tenancy shall be deemed to continue so long as any one (1) of the Tenants who occupied the Rental Unit when the deposit was set continues to occupy the Rental Unit.

17.23.320 Exceptions to Limits on Rent Increases and Other Charges

A. Rent Increase Awards for Landlord Fair Return Petitions. A Landlord may increase rents in excess of the Annual General Increase to the extent a higher rent is authorized in a final Hearing Officer's decision on a Landlord Petition for fair return filed in accordance with Part 8 of this Chapter.

B. Pass Through Awards for Landlord Specified Capital Improvements Petitions. A Landlord may impose a pass-through charge in addition to Rent to the extent authorized in a final Administrative Decision or Hearing Officer's decision on a Landlord Specified Capital Improvements Petition filed in accordance with Section 17.23.330. Provided however, in no event may the total monthly amount imposed for Specified Capital Improvements exceed three percent (3%) of the monthly Rent validly charged for the Rent Stabilized Unit on the date of the filing of the Petition. Charges for Specified Capital Improvements shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase. Following a valid vacancy decontrol of Rent for a Rent Stabilized Unit in accordance with Section 17.23.300, any awarded charges for Specified Capital Improvements for that unit shall expire.

C. One-Time Payments for New Additional Housing Services. A Tenant Household may file a joint Petition to allow the Tenant to make a payment of a one-time fee or increase the Tenant's Security Deposit in order to receive or be entitled to certain new or additional Housing Services that are expressly excluded in the written rental agreement, to the extent that these Housing Services that are identified in the Regulations. The one-time payment for new or additional Housing Services may not exceed five percent (5%) of the monthly Rent validly charged at the time of the Tenant request. The one-time payment or additional Security Deposit shall not be considered Rent for purposes of this Chapter and shall not be included when calculating a Rent increase or subject to the one (1) increase in any twelve (12)-month period limitations in Section 17.23.310.

17.23.325 Council Initiated Exceptions to Limits on Rent Increases and Other Charges

A. Other Fees, Charges, and Costs that May Be Passed Through to Tenants. The following charges may be passed through to Tenants, separate from Rent only in

compliance with the requirements below. These charges shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase.

Annual Fees imposed under Chapter 17.23.

1. Reserved.

2. New Charges. A Landlord may pass through to a Tenant a share of charges imposed on the Landlord by governmental agencies or by public utilities subject to regulation by the California Public Utilities Commission, subject to the limitations in subsection 3 below where all of the following conditions are met:

   a. 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

   b. Such pass through has been authorized by resolution of the City Council in which the charge in question was expressly identified; and

   c. The Landlord passes through the charge in accordance with the rules specified in such a resolution adopted by the City Council and the Regulations; and

   d. The Landlord passes through the charge in accordance with the rules specified in such a resolution adopted by the City Council and the Regulations.

3. Conditions to Pass Through Charges to Tenants. No charge described in subsection 2 above may be passed through to any Tenant pursuant to this Section unless all of the following conditions are satisfied:

   a. The total charge by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and

   b. No Landlord may require a Tenant to pay any amount of any charge that is attributable to any period of time that the Tenant was not entitled to use and occupy the Rental Unit; and

   c. No Landlord may require a Tenant to pay any amount of any charge that is attributable to common areas or Rental Units other than the Tenant Household's Rental Unit; and

   d. No Landlord may require a Tenant to pay more than its share of the charge attributable to that Tenant 's Rental Unit that is permitted to be passed through to Tenant.

17.23.330 Petitions for Pass Through for Specified Capital Improvements

A. Purpose. The purpose of this Section is to provide an incentive for certain improvements by allowing Landlords to petition for a limited pass through to the Tenant of the amortized costs of the improvements listed in Appendix B to the Regulations ("Specified Capital Improvements") subject to the following conditions:

   1. The charge must comply with the limitations in Section 17.23.320.B.

   2. The Specified Capital Improvement must do one (1) of the following: provide new Housing Services or enhanced Housing Service functionality to the Tenants; increase the safety (including ADA accessibility), sustainability (water or energy conservation) or seismic readiness of the Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit).

3. The Specified Capital Improvement must have been completed within twelve (12) months prior to the filing of the Petition and must meet the criteria in the Regulations.

B. Petition Required. A Landlord must petition for and receive an Administrative Decision authorizing a pass through for any costs to be charged to Tenants pursuant to this Section prior to passing through any charges.

C. No Pass Through for Improvements to Maintain Existing Housing Services. The following may not be passed through to the Tenant unless explicitly authorized by the Regulations: (1) the costs of a Specified Capital Improvement that replaces an existing physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit) with a physical feature of similar kind and quality; or (2) the costs of a Specified Capital Improvement that maintains a similar level of functionality as a prior physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit).

17.23.350 Petition Process

A. Tenant Petitions. There is hereby established a Tenant Petition process, which process and procedures shall be set forth in the Regulations. A member of a Tenant Household may submit a Petition to the Director on any one (1) or more of the following grounds: to allege a Rent increase in violation of the Ordinance; to request a reduction in Rent based on decreased Housing Services; to contest a fee or charge as an unauthorized or excessive pass through; to allege other violations of the Ordinance or Regulations; or other specific grounds that may be provided by the Regulations.

B. Landlord Petitions. There is hereby established a Landlord Petition process, which process and procedures shall be set forth in the Regulations. A Landlord may submit a Petition to the Director on any one (1) or more of the following grounds:

to request a Rent increase in excess of the Annual General Increase in order to obtain a fair return as described in Part 8; to request the ability to pass through a charge for Specified Capital Improvements; or other specific grounds that may be provided by the Regulations.

C. Joint (Unopposed) Petitions. There is hereby established a Joint Petition process, which process and procedures shall be set forth in the Regulations. A Tenant may file a Petition to request approval of a one-time payment or Security Deposit increase pursuant to Section 17.23.320.C, if the Landlord has signed the Petition. Subject to the conditions in the Regulations, a Tenant may file a Petition for an increase in the Rent of up to five percent (5%) for an additional Tenant if additional occupants are prohibited in the written rental agreement or an increase in the Rent of up to fifty dollars ($50) for a second parking space if only one (1) parking space is reserved for the Tenant in a written rental agreement, provided that no increase in the Rent is allowed for a Tenant's dependent child, foster child, spouse, domestic partner, parent or minor in the Tenant's care, which terms may be further defined in the Regulations.

D. Petitions Affecting Rental Voucher Units.

A Tenant or Landlord filing a Petition that applies to a Rental Voucher Unit must indicate that on the Petition and provide a copy of the Petition to the government agency or nonprofit administering government agency's funds within the time period specified in the Regulations for notice to the other party. The government agency or nonprofit administering government agency's funds shall be entitled to participate in the Petition process, and to file a Petition or response within the time period specified in the Regulations.

Part 4

Fees

17.23.400 Fee - Rental Unit

The costs of providing services and administering this Chapter 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. This is the fee previously codified in Section 17.23.480 and17.23.490 pursuant to Ordinance No. 19696.

17.23.410 Fee – Timing, Method and Exemptions

A. Timing and Method. The fee imposed pursuant to Section 17.23.400 shall be paid at the time at which the residential occupancy permit fee, if applicable, is due and paid under Title 17 of this Code, provided that the fee may also be collected by a supplemental billing, or collected in an alternative manner if so provided in the Regulations. Said fee may be included as an Operating Expense under the definition contained in Section 17.23.820. The City Manager shall report to the City Council no less than once each year regarding the City Manager's recommendation and the recommendation of the Commission 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 this Chapter, and the Council's finding in this regard shall be final. Payment by the Landlord of the fee shall be made at the same time and in conjunction with the residential occupancy permit fee, or in an alternative manner if so provided in the Regulations and the Director of Finance is hereby authorized to collect said fees in this manner.

B. Late Payment. Whoever fails, for more than thirty (30) days after date of notice, to pay the fee required hereunder shall, in addition to said fee, pay an additional late charge assessment as determined by resolution of the City Council. No

portion of any charge or fee for late payment or submission authorized by this Section, or any portion thereof, may be passed-through to the Tenant.

C. Fee Credit Upon Transfer. In the event the residential occupancy permit is transferred to a subsequent owner of the Rental Unit for which the fee has been paid, the subsequent owner shall be deemed to have paid said fee for the Rental Unit.

D. Fee Exemptions. The Regulations shall provide procedures and standards for a Landlord to prove eligibility for fee exemptions for Rent Stabilized Units based on claims of owner occupied units or units exempt pursuant to the definition provided in Section 17.23.167.B, Rent Stabilized Unit.

Part 5

Enforcement

17.23.500 Penalties

A. Penalty for Violations of this Chapter. 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 ($2,500) per violation per day, or ten thousand dollars ($10,000) 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 17.23, subject to California Civil Code Section 1947.7, as amended.

B. Attorney Fees. The prevailing party in any civil action brought pursuant to this Chapter 17.23 shall be entitled to the reasonable costs of bringing such civil action, including court costs and attorney fees.

17.23.510 Retaliatory Eviction

Possession of a Rental Unit shall not be recovered by a Landlord from a Tenant, and the Tenant Household, who is not otherwise in violation of the terms of occupancy of the Rental Unit, if either:

A. The Landlord's dominant motive in seeking to recover possession of the Rental Unit is retaliation against the Tenant for exercising any rights under this Chapter 17.23; or

B. The Landlord's dominant motive in seeking to recover possession of the Rental Unit is to evade the purposes of this Chapter 17.23.

17.23.520 Waivers

A. Nonwaiver. Any waiver or purported waiver by a Tenant of rights granted under this Chapter 17.23 prior to the time when such rights may be exercised shall be void as contrary to public policy.

B. Waiver of Rights. It shall be unlawful for a Landlord to attempt or seek to waive, or to waive, in a written or oral rental agreement, the rights granted a Tenant under this Chapter prior to the execution of, or as a condition of entering into or extending, a written or oral rental agreement.

17.23.530 Excessive Rents Demanded or Received; Civil and Criminal Liability

A. Misdemeanor. Any Landlord found to have received, imposed, or demanded prohibited pass through charges, other fees or charges or any Rent in excess of the Rent allowed under this Chapter 17.23 and its implementing Regulations shall be guilty of a misdemeanor, subject to the provisions of California Civil Code Section 1947.7, as amended.

B. Civil Penalties. Any person found to have demanded, accepted, received or retained any payment of Rent in excess of the Rent allowed under this Chapter 17.23 and its implementing Regulations or pass through charges, other fees or charges that are not allowed under this Chapter 17.23, shall be liable to the Tenant from whom such payment was demanded, accepted, or received for the amount that was impermissibly charged, plus damages as determined and not to exceed five hundred dollars ($500) or three (3) times the amount by which such payment exceeded the Rent allowed, whichever is greater. Remedies provided in this paragraph are in addition to any other legal remedies and are not intended to be exclusive.

17.23.540 Affirmative Defense Against Unlawful Detainer Actions

Rent Stabilized Units. A Landlord seeking to terminate a tenancy of a Tenant or Tenant Household for a Rent Stabilized Unit must comply with Section 17.23.600(A) of the Apartment Rent Ordinance and the Tenant Protection Ordinance. Non-compliance shall constitute an affirmative defense for a Tenant of a Rent Stabilized Unit against any unlawful detainer action under California Code of Civil Procedure Section 1161.

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 Stabilized Unit in violation of the Apartment Rent Ordinance is liable to that Tenant for a fine of up to ten thousand dollars ($10,000), and the reasonable costs incurred by the Tenant as a result of the eviction, including the costs of moving the Tenant Household and the reasonable costs of bringing such suit, including court costs and attorney fees.

17.23.560 Disclosure to Purchasers of Real Property

A. Any Owner, as that term is defined in Part 11 of this Chapter 17.23, of a Rent Stabilized Unit shall disclose to a potential buyer in writing, prior to the close of escrow that the Rent Stabilized Unit is subject to this Chapter 17.23 and implementing regulations. Upon request by the City, such Owner or former Owner shall provide the City with a copy of such written disclosure.

B. Failure of an Owner to make the disclosure set forth in Section 17.23.560 shall in no way excuse a purchaser of a Rent Stabilized Unit from any right, responsibility, or obligation under this Chapter 17.23.

17.23.570 Administrative Citations; Injunctive Relief

A. The Director may enforce the rights and responsibilities created by this Chapter 17.23 and the Regulations, including issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.

B. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter or the Regulations.

17.23.580 Rights and Obligations Cumulative

A. Rental in Violation of City Ordinance. If a Landlord rents a Rent Stabilized Unit: (i) in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80, or for an unpermitted non-residential use; (ii) in material violation of the City's Housing, Fire or Building Codes, Chapter 17.20, or Title 24; or (iii) in violation of the implied warranty of habitability, such rental shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.

B. Tenant Protections. Tenants shall have the right to seek the protections set forth in the Tenant Protection Ordinance in addition to any remedies available under Parts 1 through 9 of this Chapter.

C. Failure to Provide a Notice of Termination; Evasion. If a Landlord fails to comply with Section 17.23.600, requires a Tenant to enter into a new lease under another name, or otherwise seeks to evade the restrictions on Rent in this Chapter, such actions shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.

D. Additional Rights and Obligations. The rights and obligations set forth in Parts 1 through 9 of this Chapter are in addition to those set forth in any other Part or Chapter of the Municipal Code.

Part 6

Evictions – Rent Stabilized Units

17.23.600 Notices of Termination of Tenancy - Mandatory Notice to City

A. Copy of Notice of Termination to City. A copy of each and every Notice of Termination issued to a Tenant of a Rent Stabilized Unit shall be filed with the Director within three (3) days after the service thereof on the Tenant.

B. Supplement to Notice of Termination of Tenancy Filing. Until the Rent Stabilized Unit is first registered pursuant to the Regulations, the copy of the Notice of Termination provided to the Director, excluding copies of the Notice of Termination based on a three (3)-day notice to pay or quit, 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 in a form approved by the Director:

1. The amount of Rent that the Tenant Household being evicted is currently paying each month;

2. The date of the most recent Rent increase to the Tenant who has received the Notice of Termination;

3. The physical address of the Rent Stabilized Unit being vacated;

4. The names of the Tenants being evicted; and

5. Such other information as may be reasonably requested by the City.

C. Notice of Re-Rental to the City. Unless the Landlord is already obligated to re-register the Rent Stabilized Unit on vacancy or re-rental pursuant to the Regulations, once a Tenant Household has vacated a Rent Stabilized Unit, such Landlord shall be required to provide the Director with the following information in a form approved by the Director, subject to California Civil Code 1947.7, as amended:

1. The amount of Rent that the subsequent Tenant is actually paying each month; and

2. The physical address of the Rent Stabilized Unit; and

3. The name, of each subsequent Tenant; and

4. A copy of the written rental agreement (if any) between the Landlord and Tenant; and

5. The reason the prior Tenant vacated the Rent Stabilized Unit, if known; and

6. Such other information as may be reasonably requested by the City.

D. Use of Personal Information. Personally-identifying information about Tenants and Tenant Households received by the City pursuant to this Section shall be used for investigation and prosecution of violations of the Municipal Code or other

applicable laws. Unless the City receives permission from such individuals, City staff shall not otherwise provide such information to third parties unless required to do so by law or court order. For so long as the City requires registry of rents and requires the Landlord to provide the name of present or former tenant, the following information, when required to be provided by and received from the Landlord is confidential and shall be treated as confidential information within the meaning of the Information Practices Act of 1977: the name of a present or former Tenant and any additional information provided concerning the Tenant.

E. Each Violation a Separate Violation. 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.

Part 7

Tenant Buyout Agreements

17.23.700 Purpose

The purpose of this Part 7 is to increase the fairness of Buyout Offers and Agreements by requiring Landlords provide Tenants with a City Disclosure form, and permitting Tenants to rescind Buyout Agreements, provided certain conditions are met, within forty-five (45) days of executing the Buyout Agreement. An additional goal is for the City to obtain data relating to the prevalence of Buyout Agreements, so as to monitor the level of tenant displacement, and regulate compliance with the purposes of this Chapter.

17.23.705 Tenant Buyout

Subject to the requirements of Chapter 14 of the Regulations, a Landlord may negotiate with a Tenant to obtain a voluntary vacancy by agreement.

Part 8

Fair Return Standard

17.23.800 Purpose

A Landlord may Petition for a Rent adjustment in order to obtain a fair return in the event that the other increases allowed pursuant to the Apartment Rent Ordinance do not provide a fair return. This Part sets forth the standards for determining whether or not a Landlord is obtaining a fair return and what Rent increase would be required to provide a fair return if a Landlord is obtaining less than a fair return.

17.23.810 Fair Return Standard

A. Fair Return Standard. A fair return is the Base Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Base Year. "Net Operating Income" is the Gross Income from a Covered Property net of Operating Expenses, as such amounts are calculated and adjusted pursuant to this Part. Debt service costs are not included in calculating Net Operating Income.

B. Base Year. The "Base Year" is the 2014 calendar year, provided that where the Rent for Rent Stabilized Units has been set in a prior fair return decision regarding a Petition pursuant to this Part, in which case the calendar year that was the Current Year in the prior determination may be used as the Base Year for the purposes of reviewing a subsequent fair return Petition.

C. Current Year. The Current Year is the most recent calendar year preceding the submission of a Petition pursuant to this Part.

D. Calculation of Consumer Price Index. The Consumer Price Index ("CPI-U") for the Base Year shall be 251.985, which equals the annual average for 2014 reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area. The CPI-U for the Current

Year shall be the annual average for the Current Year reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area. In the event a successor index to the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area is established by the Bureau of Labor Statistics, this calculation method may be updated accordingly in the Regulations.

17.23.820 Calculations of Gross Income and Operating Expenses

A. Calculation of Gross Income. For the purposes of determining the Net Operating Income, Gross Income shall be the sum of the following:

1. Rent, calculated on the basis of one hundred percent (100%) rental occupancy at the Rents in effect at the end of the Base Year or Current Year, as applicable; and

2. Income from coin operated laundry facilities, vending machines and similar income; and

3. Interest from security and cleaning deposits (except to the extent paid to Tenants); and

4. All other income or consideration received or receivable in connection with the use or occupancy of the Rent Stabilized Units and the Covered Property.

B. Adjustments of Gross Income.

1. Vacancy and Unpaid Rent. Rents shall be adjusted for uncollected rents due to vacancy and unpaid Rent to the extent such are reasonable and beyond the control of the Landlord. Adjustments pursuant to this Section are subject to the limitation that the ratio of uncollected Rents due to vacancies and unpaid Rent in the Current Year shall not exceed the ratio in

the Base Year, unless the Landlord can demonstrate that the higher ratio is reasonable, is not the outcome of asking Rents exceeding market rents, and will likely be reoccurring.

2. Separately Charged Fees. Gross Income shall be adjusted to include other fees and charges not included in Rent that are paid to the Landlord or Landlord's designee by Tenants. If the Landlord collects any fees or charges that are not allowed under the Apartment Rent Ordinance, this fact may be considered in the determination on the Petition. In no event shall the collection of unauthorized fees or charges in the Base Year or Current Year be applied so as to result in a Rent increase to the Tenant.

3. Owner Occupied Rental Units or Rental Units Otherwise Not Rented at Market Levels. If a Rent Stabilized Unit is not rented in an arm's length transaction during the Base Year or Current Year or a portion thereof, the potential market rental income for such Rent Stabilized Units shall be included in calculating adjustments to Gross Income, which income shall be estimated based on the Rents of comparable Rental Units on the Covered Property, or if there are no comparable Rental Units on the Covered Property, the current market rents of comparable Rental Units in the immediate area.

4. Increases in Rent Based on Vacancy Decontrol. The Rent of Rent Stabilized Units that received a Rent increase following a valid vacancy decontrol pursuant to California Civil Code Section 1954.53 at any time from the first date of the Petition's Current Year through the date of the last hearing on the Petition, shall be computed at the Rent Stabilized Unit's new Rent after vacancy, for all twelve (12) months of the Petition's Current Year. In addition, if the Rent Stabilized Unit is eligible for an Annual General Increase during any month of the Current Year, the general adjustment shall be included for such months.

5. Illegal or Uninhabitable Rentals during the Base Year. If a Rent Stabilized Unit was rented in violation of the Municipal Code during the Base Year, the Base Year rent for that unit shall be established pursuant to Section 17.23.820.B.3, unless the Rent Stabilized Unit was uninhabitable in the Base Year. If a Rent Stabilized Unit is uninhabitable in the Base Year, any adjustment to income shall be made in consideration of the duties of the Landlord under law and the purpose of this Chapter.

6. Other Income in Violation of Municipal or State Law. If not already accounted for as Rent, Gross Income shall be adjusted to include other income to a Landlord from renting a Rent Stabilized Unit in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80, in violation of any other local or state law or regulation. If the Landlord earns income in violation of the law, this fact may be considered in the determination on the Petition. In no event shall the collection of unpermitted or illegal Rent or Gross Income in the Base Year or Current Year be applied so as to result in a Rent increase to a Tenant Household.

C. Calculation of Operating Expenses. For the purposes of determining Net Operating Income, Operating Expenses shall include the following expenses to the extent they are incurred in connection with the operation of the Covered Property:

1. Annual fees assessed under Chapter 17.23 to the extent that they are not passed through to Tenants;

2. Business license fees;

3. Real property taxes;

4. Utility costs paid by the Landlord to the extent that they are not passed through to Tenants;

5. Insurance;

6. Normal and reasonable repair and maintenance expenses for one (1) or more Rental Units and the Covered Property. Repair and maintenance expenses shall include, but not be limited to, building maintenance including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets;

7. Reasonable management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise. Management expenses in excess of eight percent (8%) of Gross Income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential properties;

8. Attorneys' fees and costs that are:

   a. Incurred in connection with successful good faith attempts to recover Rents owed or with successful unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from Tenants;

   b. Legal expenses that are necessarily incurred in dealings with respect to the normal operation of the Rent Stabilized Units or Covered Property, to the extent such expenses are not recovered from adverse or other parties;

c. Reasonable and necessary costs incurred in obtaining a Rent increase pursuant to this Chapter, including administrative or judicial proceedings in connection with this Chapter, except where the pass-through of such expenses would constitute a violation of public policy or would contravene the exclusion in Section 17.23.820.D.5.

Any attorneys' fees and costs included in Operating Expenses pursuant to this Section shall be amortized over a period of five (5) years, unless it is demonstrated that an alternate amortization period would be more reasonable and more consistent with the purposes of this Chapter.

9. Replacement of facilities, materials or equipment not included in Section 17.23.820.C.6 necessary to maintain the same level of services as previously provided, to the extent that they are not passed through to Tenants and subject to the condition that said expenses shall be amortized in accordance with the standards for Operating Expense amortization in the Regulations.

D. Exclusions from Operating Expenses. For the purposes of determining Net Operating Income, Operating Expenses shall not include:

1. Avoidable and unnecessary expenses incurred during or since the Base Year including expenses for additional maintenance and repair work which would not have been necessary if the maintenance had not been unreasonably deferred by the Owner or a prior Owner;

2. Debt service, including mortgage interest and principal payments and other expenses associated with obtaining debt services, including but not limited to appraisal and title insurance costs;

3. Fees, other than fees expressly authorized by Section 17.23.820.C;

4. Penalties, fees or interest imposed for violation of this Chapter or any other law;

5. Legal expenses excluded as set forth in this Chapter or the Regulations;

6. Contributions to lobbying efforts or organizations which lobby on behalf of apartment owners on local, state or federal legislative issues;

7. Depreciation;

8. Any expenses for which the Landlord has been or was eligible for reimbursement by any rebate or discount, Security Deposit, insurance, judgment for damages, settlement or any other method or device;

9. Any expense incurred in conjunction with the purchase, sale, lease (but not including individual rental agreements with Tenants) financing or re-financing of the building that contains the Rent Stabilized Units, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.; and

10. Any other expense that does not benefit the Covered Property, including, but not limited to, the cost of or forming a corporation, partnership or other entity or buying out a stockholder or partner of the Landlord.

E. Adjustments to Operating Expenses.

1. Interest Allowance for Amortized Expenses. Allowances for amortized Operating Expenses shall include an interest allowance as provided in the Regulations.

2. Adjustment of Unusually Low or High Expenses. A claimed expense(s) for a particular type of Operating Expense shall be adjusted if the claimed expense(s) is:

a. Not representative of the annual recurring level of the expense; or

b. In the case of Base Year expenses, not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or

c. In the case of Current Year expenses, is not a reasonable estimate of future recurring annual expenditures for that item.

Unusually high or low expenses in a particular year shall be adjusted to allow for a reasonable comparison between the annual recurring level of the expense(s) in the Base Year and the Current Year. This adjustment may be made by using an average of the particular expense over a number of years or amortizing an amount that is above the average, or using an industry average or adjusting expense levels from other years by the CPI-U or by some other reasonable methodology. In making such adjustments for specific items, the goal shall be to establish an amount for that particular Operating Expense that most reasonably serves the objectives of obtaining a reasonable comparison between the recurring level of expense(s) in the Base Year and the Current Year.

3. Amortization of Non-recurring expenses. Non-recurring expenses which are "substantial" shall be amortized over a reasonable period. For purposes of this paragraph, non-recurring expenses are substantial if they exceed one (1%) of the annual Rent (as determined pursuant to Section 17.23.820.A.1).

4. Calculation of Management Expenses. It shall be presumed that management expenses increased by the percentage increase in the CPI-U between the Base Year and the Current Year, unless the Landlord can demonstrate that the level of management services that are beneficial to the Tenants has increased. A change from owner management in the Base

Year to third party management in the Current Year, in itself, shall not be considered an increase in management services beneficial to the Tenants.

5. Mixed Use Properties; Segregation of Expenses and Income. If a portion of the Covered Property is not used as residential rental property with Rent Stabilized Units or includes units which are not rent stabilized, this must be declared in the Petition, and any Income and Operating Expenses must be fairly allocated, consistent with the purposes of this Chapter, between the other uses and the rent stabilized portion of the property covered by the Petition.

6. Apportionment of Operating Expenses. In the event that a particular Operating Expense covers several years of costs, the costs shall be fairly allocated to the year that they are attributable to, even if they were paid for in a different year.

17.23.830 Adjustment of Base Year Net Operating Income

A. Presumption of Fair Return. The Apartment Rent Ordinance presumes that the Landlord received a fair return in the Base Year.

B. Rebutting the Presumption. The presumption that the Landlord received a fair return in the Base Year based on reasonable expenses may be overcome by sufficient evidence showing that income was unusually low or expenses were unusually high for a particular Covered Property in the Base Year as described in this Part.

C. Authority to Adjust Net Operating Income. The Hearing Officer may adjust the Base Year Net Operating Income if the Hearing Officer finds:

1. The Landlord's Operating Expenses in the Base Year were unusually high or low in comparison to other years due to unusual circumstances. In such

instances, adjustments may be made in calculating Operating Expenses so the Base Year Operating Expenses reflect average expenses for the Covered Property over a reasonable period of time. The Hearing Officer shall consider the following factors in making this finding:

a. The Landlord made substantial Capital Improvements during the Base Year, which were not reflected in the Base Year rents;

b. Substantial repairs exceeding one (1%) of the annual Rent (as determined pursuant to Section 17.23.820.A.1) were made due to damage caused by uninsured disaster or vandalism, provided that the property was not uninsured or unreasonably underinsured as determined by the Hearing Officer, which were not reflected in the Base Year rents;

c. Maintenance and repair were below accepted standards or resulted from the unreasonable deferral of other repairs or work;

d. Other expenses were unreasonably high or low, notwithstanding prudent business practice.

2. The Landlord's Gross Income during the Base Year was unusually high or low. In such instances, adjustments may be made in calculating Gross Income consistent with the purposes of this Chapter. The Hearing Officer shall consider the following factors in making this finding:

a. The Gross Income during the Base Year was unusually low because some Tenants had unusually low Rents for the quality, location, age, amenities and condition of the housing as compared to the Rent for comparable units without housing violations in the immediate area in which the Rent Stabilized Unit is located. In the event that a claim is made pursuant to this Section, the Landlord shall pay for an appraisal

of Base Year rents for comparable buildings made by an appraiser selected by the City. The appraisal, which shall be presented as evidence, shall be conducted in a manner consistent with the standards in the Regulations.

b. The Gross Income during the Base Year was significantly lower than normal because of destruction of all or part of the premises and/or temporary eviction for construction or repairs;

c. There was a special relationship between the Landlord and Tenant (such as a family relationship) resulting in abnormally low rent charges;

d. The Rents had not been increased for five (5) years preceding the Base Year;

e. The Tenant lawfully assumed maintenance responsibilities in exchange for low Rent increases or no Rent increases; or

f. Other special circumstances which establish that the Rent was not set as the result of an arms-length transaction.

17.23.840 <u>Establishment of Base Year Operating Expenses in the Absence of Expense Records</u>

If Base Year Operating Expense information is unavailable, the Landlord shall submit a request to the City to accept the Petition without complete Base Year Operating Expense information in a manner consistent with the standards in the Regulations. In the absence of Base Year Operating Expense information, it shall be presumed that Operating Expenses have increased by the same percentage as the CPI-U since the Base Year, except that data or rate information or other sources of cost information may be considered in estimating the level of particular Operating Expenses in the Base Year. Information on increases or decreases in costs between the Base Year and the Current

Year may be introduced by the Landlord, Tenant or members of the Tenant Household, City staff, and/or the Hearing Officer.

17.23.845 Purchasers of Rent Stabilized Properties After the Base Year

If the Landlord can show that the Landlord purchased the Covered Property between January 2015 and May 2016 in an arm's length transaction, and that reasonable attempts were made to obtain the records regarding Gross Income from the prior owner, and no information on the Base Year Gross Income is available from Tenants or City Staff , the Landlord may request to the City to accept a Petition for an adjustment under Section 17.23.820 using the year of purchase as an Alternative Base Year, in which case, the provisions of Section 17.23.810 shall be adjusted accordingly.

17.23.850 Allocation of Rent Increases

Rent increases resulting from a Landlord Petition for fair return shall be allocated equally among all Rent Stabilized Units in the Covered Property; subject to the condition that the Hearing Officer, in the interests of justice, shall have the discretion to apportion the Rent increases in another manner necessary to ensure fairness.

17.23.860 Authority to Insure a Fair Return

If a court finds that a Landlord has been denied a fair return, notwithstanding any other provision in this Section, the Hearing Officer may provide for a Rent adjustment that is adequate to provide a fair return.

17.23.870 Landlords to Retain 2014 Records

Landlords are required to keep all financial records for 2014 which may be necessary for making a Net Operating Income determination. Failure to retain such records of Base Year Operating Expenses may result in the loss of the ability to demonstrate the need for a fair return Rent increase after September 1, 2016.

SECTION 2. Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended by adding a Part to be numbered, entitled and to read as follows:

Part 9

Rent Registry

17.23.900 Rent Registry

A. Rent Registration. The procedures for registration shall be established in this Part and the Regulations. All registration requirements are subject to California Civil Code Section 1947.7, as may be amended. The Landlord shall complete and submit to the Director a registration for each Rent Stabilized Unit on a City approved form, annually unless some other interval is specified by the City in the Regulations.

B. Copy of Registration to Tenant. If requested by the City, each Landlord shall provide to an adult member of the Tenant Household of a Rent Stabilized Unit a true and correct copy of the completed registration form that pertains to their Rent Stabilized Unit within ten (10) days of submission to the Director. The Landlord may redact any information that does not pertain to that Rent Stabilized Unit except the name and address of the Landlord.

C. Regulations. The Regulations adopted by the City Manager for the implementation and administration of this Chapter 17.23 may address the contents and submission of registrations, including deadline for submissions by Landlords.

D. Implementation of an Alternate Registry Procedure. Notwithstanding Section 17.23.900.A, the City Council by resolution may, at any time after the second annual registration cycle is complete, change to another interval for, or vacancy-based, registration.

E. Landlord Tenant Collusion. It shall be a violation of this Chapter to report an amount of Rent for a Rent Stabilized Unit to the Director other than the actual amount paid by the Tenant Household for the use and occupancy of the Rent Stabilized Unit, or in the case of a Rental Voucher Unit, the sum of the rent paid by the Tenant and government agency.

F. Upon failure to submit the registration or re-registration for a Rent Stabilized Unit required pursuant to the Regulations within thirty (30) days of the date the registration or re-registration is due, the Landlord shall pay a late registration fee as set forth in the schedule of fees adopted by resolution of the City Council.

RD:SSG:KML
11/17/2017

PASSED FOR PUBLICATION of title this 14th day of November, 2017, by the following vote:

AYES:	ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, NGUYEN, PERALEZ, ROCHA; LICCARDO.
NOES:	KHAMIS.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk