

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
ENACTING A TEMPORARY MORATORIUM ON EVICTIONS OF
FEDERAL EMPLOYEES, FEDERAL CONTRACTOR EMPLOYEES
AND FEDERAL RENT SUBSIDY RECIPIENTS FOR NONPAYMENT
OF RENT AND SETTING FORTH THE FACTS CONSTITUTING
SUCH URGENCY**

WHEREAS, the United States Congress has not approved legislation to fund certain federal agencies and federal funding lapsed on December 22, 2018 for nine federal departments resulting in a partial federal government shutdown; and

WHEREAS, for the last month, the affected federal employees and federal contractor employees have not received their regularly scheduled wages or other payments; and

WHEREAS, the U.S. Department of Housing and Urban Development has been shuttered by the shutdown resulting in not providing regularly scheduled rent subsidy payments to federal funding recipients; and

WHEREAS, for the last month the affected federal employees, federal contractor employees have not received their regularly scheduled wages and regularly scheduled rent subsidy payments may not have been received for other federal funding recipients; and

WHEREAS, it is uncertain when an appropriations bill will be approved by the United States Congress and signed by the President to fund and reopen the nine federal departments; and

WHEREAS, this Ordinance is temporary and not a general ordinance in force required to be codified pursuant to section 606 of the City Charter; and

WHEREAS, pursuant to section 605 of the City Charter, this urgency ordinance must be “adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency”; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential rental market in the City during the Federal Government Shutdown, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose pay checks or rent subsidies have not been received due to the Federal Government Shutdown to remain in their homes; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of San José’s residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

WHEREAS, during the Federal Government Shutdown, federal employees and other affected tenants may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Approving the uncodified ordinance shown in Exhibit A.

SECTION 2. The City Council of the City of San José hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above and in the memorandum to the City Council from the Mayor dated January 23, 2019 and the testimony at the January 24, 2019 City Council meeting.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth in Section 2 of this Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José and shall remain in effect until the 30 days after the end of the Federal Government Shutdown or 90 days after its adoption.

RD:SSG:SSG
1/22/2019

ADOPTED IN ACCORDANCE WITH CHARTER SECTION 605(d) this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A
**TEMPORARY MORATORIUM ON EVICTIONS OF FEDERAL EMPLOYEES,
FEDERAL CONTRACTORS AND FEDERAL RENT SUBSIDY RECIPIENTS FOR
NONPAYMENT OF RENT**

Section 1 Title

This Ordinance shall be known as the “Shutdown Eviction Moratorium Ordinance.”

Section 2 Policy and Purposes Declaration

The purposes of this Ordinance are to promote housing stability during the Federal Government Shutdown and to prevent avoidable homelessness. This Ordinance is immediately necessary for the immediate preservation of the public peace, health or safety because the Federal Government Shutdown is of unprecedented length and has the potential for destabilizing the residential rental market and for all of the reasons described herein. It is intended to enable Tenants in the City whose regularly scheduled paychecks or rent subsidies have been not been provided due to the Federal Government Shutdown to be temporarily exempt from eviction for non-payment of Rent and to reduce the risk that actions of the federal government will lead to anxiety, stress and potential homelessness for the affected City residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

Section 3 Term, Expiration

This Ordinance is effective immediately and shall expire on the earlier of: 30 days after the end of the Federal Government Shutdown or 90 days after its adoption.

Section 4 Definitions

- A. “Affected Tenant” shall mean a Tenant or Tenant Household that includes a federal employee, federal contractor employee or a person with a federal rental subsidy whose regularly scheduled wages rent subsidy, or other payment has not been delivered due to the Federal Government Shutdown.
- B. “Federal Government Shutdown” shall mean the lapse in funding for nine federal departments during period between the December 22, 2018 and the date of the President’s approval of an appropriations bill or other legislation restoring the lapsed funding.
- C. “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.
- D. “Notice of Termination” shall mean the notice informing a Tenant Household of the termination of its tenancy in accordance this Ordinance and with California Civil Code Section 1946.1 and California Code of Civil Procedure Section 1161, as amended.
- E. “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.

- F. "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.
- G. "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.

Section 5 Scope

This Ordinance applies to Affected Tenants in any Rental Unit.

Section 6 Moratorium on Nonpayment and No Cause Terminations

- A. During the term of this Ordinance, a Landlord may not terminate the tenancy of an Affected Tenant unless the Landlord can demonstrate: that the Landlord served a Notice of Termination to the Affected Tenant and that the termination qualifies as a Just Cause Termination in compliance with Section 7 below.
- B. The Notice of Termination provided to Affected Tenants must contain the reason for the termination of tenancy in accordance with Section 7 below:

Section 7 Just Cause Termination

- A. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as a "Just 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, or has failed to pay rent because regularly scheduled payments were not made to the Tenant or on behalf of the Tenant due to the lapse of federal funding during the Federal Government Shutdown and said failure to pay 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 clause (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, a minor in the Tenant's care, the spouse, domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom, or in the case of a studio unit, two adults. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, a minor in the Tenant's care, spouse, domestic partner, or parent 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 as may be further described in the regulations adopted by the City Manager, 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 California Civil Code section 1954, as amended.
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, 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 which has been offered at comparable rent owned by the Landlord; and
 - 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 subsection B, below.
9. Ellis Act Removal. The Landlord 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 subsection B 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) (each an "authorized family member") 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. 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 thirty-six (36) consecutive months. The Owner shall have provided relocation assistance as required by subsection B, 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 José Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as required by subsection B.3, below.
12. Vacation of Unpermitted Unit. The Landlord seeks in good faith to recover possession of an Unpermitted Unit in order to end the unpermitted use. The Landlord shall have provided relocation assistance as required by subsection B.3, below.

13. Criminal Activity.

- a. The Tenant Household, after receiving a written notice to cure (which notice shall include the return provisions listed in subsection d below) by removing the Violating Tenant (as defined below) from the household, and, where necessary, amending the lease to remove the Violating Tenant's name, fails to do so within a reasonable time, by one of the following methods as further described in the regulations:
 - i. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.
 - ii. Removing the Violating Tenant from the household and providing written notice to the landlord that the Violating Tenant has been removed.
- b. For purposes of this subsection 13, a "Violating Tenant" shall mean an adult Tenant that is indicted by a grand jury or held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within 1,000 feet of the premises on which the Rental Unit is located. The term "premises" shall mean "Lot", as defined in Section 20.200.660 of the San José Municipal Code.
- c. The past criminal history of a Tenant shall not be a factor in determining whether the Tenant is a Violating Tenant.

- d. If a Violating Tenant, as defined above, is acquitted from the charges or the charges are dismissed or reduced, he or she may return to the Rental Unit as a Tenant, so long as: 1) the Tenant Household still resides in the Rental Unit; and 2) the Tenant Household consents to the Violating Tenant's return.

B. Relocation Assistance.

1. Tenants who receive a Notice of Termination that relies on subsections A.8 or A.10 above as the just 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, Part 11 of Chapter 17.23 of the San Jose Municipal Code, 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 California Civil Code section 1950.5, as amended.
2. Tenants who receive a Notice of Termination that relies on subsection A.9 above as the just cause rationale to terminate the tenancy must have received, and the Landlord must have provided, all applicable Relocation Assistance provided for in the Ellis Act Ordinance.

Tenants who receive a Notice of Termination that relies on subsection A.11 or A.12 above as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide, Relocation Assistance as defined in Part 11 of Chapter 17.20 of the San José Municipal Code, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance.

Section 8 Affirmative Defense to Eviction; Penalties and Remedies

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with this Ordinance. Non-compliance with any applicable component of this Ordinance shall constitute an affirmative defense for an Affected Tenant against any unlawful detainer action under California Code of Civil Procedure section 1161, as amended.
- B. Civil Remedies.
1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the City or the Affected Tenant Household for actual and exemplary damages.
 2. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
 3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.
 4. 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.

Section 9. Relationship to Tenant Protection Ordinance

This Ordinance is not intended to relieve a Landlord from any obligation under the Tenant Protection Ordinance, Part 12 of Chapter 17.23 of the San Jose Municipal Code.