

Apartment Rent Ordinance – Questions and Answers for Tenants and Landlords

- 1. Does the City of San José regulate rent increases?** Yes. San José has two ordinances which regulate rent increases, one for mobilehomes and one for apartments. This brochure is about the Ordinance which applies to apartments. The Ordinance may be found [here](#) and its associated regulations [here](#).
- 2. Are all kinds of rental property covered under the Ordinance?** No. The Apartment Rent Ordinance covers most rental units built prior to September 7, 1979, excluding duplexes, condos, townhouses, granny units, and single-family homes. It does not include affordable housing.
- 3. How often may rents be raised?** No more than once in any twelve-month period.
- 4. How much may rents be raised?** Apartment rents may be raised without a hearing by 5%. A landlord may petition to pass through costs to tenants for the following reasons:
 - Specific Capital Improvements: The total monthly amount imposed may not exceed 3 percent of the monthly rent charged and not considered rent. The improvement must have been completed within 12 months prior to the filing of the petition.
 - Fair Return Increase: A special permanent rent adjustment may be approved by the City when the landlord offers proof that their operating expenses exceed income as is adjusted for by inflation.

A tenant may file a joint petition with their landlord for a 5% increase in rent per additional occupant.

- 5. What may a tenant do if their rent is raised over the 5% guideline?** The tenant has the right to file a petition with the Rent Stabilization Program, contact information is provided at the bottom of this page. The petition is an individual complaint form and seeks a hearing on the rent increase.
- 6. What about reductions in services?** Housing services are those services agreed upon or required by law. A reduction in services without a corresponding reduction in rent is a type of rent increase. Tenant may make a written claim on any services reduced within the last twelve months (a claim form is part of the petition). Tenant will have to prove at the hearing that the service was reduced.
- 7. What about health and safety problems?** Hearing Officers may consider evidence of Housing Code violations or of violations of California Civil Code Sections 1941.1 and 1941.2 and may reduce, disallow or condition rent increases based on their severity. Tenants have the burden of proving this type of claim.
- 8. How may tenant or landlord file a petition?** Contact the Rent Stabilization Program for a copy of the petition form by telephone, 408.975.4480 or may e-mail a petition to RSP@sanjoseca.gov.
- 9. What is the petition filing deadline?** It is best to file a petition when tenants receive the notice of increase from a landlord, before the effective date of the increase.
- 10. Will the City notify me when it receives my petition?** Yes. City staff is authorized to make certain decisions based on the evidence received. Staff will investigate the complaint and either render a decision themselves or refer the matter to a hearing officer for resolution. Tenant or



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landlord will receive either a draft of the decision by staff for comment, a notice of the hearing date, or a notice that your petition is not eligible for a hearing.

- 11. When are the hearings?** They are generally on a Monday through Thursday date at City Hall (200 E Santa Clara St, San Jose 95113). Hearings are typically in the evening unless a time during the day works better for both parties.
- 12. Are the hearings public?** No. These are administrative hearings and should be attended only by the landlord, designated representatives, petitioning tenants, witnesses, and advisors. A party may complete and submit a proxy form if they would like someone to represent them at the hearing.
- 13. What happens at the mediation hearings?** A hearing officer will review any documents submitted, hear testimony, and discuss the case with the tenant(s) and landlord. Many cases are settled by a voluntary agreement between the landlord and tenant(s). A hearing officer will assist both sides to arrive at an agreement, if this is the result they wish. A hearing officer may continue the hearing to an additional day, if necessary, and may allow the parties to submit written arguments or documents by a set deadline.
- 14. What if an agreement is not possible?** A hearing officer will consider the evidence and testimony and issue a decision within ten (10) days. This decision may be appealed with a final decision by an arbitration hearing officer.
- 15. How may I file an appeal?** An appeal may be made if a party doesn't feel that the mediation hearing was fair or if the other party did not abide by the voluntary agreement or if the decision by staff or a hearing officer does not address all the issues in the complaint or does not focus on specific areas of the Ordinance or regulations as required. An appeal request must be made in writing to the Program Office.
- 16. May a hearing be cancelled?** Yes, by a written request by the petitioner. A hearing may be cancelled if a resolution has been agreed upon by both parties or if the petitioner withdraws their petition.
- 17. May a hearing be rescheduled?** Yes, when the request is made at least seven (7) days prior to a hearing. Hearings may also be rescheduled with less notice if one of the parties is prevented from attending by circumstances beyond their control (such as illness).
- 18. May a hearing officer order repairs made?** No. A hearing officer may only set the amount of rent. A voluntary agreement may provide for repairs to be made. Other programs may assist with getting repairs made, such as the Bay Area Legal Aid (408) 283-3700, Fair Housing Law Project (408) 280-2452, the Asian Law Alliance (408) 287-9710 or the City's Code Enforcement Division (408) 535-7770.
- 19. May rent be raised to a new tenant?** In some circumstances it may be. If the prior tenant was evicted by a court for non-payment or other material violation of a written rental agreement, then the rent may be raised. Rent may also be raised when the prior tenant moved voluntarily.
- 20. May rent be raised when my roommate moves out?** Not in the rent stabilized units described above. The Ordinance defines continuing tenancy as including any existing tenant or member of the tenant household.
- 21. My security deposit is being increased. May you do something about it?** The Apartment Rent Ordinance does not allow a landlord to raise a security deposit during a continuing tenancy except a one-time fee may be charged for the addition of pets.



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22. May any charges from the landlord be made in addition to the rent? Penalties for excess water usage are during droughts may be divided between the landlord and the tenants. There are rules governing how these charges may be made and the Rent Stabilization Program, 408.975.4480 will resolve disagreements.

The Apartment Rent Ordinance also allows landlords to collect certain fees (but not add the fees to the base rent amount):

- Limited replacement fees for key or security card no more than actual cost of replacement plus \$10.00
- Limited bounced check service fees up to \$25 for the first check and up to \$35 for each additional check (These amounts are defined by California Civil Code Section 1719 (a)(1) and may change over time)
- Late payment fees no more than 5% of monthly rent for each payment of rent that is more than 3 days late.
- Application screening fees may be charged at a maximum of around \$35 per applicant (This fee is defined by California Civil Code Section 1950.6 (b))
- Rent increase awards for Landlord Fair Return Petitions
- Pass through awards for Landlord Specified Capital Improvement Petitions
- One-time payments for new additional housing services

23. May rights be waived under the Ordinance? No.

24. How may tenants or landlords prepare for a hearing? There are several things which tenants and landlords may do. Since most cases are resolved by negotiated agreements tenant and landlord may consider negotiating a settlement either before or during a hearing. Secondly, tenant and landlord may review any earlier cases at the same rental complex (case files are public records). This may show tenant and landlord what claims and evidence was presented at earlier hearings. Finally, tenant and landlord may study the Ordinance and Program Regulations. The Ordinance is Chapter 17.23 of the Municipal Code may be reviewed on the City's web site. The Ordinance and/or the Program Regulations may be mailed free of charge. Program staff may answer questions on the Ordinance and Regulations, but may not prepare case.

25. Who oversees and administers the program? The program is administered by the City of San José, Housing Department. The Housing and Community Development Commission advises the City Manager and City Council on changes in the Ordinance and Regulations. (The Commission does not make decisions on whether a particular increase is reasonable).

26. Where is the Rent Stabilization Program located? The Program is located at 200 East Santa Clara Street, 12th Floor San José, CA 95113-1305. Call 408.975.4480.

