## STAFF REPORT

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| **Agenda Item:** | 7 | **Name:** | April Sanders |
| **Proposed No**.: | 2021-0131 | **Date:** | April 26, 2021 |

**SUBJECT**

Proposed Ordinance 2021-0131 would establish just cause provisions and additional protections for tenants under both month-to-month tenancies and fixed-term leases in unincorporated King County.

**SUMMARY**

The Washington Residential Landlord-Tenant Act governs aspects of most residential landlord/tenant relationships and includes protections for both tenants and landlords. Proposed Ordinance 2021-0131 would expand protections for unincorporated area residential tenants through the establishment of just cause provisions and additional tenant protections.

The proposed just cause provisions would require that owners have a “just” reason for pursuing an eviction, terminating a tenancy, or failing to renew a fixed-term lease. These just causes include a tenant's failure to comply with a pay or vacate notice, a landlord's decision to sell the property, and certain criminal activity.

Additionally, the Proposed Ordinance would enact additional tenant protections, including capping move in fees and security deposits at one month's rent, capping late fees to 1% of monthly rent, requiring additional notice for rent increases greater than 3%, among others described in the analysis section of this staff report.

The Proposed Ordinance would also repeal King County Code (KCC) 12.47, which currently requires a landlord to prevent and report suspicion of criminal conduct, and amend KCC 2.60 to allow for public defense access for tenants.

If approved, the Proposed Ordinance would be effective 90 days after enactment.

**BACKGROUND**

**Washington Residential Landlord-Tenant Act.[[1]](#footnote-1)** The Washington Residential Landlord-Tenant Act (RLTA) governs aspects of most landlord/tenant relationships for residential tenancies, including a landlord's recourse for a tenant who breaches material terms of a rental agreement or fails to pay rent, restrictions on when a landlord may access the housing unit, fair housing rights, and protections against retaliation. The RLTA does not govern tenancies in mobile or manufactured homes, or certain migrant worker housing, among other tenancies.

Additionally, in 2019 the Washington State legislature passed two bills relevant to just cause evictions. House Bill 1440 required landlords to provide tenants at least 60 days' written notice of an increase in the rent, instead of the previous 30-days. There is an exception for rental agreements concerning subsidized tenancies where the rental amount is based on the income of the tenant.[[2]](#footnote-2)

Senate Bill 5600 extended the requirement for pay-or-evict notices in Washington State to 14 days (originally 3 days). The bill also made uniform eviction notices available to landlords written in plain language. An additional reform to the eviction process in the bill included the use of judicial discretion in nonpayment of rent cases, by requiring consideration of factors beyond the tenants’ control.[[3]](#footnote-3)

**Just Cause Evictions.** Just cause or good cause eviction legislation requires that owners have a “just” reason for pursuing an eviction. These just causes vary across jurisdictions, but common reasons include nonpayment of rent, breach of the terms of the rental agreement, and certain criminal activity.

There are a number of Just Cause Evictions Ordinances in other jurisdictions across the country including: Philadelphia, Pennsylvania (Fair Housing Ordinance, §9-800 Philadelphia Code[[4]](#footnote-4)); San Francisco, California (Rent Ordinance, Section 37.9[[5]](#footnote-5)); Oakland, California (Oakland Municipal Code 8.22.360[[6]](#footnote-6)); Los Angeles, California (Rent Stabilization Ordinance, Los Angeles Municipal Code 151.09[[7]](#footnote-7)); Washington, DC (Code of the District of Columbia §42-3505.01[[8]](#footnote-8)); and Seattle which will be discussed in more detail later in this staff report.

**Renter protections in King County.** King County Code’s Open Housing chapter[[9]](#footnote-9) regulates the practices of those who rent or sell homes or apartments in unincorporated King County.

In 1981, the King County Council adopted the Fair Housing Ordinance,[[10]](#footnote-10) which prohibited discrimination in the rental, sale or financing of housing in unincorporated King County on the basis of race, color, religion, national origin, age, sex, marital status, parental status, sexual orientation, disability, or the use of a trained service dog.

In 1992, the Council updated the Fair Housing Ordinance by adding participation in the Section 8[[11]](#footnote-11) program to the list of conditions against which housing discrimination was prohibited.[[12]](#footnote-12)

These ordinances were codified to become the KCC’s Open Housing Chapter (K.C.C. 12.20),[[13]](#footnote-13) which continues to regulate the practices of those who rent or sell homes or apartments in unincorporated King County. Investigation of complaints is handled by the King County Office of Civil Rights.

Ordinance 18708 was enacted by the King County Council in 2018, to prohibit discrimination based on the source of income used by a tenant or homebuyer for housing in unincorporated King County, including:

1. A cash benefit, such as Social Security; a retirement program; unemployment; child support; the State Aged, Blind or Disabled Cash Assistance Program; state refugee Cash Assistance; or other federal, state, local, private or nonprofit programs; or
2. A housing subsidy, in addition to Section 8, such as Veterans Affairs Supportive Housing (VASH) vouchers, state Housing and Essential Needs (HEN) funds, or rapid rehousing assistance.

**Regional Affordable Housing Taskforce and the Affordable Housing Committee.** The King County Council established the Regional Affordable Housing Taskforce (RAHTF) in 2017 through Motion 14873. The Taskforce was charged with developing a recommended countywide affordable housing strategy. In December 2018 the RAHTF released its Final Report and Recommendations[[14]](#footnote-14) and the King County Council declared through Motion 15372 that the recommendations therein represented the policy of the Council. The RAHTF Report included recommended strategies of adopting ordinances to expand tenant protections and provide implementation support.[[15]](#footnote-15)

**Demographic Data.**  According to King County Demographer Rebeccah Maskin, approximately 22% (or 25,000) of unincorporated area households are renter households. The percentage varies across the unincorporated area. For example, Skyway/West Hill has a higher percentage of renter households at approximately 42%.[[16]](#footnote-16)

**Seattle Just Cause Legislation.** The City of Seattle has a Just Cause Eviction Ordinance that requires landlords to have one of the defined just causes in order to terminate a month-to-month tenancy. It specifies the only reasons for which a tenant in Seattle may be required to move and requires owners to state the reason, in writing, for ending a tenancy when giving a termination notice. A property owner cannot evict a tenant if the property is not registered with the City of Seattle. The Just Causes identified in City of Seattle code are as follows[[17]](#footnote-17):

* Late rent: tenant receives a 14-day notice to pay or vacate and fails to comply.
* "Habitual failure": tenant receives 4 or more 14-day pay or vacate notices in the most recent 12-month period for late rent.
* Violation of the rental agreement: tenant receives a 10-day notice to comply with the rules of the rental agreement or vacate and fails to comply.
* "Habitual failure": tenant receives 3 or more 10-day notices to comply or vacate in the most recent 12-month period for failure to comply with the rules of your rental agreement.
* The landlord or a member of their immediate family needs to move into the unit. This requires a 90-day notice.
* The landlord wants to sell the unit. This requires a 90-day notice and only applies to single-family dwelling units.
* The occupancy of a unit depends on being employed on the property and tenant employment is terminated. This would typically apply to property managers who live on site.
* The landlord rents a portion of the home or an accessory dwelling unit to their own home and no longer wishes to share with the tenant.
* The landlord wants to substantially remodel the unit or the building.
* The landlord wants to demolish the property or change the use to non-residential.
* The landlord wants to convert the unit to a condo or a co-op.
* The landlord receives a notice of violation for housing standards in a permitted accessory dwelling unit and wants to discontinue renting it.
* The landlord receives a notice of violation for an unauthorized housing unit, commonly called an "illegal unit," and has to discontinue renting.
* The landlord has to reduce the number of renters in a dwelling unit to comply with the legal limit.
* The landlord is issued an emergency order by the City to vacate and close the housing unit due to hazardous conditions.
* The landlord issues a notice for engaging in criminal activity on the property. The landlord must specify the crime and facts supporting the allegation in the notice of termination and provide a copy to the City.

**Federal Way Good Cause Ordinance.[[18]](#footnote-18)** A Federal Way Good Cause Ordinance was approved by voters through Initiative Measure 19-001 in November of 2019. The Ordinance established good cause provisions (similar to the just causes noted above) for both month-to-month tenancies and fixed-term lease renewal, creating a defense to eviction if a landlord fails to satisfy one of the good causes in such an action. Additionally, it included other tenant protections, such as prohibiting retaliatory actions against tenants and prohibiting tenant discrimination based on military, first responder, senior, family member, health care provider, or educator status.

**ESHB 1236.[[19]](#footnote-19)** House Bill 1236 was introduced by Representative Nicole Macri early in the 2021 Legislative Session. At the time of this staff report, the Bill was amended by both the House of Representatives and the Senate and is awaiting a signature from the Governor. Engrossed Senate House Bill 1236 specifies good causes for eviction, refusal to renew a tenancies and termination of a tenancy and amends penalties for including unlawful provisions in a rental agreement. Below is a summary table of the cause requirements for terminating a tenancy.

**Table 1. ESHB 1236 Cause Requirements**

|  |  |  |
| --- | --- | --- |
| Lease Agreement | Cause Required | Landlord Notice Requirement |
| Fixed term lease that includes a clause converting lease to a month-to-month at the end of the initial lease term | No cause needed for a landlord to end tenancy at the end of the lease term | 60 days |
| Fixed term lease without a clause converting lease to a month-to-month at the end of the initial lease term | May terminate without cause if:   1. Initial lease term is for 12 months or more and the parties have entered into successive rental agreements of six months or more; 2. The tenancy has never been for a monthly basis since inception of the tenancy | 60 days |
| All other tenancies, including those on a monthly or periodic basis | May not terminate tenancy without one of the enumerated causes, or other just causes constituting a legitimate economic or business reason | 60 days |

*Enforcement Remedies*. A landlord who removes a tenant in violation of the statute is liable for the tenant's damages or 3 times the monthly rent, whichever is greater, plus attorney's fees and costs. Including prohibited provisions in the rental agreement leaves the landlord liable to 2 times the monthly rent.

Analysis is ongoing on potential impacts to Proposed Ordinance 2021-0131 if this bill becomes law.

**ANALYSIS**

**Just Cause Provisions.** Proposed Ordinance 2021-0131 establishes just causes that a landlord must satisfy in order to terminate a month-to-month tenancy, fail to renew a fixed-term lease or begin eviction proceedings. These just causes are summarized below.

* A tenant fails to comply with a pay rent or vacate notice, a comply or vacate notice, or a notice to vacate for waste or nuisance.
* A tenant fails to comply with a ten-day notice to comply or vacate that requires compliance with a material term of the rental agreement or that requires compliance with a material obligation under chapter 59.18 RCW.
* An owner seeks possession so that the owner or their immediate family may occupy the unit.
* An owner elects to sell the unit.
* A tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated.
* An owner seeks to do substantial rehabilitation in the building.
* An owner elects to demolish the building, convert it to a cooperative, or convert it to a condominium.
* An owner seeks to discontinue use of a dwelling unit after receipt of a notice of violation from the department of local services.
* An owner seeks to reduce the number of occupants who reside in one dwelling unit to comply with the legal limit after receipt of a notice of violation.
* An owner seeks to discontinue residential use of an accessory dwelling unit.
* Emergency measures requiring that a dwelling unit be vacated and closed has been issued.
* An owner intends to discontinue leasing to a tenant of the owner's own dwelling unit in which the owner resides.
* A tenant, or with the consent of the tenant, the tenant's subtenant or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises.

**Additional Tenant Protections.**

*Fees.* The Proposed Ordinance would cap move in fees and security deposits at one month's rent, with the option to pay move in fees and security deposits incrementally. It would also cap late fees or costs that can be charged to a tenant due to nonpayment of rent at 1% monthly rent.

*Access to Public Defense.* The Proposed Ordinance amends KCC 2.60.050 to allow for the Department of Public Defense to represent tenants whose leases have been terminated or are subject to unlawful detainer actions in violation of any King County ordinance, when funds are available. Currently, there is not funding in the 2021-2022 Biennial Budget dedicated to funding public defense access for tenants.

*Repeal of KCC 12.47.[[20]](#footnote-20)* The Proposed Ordinance would repeal KCC 12.47, which requires landlords to prevent criminal activity and evict based on criminal violations of the tenant or tenant's guests. KCC 12.47 also requires landlords to report suspicion of criminal activity to the King County Sheriff's Office. If a landlord does not report suspicion of criminal conduct or prevent criminal activity, they could be charged with civil infractions.

With the repeal of KCC 12.47, a landlord would no longer be required to report or prevent criminal activity, but would still be able to evict a tenant under the just cause listed in section 5.A.13.

*Miscellaneous.* In addition to the provisions listed above, the following tenant protections are included in the Proposed Ordinance:

* Requires a landlord to give 3 to 4 months' notice for rent increases greater than 3%;
* Prohibits landlords from engaging in unfair or abusive acts or practices and deceptive acts or practices;
* States that acceptance of rent by a landlord waives any right to declare forfeiture or seek eviction solely for any prior breaches of the rental agreement;
* Prohibits a landlord from increasing the rent if the dwelling unit has defective conditions making the unit unlivable or in violation of RCW 59.18.060;
* Requires rental agreements to include a provision allowing tenants to adjust the due date of rent payments if the tenant has a fixed income source that the tenant receives on a date of the month incongruent with paying rent on the date otherwise specified in the rental agreement (I.E. if an individual receives social security on the 2nd of the month, they may elect to pay rent on the 3rd). Also prohibits a landlord from refusing to enter into a rental agreement with a prospective tenant if the tenant requests such accommodations;
* Requires landlords to include language on a pay rent or vacate to include that the landlord may allow you to pay rent after the 14 days in lieu of initiating eviction proceedings; and
* Prohibits landlords from requesting a social security number for the purposes of screening a prospective tenant.

**Penalties.** A landlord found in violation of any of the provisions in the Proposed Ordinance would be liable to a tenant in a private right of action for double damages or 4 ½ times the monthly rent, whichever is greater, and court costs and attorneys' fees. The exception is the use of a tenant's social security number for tenant screening. If a landlord is found in violation of this provision, they would be held liable up to double damages or one month's rent, whichever is greater, and court costs and attorneys' fees.

**Enforcement Mechanism.** Superior Court would act as the enforcement mechanism for the provisions included in the Proposed Ordinance. If a tenant believes a landlord has wrongfully initiated eviction proceedings, or wrongfully refuses to renew a fixed-term lease, the tenant may bring the landlord to court.

**Executive's Reports and Requirements.**

*Central Phone Number.*The Executive would be required to develop a central phone number within the Department of Community and Human Services (DCHS) for tenants who believe their tenancy was terminated, or their fixed-term lease was not renewed, wrongfully.

*Tenant Protections Access Plan.* The Executive would be required to transmit a Tenant Protections Access Plan, with accompanying legislation to codify recommendations, by August 2021 with the goal of expanding knowledge of tenant protections in King County Code. The Plan would include:

* Recommendations on providing information about tenant protections in King County and access to those protections to residents with limited English proficiency;
* Recommendations on providing tenant protections to undocumented residents who may have a fear of accessing tenant protections through the court system;
* A "know your rights" campaign with the objective of spreading awareness of the new provisions in the Proposed Ordinance, utilizing partnerships with community organizations and the King County immigrant and refugee commission; and
* Recommendations on ways to provide free legal representation, advice and other legal assistance to tenants facing eviction, harassment, disrepair and other housing-related issues, including an analysis of the right-to-counsel law available through the New York City office of civil justice's legal representation program.

*Landlord Outreach Plan.*  Also by August of 2021, the Executive would be required to transmit a Landlord Outreach Plan with the goal of expanding knowledge of tenant protections in the King County Code to landlords.

**Effective Date.** The Proposed Ordinance would take effect 90 days after enactment.

**Executive Feedback.** DCHS and the Executive's office have reviewed the Proposed Ordinance and provided some initial feedback. Executive Staff indicate that the phone line required in Section 19.A. of the proposed ordinance would put Executive branch staff in a position to give legal advice to residents, and they don’t believe they are well positioned to do that. Executive staff further state that DCHS would be unable to complete the Tenant Protections Access Plan required in Section 19.B. by the August 2021 deadline.

Additionally, policy staff requested information from the Sheriff's Office about their current use of KCC 12.47. Sheriff's Office staff indicate that they rely on KCC 12.47 often as a tool to gain compliance when particular properties have become venues for criminal behavior. They further state that although they often may not follow through with a citation, the possibility is often enough to gain compliance. If the Sheriff's Office does not have these code provisions, they state that there is no leverage or authority to solve persistent issues.

Councilmembers continue to work with the Executive, KCSO, and outside stakeholders on refining the legislation and may propose amendments at a future meeting.

**INVITED**

* Kelly Rider, Government Affairs, Department of Community and Human Services

**ATTACHMENTS**

1. Proposed Ordinance 2021-0131

1. <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18> [↑](#footnote-ref-1)
2. <https://app.leg.wa.gov/billsummary?BillNumber=1440&Year=2019> [↑](#footnote-ref-2)
3. <https://app.leg.wa.gov/billsummary?BillNumber=5600&Year=2019&Initiative=false> [↑](#footnote-ref-3)
4. <https://www.phila.gov/FairHousingCommission/pdf/Fair%20Housing%20Ordinance%209-800%209-1200%20(4-20-2019).pdf> [↑](#footnote-ref-4)
5. <https://sfrb.org/section-379-evictions> [↑](#footnote-ref-5)
6. <https://www.oaklandca.gov/resources/read-the-just-cause-for-eviction-ordinance> [↑](#footnote-ref-6)
7. <https://hcidla.lacity.org/RSO-Overview>B [↑](#footnote-ref-7)
8. <https://code.dccouncil.us/dc/council/code/sections/42-3505.01.html> [↑](#footnote-ref-8)
9. K.C.C. 12.20 [↑](#footnote-ref-9)
10. Ordinance 5280 [↑](#footnote-ref-10)
11. Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437f, authorizes the United States Department of Housing and Urban Development (HUD) to enter into agreements with state and local public housing agencies by which the parties jointly provide housing assistance to low-income families. This is also commonly known as the housing choice voucher program. [↑](#footnote-ref-11)
12. Ordinance 10469 [↑](#footnote-ref-12)
13. K.C.C. 12.20 [↑](#footnote-ref-13)
14. <https://www.kingcounty.gov/~/media/initiatives/affordablehousing/documents/report/RAH-Report-Print-File-7-17-19.ashx?la=en> [↑](#footnote-ref-14)
15. Recommendation 4: “Preserve access to affordable homes for renters by supporting tenant protections to increase housing stability and reduce risk of homelessness.” There are four strategies in this recommendation: (a) propose and support legislation and statewide policies related to tenant protection to ease implementation and provide consistency for landlords, (b) strive to more widely adopt model, expand tenant protection ordinances countywide and provide implementation support, (c) expand supports for low-income renters and people with disabilities and (d) adopt programs and policies to improve the quality of housing in conjunction with necessary tenant protections. See <https://www.kingcounty.gov/~/media/initiatives/affordablehousing/documents/report/RAH-Report-Print-File-7-17-19.ashx?la=en> [↑](#footnote-ref-15)
16. Note: the County Demographer aggregated census tracts to re-create the unincorporated area. The source is Census Bureau ACS 5-year data for 2019. [↑](#footnote-ref-16)
17. Some of the just causes also require the landlord to provide relocation assistance to the tenant. [↑](#footnote-ref-17)
18. Federal Way Revised Code Chapter 20.05, <https://www.codepublishing.com/WA/FederalWay/#!/html/FederalWay20/FederalWay2005.html> [↑](#footnote-ref-18)
19. <https://app.leg.wa.gov/billsummary?BillNumber=1236&Initiative=false&Year=2021> [↑](#footnote-ref-19)
20. <https://kingcounty.gov/council/legislation/kc_code/15_Title_12.aspx> [↑](#footnote-ref-20)