

**Draft Recommendations for the  
City of San Jose Tenant Protection Ordinance**  
*(formerly referred to as the Anti-Retaliation Ordinance)*

Released for public comment January 18, 2017  
Written comments must be received by 5pm on March 3, 2017

Please email comments to [TPO@sanjoseca.gov](mailto:TPO@sanjoseca.gov) or  
send hard copy comments to  
Attention: Rachel VanderVeen, 200 East Santa Clara St., 12<sup>th</sup> Floor, San Jose CA 95113

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**Attachments**

- A. List of proposed items to be included as “Material Code Violation” and “Necessary Repair or Replacement”

**Public Meetings:**

- February 8: City Hall Wing Rooms 118-120 6:30-8:30pm
- February 15: Bascom Community Center 6:30-8:30pm
- February 27: Cypress Community Center 6:30-8:30pm
- March 9: HCDC Meeting – City Hall Wing Rooms 5:45pm

## **Purpose of this Document**

The purpose of this document is to provide draft recommendations for public comment regarding the proposed San Jose Tenant Protection Ordinance (TPO), as directed by the City Council on April 19, 2016. These draft recommendations were released on January 18, 2017 and are available for a 45-day public comment period. Written comments are due to City staff by **5pm on March 3, 2017**.

## **Background**

The City does not currently restrict no-cause terminations of tenancy other than to require certain noticing under the Apartment Rent Ordinance (ARO). On April 19, 2016 the City Council directed staff to develop an Anti-Retaliation and Protection Ordinance. After receiving feedback that the "Anti-Retaliation and Protection Ordinance" name was cumbersome and difficult to understand, staff renamed this proposed ordinance to the Tenant Protection Ordinance.

This ordinance was proposed because Staff received multiple statements from tenants who asserted they were afraid to complain about issues impacting their housing because they feared receiving a no-cause eviction. Issues that tenants have stated they were afraid to pursue included of housing, building, or fire code violations, harassment, intimidation, unfair and excessive rent or service charges, discrimination, participation in City public meetings, and threats pertaining to immigration status.

The City Council directed staff to develop an ordinance that created protections for tenants living in apartments that were experiencing housing, building, and fire code violations, or needed important repairs as well as those who exercised their rights under the ARO. Tenants facing these circumstances would be enrolled and receive just/good cause protections for up to two years from resolution of the complaint. Good cause protections work by requiring cause for the eviction of protected tenants. As in all other good cause based ordinances in California, under the proposed tenant protection ordinance, an enrolled tenant can still be legally evicted for violating the terms of the rental agreement, for non-payment of rent and various other causes to terminate their tenancy.

Staff conducted research of other cities in California with good cause protections similar to those in the draft ordinance. None of these cities require a tenant enrollment process, but some of the cities provide other limitations on tenant protection. For example, in San Diego, a renter can be evicted without cause for the first two years of their tenancy. After successfully meeting the terms of their rental agreement for two years, the tenant receives good cause protections for the duration of their tenancy.

## **Integration with the Apartment Rent Ordinance Rent Registry**

Unless effectively monitored and enforced through a rent registry, no-cause terminations of tenancy can undermine the effectiveness of rent stabilization ordinances. In cases where a property owner wants to rent to a new tenant that may be less knowledgeable of their rights or illegally utilize vacancy decontrol to reset rents after a no-cause termination, the owner can issue the tenant a no-cause notice to move their existing tenant out after 60 or 90 days. Other cities have tightened this loophole by enacting just/good cause eviction ordinances, which clearly define the list of reasons that tenants can lose their housing. These protections are given to either rent stabilized or all tenants in jurisdictions that enact these protections.

As proposed, the TPO will be a complaint-based program that provides protections only to tenants experiencing one of the conditions outlined in the ordinance. Effective implementation of the TPO will require use of the rent registry to ensure that tenants receive the proper term of good cause and that clear communication is occurring with the property owner.

## **Process to Date**

Staff met with a wide range of stakeholders while developing the proposed Tenant Protection Ordinance. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with Property owners and Managers of small properties, large properties, and a variety of Tenants and tenant advocates on multiple occasions. The Department also hosted three public meetings on the proposed ordinance. Staff was invited to attend three additional meetings hosted by stakeholders.

### **Public Meetings:**

November 7<sup>th</sup> – Cypress Community Center

November 14<sup>th</sup> – San Jose City Hall

November 16<sup>th</sup> – Bascom Community Center

December 5<sup>th</sup> – Housing & Community Development Commission

### **Stakeholder Meetings – Invited By:**

November 30<sup>th</sup> – Santee Tenants

December 4<sup>th</sup> – Small Property owners

December 13<sup>th</sup> – Sacred Heart Community Service

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## **Chapter 17.23 Part 10 TENANT PROTECTION ORDINANCE: PROTECTIONS FOR CERTAIN TENANTS**

**17.23.1000 Title.**

**17.23.1005 Policy and purposes declaration.**

**17.23.1010 Definitions.**

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**17.23.1050 Anti-Retaliation Protections.**

**17.23.1060 Affirmative Defense to Eviction; Penalties and Remedies.**

### **PART 10. TENANT PROTECTION**

**17.23.1000 Title.**

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

**17.23.1005 Policy and purposes declaration.**

The purposes of this Part 10 are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. This Part is intended to enable tenants in the City to participate in the Apartment Rent Ordinance petition process, request correction of code violations and necessary repairs, and exercise their rights under local, state, and federal laws without fear of retaliation. This Part 10 regulates landlord and tenant relations by promoting fair dealings between landlords and tenants in recognition of the importance of residential housing and the landlord-tenant relationship as components of a healthy, safe, and vibrant city. The rights and obligations created by this Part 10 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.

**17.23.1010 Definitions.**

In addition to the definitions provided in Chapter 17.23, Parts 2 and 9, for purpose of this Part 10 the following terms are defined as follows:

- A. “Director” means the Director of the Housing Department or the Director's designee.
- B. “Enrolled Tenant” means the Tenants, and their Tenant Household, who have received Full Enrollment, or Limited Term Enrollment in Good Cause Protections.

C. “Enrollment Term” means the time period during which a Tenant, and the entire Tenant Household, is entitled to Good Cause Protections. The Enrollment Term shall be determined pursuant to Section 17.23.1020.

D. “Full Enrollment” means the Tenant, and the entire Tenant Household, are granted Good Cause Protections that commence as described in Section 17.23.1020(C) and end two (2) years after resolution of the event triggering enrollment, unless the Good Cause Protections are either extended or terminated.

E. “Good Cause Protections” means those protections afforded to a Tenant Household under Section 17.23.1030.

F. “Guesthouse” shall have the meaning provided in Sections 20.200.470 and 20.200.480.

G. “Guest Room” shall have the meaning provided in Section 20.200.460.

H. “Habitual” shall have the meaning provided in regulations adopted by the City Manager for administration of this Part.

I. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.

J. “Limited Term Enrollment” means the Tenant, and the entire Tenant Household, are granted Good Cause Protections that commence as described in Section 17.23.1020(A) and end six (6) months after resolution of the event triggering enrollment as described in Section 17.23.1020(B), unless the Good Cause Protections are extended or terminated.

K. “Material Code Violation” shall have the meaning provided in the regulations adopted by the City Manager for administration of this Part.

L. “Necessary Repair or Replacement” shall have the meaning provided in the regulations adopted by the City Manager for administration of this Part.

M. “Notice of Satisfaction” means the notice from a Landlord, on a form approved by the Director, informing both a Tenant Household and the Director that the Landlord believes a Material Code Violation and/or Necessary Repair or Replacement has been resolved in accordance with Section 17.23.1020.

N. “Notice of Termination” means the notice informing a Tenant Household of the termination of its tenancy in accordance with Civil Code section 1946.1 and Code of Civil Procedure section 1162. Each Notice of Termination delivered to an Enrolled Tenant or to a Tenant Household residing in a Rent Stabilized Unit must use the form approved by the Director, and the Landlord must deliver a copy of such notice to the Director in accordance with Section 17.23.1040.

O. “Rent Stabilized Units” means Rental Units that are subject to the City's Apartment Rent Ordinance provided in Chapter 17.23, which includes rooms or accommodations occupied for

thirty (30) days or more in a Guesthouse and units in any Multiple Dwelling building for which a certificate of occupancy was received on or prior to September 7, 1979, as those terms are defined in Sections 20.200.340, 20.200.470, and 20.200.480 of the San José Municipal Code.

P. “Rental Unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays Rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the San José Municipal Code. For purposes of this Part 10, Rental Unit includes Guest Rooms in any Guesthouse.

Q. “Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.

R. “Tenant Household” means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.

**17.23.1015 Scope; Regulations.**

A. Subject to any exceptions, additions, and clarifications included in regulations that may be adopted by the City Manager for administration of this Part, this Part applies to the following:

1. Rent Stabilized Units;
2. Rental Units in any Multiple Dwelling as defined in Chapter 20.200 of Title 20, excepting permitted hotels and motels;
3. Guest Rooms in any Guesthouse; and
4. Structures or parts of a structure that are being rented as a home, residence, or sleeping place, where the use as a home, residence, or sleeping place is not authorized, permitted, or otherwise approved by the City.

B. The City Manager may adopt regulations for the administration and implementation of this Part. The Director of Housing, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of this Part.

**17.23.1020 Qualification for Enrollment.**

Tenants, and the entire Tenant Household, shall qualify for Limited Term Enrollment and/or Full Enrollment for the specified Enrollment Term(s) as provided in Sections 17.23.1020(A), (B), and (C) below. Qualification for Limited Term Enrollment and/or Full Enrollment may be appealed by a Landlord pursuant to Section 17.23.1025(A) within ten (10) days after the Tenant and the Tenant Household have become entitled to Limited Term Enrollment or Full Enrollment status, as applicable.

A. Limited Term Enrollment; Commencement. A Tenant, and the entire Tenant Household, are entitled to Limited Term Enrollment immediately upon the occurrence of one of the following events:

1. Tenant files a complaint with Code Enforcement for a Material Code Violation.
2. Tenant requests the Landlord provide a Necessary Repair or Replacement for the Rental Unit or the building in which the Rental Unit is located and informs the Director of the request. For purposes of this Section 17.23.1020(A)(2), a Tenant may inform the Director in a writing via online submission, email, or other method of communication identified in the regulations adopted by the City Manager, and accompanied by photographs (if applicable) documenting the Necessary Repair or Replacement
3. Tenant files a lawsuit or complaint alleging violation of state or federal fair housing laws by the Landlord with a court or the administrative agency with jurisdiction over handling such claims. For purposes of this subsection (3) of Section 17.23.1020(A), fair housing laws include but are not limited to the Federal Fair Housing Act, the Federal Americans with Disabilities Act, the Age Discrimination Act, the California Fair Employment and Housing Act (Government Code section 12900 – 12996), and the Unruh Civil Rights Act (Civil Code section 51).

B. Limited Term Enrollment, Term. Limited Term Enrollment for Good Cause Protections shall terminate upon the earlier of: six (6) months after resolution of the issue underlying the complaint or request identified in subsections 1 through 3 of Section 17.23.1020(A) or the Tenant's voluntary vacation of the Rental Unit. For purposes of Sections 17.23.1020(A) and (B), complaints and requests are resolved when one of the following events has occurred:

1. If a Tenant made a request for a Necessary Repair or Replacement, it was completed by the Landlord and the Landlord provides a Notice of Satisfaction on a form approved by the City to both the Director and the Tenant within thirty (30) days from the date of the Landlord's receipt of the Tenant's request then the Necessary Repair or Replacement is presumed to be resolved. If a Notice of Satisfaction is not delivered to both the Director and the Tenant within thirty (30) days from the date of the Landlord's receipt of the Tenant's request, then the Limited Term Enrollment of the Tenant and the entire Tenant Household shall be extended to Full Enrollment in accordance with Section 17.23.1020(C). The Tenant may contest the Notice of Satisfaction and appeal the presumption of resolution within ten (10) days of the Tenant's receipt of the Notice of Satisfaction on the grounds that the repair was not completed or was completed incorrectly under Section 17.23.1025(B).
2. If Code Enforcement does not find a Material Code Violation when an inspection is conducted, then the complaint or request is resolved.
3. If the Tenant complaint of violation of state or federal fair housing laws is dismissed by the court or administrative agency with jurisdiction over the matter or a lawsuit is resolved, including through a negotiated agreement, then the complaint is resolved.

C. Full Enrollment. A Tenant, and the entire Tenant Household, residing in a Rental Unit where any of the following conditions exist are entitled to Full Enrollment commencing with the existence of a condition defined in this Section 17.23.1020(C) and continuing until the earlier of

or the Tenant's voluntary vacation of the Rental Unit or two (2) years after resolution of that condition.

1. Material Code Violation. A Tenant Household is entitled to Good Cause Protections commencing with the existence of a Material Code Violation identified by Code Enforcement in a City-initiated inspection or as the result of a complaint from a City Department of a violation of Title 24 in the Rental Unit or structure containing the Rental Unit. Good Cause Protections shall continue for two (2) years after resolution of the Material Code Violation. For purposes of this subsection 1 of Section 17.23.1020(C), resolution shall mean the Material Code Violation was fixed, repaired, or otherwise addressed to the satisfaction of Code Enforcement and the code compliance case status is "Closed" with respect to the Material Code Violations.

2. Petition, Opposition Statement, or Claim of Violation. A Tenant Household in a Rent Stabilized Unit is entitled to Good Cause Protections commencing with the submission of a petition, opposition statement, or claim of violation of the Apartment Rent Ordinance (Chapter 17.23) by a member of the Tenant Household, so long as that petition, opposition statement, or claim is accepted for any administrative review process under the Apartment Rent Ordinance (Chapter 17.23). For purposes of this subsection (2) of Section 17.23.1020(C), resolution shall mean the issuance of a final administrative decision on the issue(s) underlying the petition, opposition statement, or claim.

3. Landlord Refusal to Allow Inspection. A Tenant Household is entitled to Good Cause Protections commencing when a Landlord refuses to allow a City official or personnel designated by the City to inspect a structure containing a Rental Unit. For purposes of this subsection (3) of Section 17.23.1020(C), inspections shall include but are not limited to fire and life safety inspections, and Code Enforcement inspections. If no Material Code Violation or Necessary Repair or Replacement is identified following an inspection of the Rental Unit or structure containing a Rental Unit, Good Cause Protections shall continue for two (2) years after the City is allowed access to the structure for such inspection. If a Material Code Violation or Necessary Repair or Replacement is identified during the inspection, then the affected Tenant Household shall be entitled to Good Cause Protections for two (2) years after the resolution of the Material Code Violation or Necessary Repair or Replacement to the City's satisfaction.

4. Court or Administrative Order. A Tenant Household in a building containing a Rental Unit that is the subject of a court order, injunction or other administrative action related to a violation of the Housing Code (Chapter 17.20), Fire Code (Chapter 17.12), or Building Code (Chapter 17.04) is entitled to Good Cause Protections. The Good Cause Protections shall commence when a Tenant or the City files a case or claim, shall continue throughout the pendency of the case or claim, and shall conclude two (2) years after final judgement regarding the claim is issued, or in the event of an injunction, after the injunction is dismissed.

5. Ellis Act. A Tenant Household is entitled to Good Cause Protections commencing twelve (12) months prior to delivery by an Owner to the City of a Notice of Intent to Withdraw under Part 9 of Chapter 17.23 (the "Ellis Act Ordinance") As an Enrolled Tenant, the Tenant Household is entitled to all applicable benefits under the Ellis Act Ordinance including but not limited to Relocation Assistance and the Right to Return, regardless of the actual Enrollment status of a Tenant Household upon termination of tenancy. The Good Cause Protections shall continue



until the building is withdrawn from the residential rental market in accordance with Ellis Act Ordinance, or for two (2) years after revocation of a Notice of Intent to Withdraw.

6. Unregistered Unit. A Tenant Household in a Rent Stabilized Unit is entitled to Good Cause Protections if that unit is not in compliance with any registration requirement imposed under the Apartment Rent Ordinance.

7. Unpermitted Units. A Tenant Household in a Rental Unit that is not a conforming use permitted by the San José Municipal Code is entitled to Good Cause Protections commencing with the creation of the tenancy and continuing until two years after the unit has been permitted.

**17.23.1025 Appeals of Enrollment Status or Completion of Repair.**

A. A Landlord may petition the Director to appeal the Tenant's entitlement to Limited Term Enrollment, Full Enrollment, or both. Such petition shall be brought, if at all, no later than ten (10) days after the Tenant and the Tenant Household have become entitled to Limited Term Enrollment or Full Enrollment status, as applicable. To have grounds for a petition, a Landlord must assert one or more of the following in writing and support the assertion with substantial evidence:

1. The Necessary Repair or Replacement was completed within thirty (30) days, in which case the Tenant and the Tenant Household shall not be entitled to Full Enrollment. A petition claiming completion within thirty (30) days may be reviewed and a decision issued by the Director based on written materials provided by the Landlord and Tenant Household.

2. The Necessary Repair or Replacement could not be completed within thirty (30) days but the Landlord began meaningful repair or replacement activities and is diligently pursuing completion of the Necessary Repair or Replacement, in which case the Tenant and the Tenant Household shall not be entitled to Full Enrollment, but may have Limited Term Enrollment extended until six months after the Necessary Repair or Replacement is completed and a Notice of Satisfaction is delivered to the City and the Tenant. A petition claiming diligent pursuit of a Necessary Repair or Replacement may be reviewed and a decision issued by the Director based on written materials provided by the Landlord and Tenant Household.

3. The Necessary Repair or Replacement was necessitated by the willful misconduct or grossly negligent acts of the Tenant or Tenant Household. If, after a hearing, the Director determines that the Necessary Repair or Replacement was necessitated by the willful misconduct or grossly negligent acts of the Tenant or Tenant Household then the Tenant and the Tenant Household shall not be entitled to Limited Term Enrollment or Full Enrollment.

4. The Tenant unreasonably refused access to the Rental Unit for purposes of pursuing or completing the Necessary Repair or Replacement or for an inspection by Code Enforcement, after written request for access was provided to the Tenant. If, after a hearing, the Director determines that the Tenant unreasonably refused access to the Rental Unit then the Tenant and the Tenant Household shall not be entitled to Full Enrollment.

5. The Landlord has appealed the determination of the existence of the Material Code Violation(s) pursuant to Chapter 1.14 of Title 1 and the Landlord's appeal has been sustained.

B. A Tenant may petition the Director to contest the Notice of Satisfaction and appeal the presumption of satisfaction. Such petition shall be brought, if at all, no later than ten (10) days after the Tenant and the Tenant Household have received the Notice of Satisfaction. To have grounds for a petition, a Tenant must assert either that the repair or replacement was not completed or that the repair or replacement was incorrectly completed and support the assertion with substantial evidence.

C. Specific petition requirements and hearing procedures shall be set forth in the regulations adopted by the City Manager.

**17.23.1030 Good Cause Protections.**

A. A Landlord may not terminate the tenancy of Enrolled Tenants during the Enrollment Term unless the Landlord can demonstrate:

1. that the Landlord possesses a valid Residential Occupancy Permit under Title 17, Chapter 20 of the San José Municipal Code (if applicable); and

2. that the Landlord served a Notice of Termination to the Tenant Household and delivered a copy of the Notice of Termination to the City in accordance with Section 17.23.1040 and California Civil Code Section 1946.1; and

3. that on the date of service to the Tenant Household of the Notice of Termination, the Rental Unit to which the Notice of Termination applies is substantially in compliance with the following requirements:

a. The implied warranty of habitability, including but not limited to the requirements codified in Civil Code sections 1941 through 1941.7 (unless the Landlord is terminating the tenancy in accordance with subsections (7) or (8) of Section 17.23.1030); and

b. The Apartment Rent Ordinance (if applicable), including but not limited to the maximum rents allowed thereunder, as codified in Chapter 17.23; and

c. The Apartment Rent Ordinance (if applicable) Landlord/Rent Registry

4. that the termination qualifies as a Good Cause Termination, as defined below.

B. Good Cause Terminations. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as a "Good Cause Termination."

1. Nonpayment of Rent. After being provided with written notice of the identity and mailing address of the Landlord, and the amount of rent due, the Tenant has failed to pay rent to which the Landlord is legally entitled pursuant to any written or oral rental agreement and under the provisions of state or local law, unless the Tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the Tenant of a written notice setting forth the

amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. Material or Habitual Violation of the Tenancy.

a. The Tenant has failed to cure a violation of any material term of the rental agreement within a reasonable time after receiving written notice from the Landlord of the alleged violation or has committed Habitual violations of the rental agreement, but only if either subsection (i) or (ii) applies:

i. The demand to cure is based on terms that are legal and have been accepted in writing by the Tenant or made part of the rental agreement; or

ii. The demand to cure is based on terms that were accepted by the Tenant or made part of the rental agreement after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

b. The following potential violations of a tenancy can never be considered material or Habitual violations:

i. An obligation to surrender possession on proper notice as required by law.

ii. An obligation to limit occupancy when the additional Tenant(s) who join the Tenant Household are any of the following: a dependent child or foster child, the spouse or domestic partner, parent, brother, or sister of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the number of individuals authorized in the rental agreement or the number permitted by the City under Section 17.20.270B. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, spouse or domestic partner, parent, brother, or sister of a Tenant, provided that the approval is not unreasonably withheld.

3. Substantial Damage to the Rental Unit. The Tenant, after written notice to cease and a reasonable time to cure, causes substantial damage to the Rental Unit, or common area of the structure or rental complex containing the Rental Unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such damage and to cease engaging in the conduct identified in the notice to cease.

4. Refusal to Agree to a Like or New Rental Agreement. Upon expiration of a prior rental agreement the Tenant has refused to agree to a new rental agreement that contains provisions that are substantially identical to the prior rental agreement, and that complies with local, state and federal laws.

5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.

6. Refusing Access to the Unit. The Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under Civil Code Section 1954.

7. Unapproved Holdover Subtenant. The Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.

8. Substantial Rehabilitation of the Unit. The Landlord after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, provided that:

- a. The repairs costs not less than the product of ten (10) times the amount of the monthly rent times the number of Rental Units upon which such work is performed. For purposes of this subsection (7), the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and
- b. The repairs necessitate the relocation of the Tenant Household because the work will render the Rental Unit uninhabitable for a period of not less than thirty (30) calendar days; and
- c. The Landlord gives advance notice to the Tenant of the ability to reoccupy the unit upon completion of the repairs at the same rent charged to the Tenant before the Tenant vacated the unit or, if requested by Tenant, the right of first refusal to any comparable vacant Rental Unit at comparable rent owned by the Landlord. Notwithstanding Section 17.23.1020, in either circumstance the Tenant's enrollment under this Part 10 of Chapter 17.23 shall continue in the new Rental Unit despite a change in location;
- d. In the event the Landlord files a petition under the Apartment Rent Ordinance within six (6) months following the completion of the work, the Tenant shall be party to such proceeding as if he or she were still in possession, unless the Landlord shall submit with such application a written waiver by the Tenant of his or her right to reoccupy the premises pursuant to this subsection; and
- e. The Landlord shall have provided relocation assistance as required by Section 17.23.1030(C), below.

9. Ellis Act Removal. The Owner as defined in the Ellis Act Ordinance seeks in good faith to recover possession of the Rental Unit to remove the building in which the Rental Unit is located permanently from the residential rental market under the Ellis Act and, having complied in full with the Ellis Act and Ellis Act Ordinance, including the provision of relocation assistance as required by Section 17.23.1030(C), below.

10. Owner Move-In. The Owner seeks in good faith, honest intent, and without ulterior motive to recover possession for: (a) the Owner's own use and occupancy as the Owner's principal residence for a period of at least 36 consecutive months commencing within three months of vacancy; or (b) the principal residence of the Owner's spouse, domestic partner, parent(s), child or children, brother(s), or sister(s) for a period of at least 36 consecutive months and commencing within three months of vacancy, so long as the Rental Unit for the Owner's authorized family member is located in the same building as the Owner's principal residence and no other unit in the building is vacant. For purposes of this subsection (9) of Section 17.23.1030(B), "Owner" means a fee owner of at least fifty (50) percent interest in the property. It shall be a rebuttable presumption that the Owner has acted in bad faith if the Owner or the Owner's qualified relative for whom the Tenant was evicted does not move into the Rental Unit within three months from the date of the Tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months. The Owner shall have provided relocation assistance as required by Section 17.23.1030(C), below.

11. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the San Jose Municipal Code or any other provision of law. The Landlord shall have provided relocation assistance as required by Section 17.23.1030(C), below.

C. Relocation Assistance.

1. Enrolled Tenants who receive a Notice of Termination that relies on subsections (8) or (10) of Section 17.23.1030(B) as the good cause rationale to terminate the tenancy must receive, and the Landlord must provide, the following relocation assistance to the Tenant Household. The relocation assistance must be provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.

- a. Relocation Assistance. An amount equal to the Base Assistance provided for in the Ellis Act Ordinance, as set by resolution of the City Council.
- b. Refund of Security Deposit. Owner must refund to the Tenant Household any security deposit paid by the Tenant Household, provided, however, that the Owner may withhold any properly itemized deductions from the security deposit pursuant to Civil Code section 1950.5.

2. Enrolled Tenants who receive a Notice of Termination that relies on subsection (9) of Section 17.23.1030(B) as the good cause rationale to terminate the tenancy must have received, and the Landlord must have provided, Relocation Assistance as defined in the Ellis Act Ordinance.

3. Enrolled Tenants who receive a Notice of Termination that relies on subsection (11) of Section 17.23.1030(B) as the good cause rationale to terminate the tenancy must receive, and the Landlord must provide, relocation benefits as defined in Part 11 of Chapter 17.20, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance, as set by resolution of the City Council.

**17.23.1040 Notice of Termination to the Tenant and City.**

A. The Notice of Termination provided to Enrolled Tenants must contain the reason for the termination of tenancy in accordance with Section 17.23.1030(B) on a form approved by the Director.

B. A Landlord must provide the City with a true and accurate copy of any Notice of Termination provided to an Enrolled Tenant.

**17.23.1050 Anti-Retaliation Protections.**

A. No Landlord may threaten to bring, or bring, an action to recover possession, cause the Tenant to quit the Rental Unit involuntarily, serve any notice to quit or Notice of Termination, reduce any housing services, or increase the rent where the Landlord's intent is retaliation against the Tenant for the Tenant's assertion or exercise of rights under this Chapter 17.23.

B. Any such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the Tenant for actual and punitive damages and injunctive relief. In an action by or against a Tenant, evidence of the assertion or exercise by the Tenant of rights under this Chapter 17.23 within six months prior to the alleged act of retaliation shall create a rebuttable presumption that the Landlord's act was retaliatory. For purposes of this Section 17.23.1050(B), "rebuttable presumption" means that the Court must find the existence of the fact presumed unless and until its nonexistence is proven by a preponderance of the evidence. A Tenant may assert retaliation affirmatively or as a defense to the Landlord's action without the aid of the rebuttable presumption regardless of the period of time which has elapsed between the Tenant's assertion or exercise of rights under this Chapter 17.23 and the alleged act of retaliation.

**17.23.1060 Affirmative Defense to Eviction; Penalties and Remedies.**

A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Enrolled Tenant must comply with this Part 10 of Chapter 17.23. Non-compliance with any applicable component of this Part 10 shall constitute an affirmative defense for an Enrolled Tenant against any unlawful detainer action under Code of Civil Procedure section 1161.

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

C. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Part 10 may be subject to civil proceedings for displacement of Tenant(s) initiated by the City or the Tenant Household for actual and exemplary damages.

2. Whoever is found to have violated this Part shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Part.

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

Draft

**DRAFT – FOR DISCUSSION PURPOSES – DRAFT****Material Code Violations and Necessary Repair and Replacement List**

The Tenant Protection ordinance includes Material Code Violations and Necessary Repair definitions. This document provides a list of San Jose Municipal Code violations that would be considered either a Material Code Violation or a Necessary Repair. Please provide input on the categorization of violation and examples of other repairs that are not included on this list during the public review period (January 17 – March 3). The list Necessary Repairs and Replacement list is not an exhaustive list, but serves as clear examples of items that would be considered in this category under the ordinance.

When reviewing the list, please note if building conditions do not meet the standards outlined below, they will be considered a violation. If there is evidence that the damage was caused by the tenant, good cause provisions will not apply.

**Material Code Violations**

**Exterior walls** - In good condition, holes, missing sections or deterioration.

**Stairway/ landing/decks/balconies/guardrails/handrails** - In good condition, no significant deterioration or safety hazard. Permits obtained and finalized for replacement of stairways and balconies.

**Exterior lighting** - All lights function and have proper covers, no exposed wiring.

**Electrical Service** - Permits obtained and finalized for service upgrade and/or panel replacement.

**Heaters** - Are permanently installed and properly functioning. Permit obtained and finalized for replacement of heater.

**Flooring** - No deteriorated floor supports.

**Roof and ceilings** - In good condition without any leaks. Permit obtained and finalized for re-roof.

**Windows** – No broken or missing glass.

**Water heaters** - Water heaters are installed in an approved location, and have seismic strapping, operable temperature relief valve, drain line and venting. Hot water is supplied to plumbing fixtures at a temperature of not less than 110 degrees Fahrenheit. Permit obtained and finalized for replacement of water heaters.

**Fire Detection** - Smoke detectors are operable and are located in hallways leading to rooms used for sleeping purposes and also in each bedroom as required by Code.



**Carbon Monoxide Detectors** - Located outside each sleeping area and on each level of a dwelling (including basements). Installation must be per manufacturer's instructions and per California Building Code.

**GFCI required locations** - GFCI properly functioning and installed where outlets have been replaced in the bathrooms, above kitchen counters, on the exterior of building, in garages and basements.

**Electrical** - no exposed wiring. Permit obtained and finalized.

**Pest Control** - No infestations of insects or rodents/vermin. Professional extermination utilized as needed for pest control.

**Plumbing/Piping** – Adequate running water, adequate sewage disposal.

### **Necessary Repairs and Replacements**

**Exterior Premises** - No abandoned or inoperable vehicles, overgrown vegetation, discarded household items, trash, debris or graffiti. Landscaping is being maintained. No deteriorated fencing or driveway/ parking surface areas.

**Vent screens** - No missing or damaged crawl space, attic or foundation vent screens.

**Electrical Service** - Multi-unit panels are identified; all breakers/fuses labeled, no missing tie bars, broken breaker handles and no exposed wiring.

**Common Areas** (including Laundry Room) - In a safe and sanitary condition. Fire Extinguishers (minimum 2-A: 10B:C rating) installed with visible gauge and annual re-charge date tag.

**Windows and window locks** - Windows can be opened and closed easily. Bedroom egress windows are not blocked by furniture or air conditioners, and any security bars can be released from the interior. Window locks as required by Code.

**Entry doors** - All doors and door jambs have strike plates that are secure; entry doors have standard deadbolt with thumb latch at interior and are weather sealed.

**Kitchen counters and sink surfaces** - Surfaces are in good condition, no significant cracked, chipped or missing pieces.

**Flooring** - Coverings do not create tripping hazards due to torn, missing, deteriorated sections of flooring.

**Plumbing fixtures / piping** - Properly installed and in good condition without any leaks or clogs, no missing handles or spouts.

**Bathroom ventilation** - Bathrooms have an operable window and/or exhaust fan.

**Electrical** - General outlets, lights, switches and cover plates are installed properly and in good condition.

**Exterior walls** – No peeling paint.