



Legislation Text

File #: 2021-0131, **Version:** 3

Clerk 06/30/2021

AN ORDINANCE relating to tenant protections; amending Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050, adding a new chapter to K.C.C. Title 12 and repealing Ordinance 16223, Section 3, and K.C.C. 12.47.010, Ordinance 16223, Section 4, and K.C.C. 12.47.020, Ordinance 16223, Section 5, and K.C.C. 12.47.030 and Ordinance 16223, Section 6, and K.C.C. 12.47.040.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. The King County council finds that establishing this ordinance, a just cause and tenant protections ordinance, is necessary to protect the public health, safety and welfare.

B. Under a provision of the Washington state Residential Landlord-Tenant Act of 1973, RCW 59.18.290, landlords may not evict residential tenants without a court order, which under RCW 59.18.380 can be issued by a court only after the tenant has an opportunity to contest the eviction.

C. King County established the regional affordable housing task force in 2017 through Motion 14873. The task force's charge was to develop a recommended countywide affordable housing strategy.

D. The regional affordable housing task force released its Final Report and Recommendations in December 2018, and the King County council declared through Motion 15372 that recommendations contained therein represent the policy of the council.

E. The regional affordable housing task force's report included Census data that showed that more than one hundred twenty-four thousand low-income households in King County are severely cost burdened. Of

those, eighty-eight percent, or one hundred nine thousand seven hundred households, earn fifty percent or less of area median income, meaning the county's poorest residents struggle most with housing costs. The report found that communities of color and renters are disproportionately likely to be severely cost burdened, paying more than half of their income toward housing costs. The report also included a recommended strategy of adopting ordinances to expand tenant protection and provide implementation support.

F. The Washington state Legislature passed Engrossed Substitute House Bill 1236, which became Chapter 212, Laws of Washington 2021. Those statutes establish just cause eviction regulations at the state level. This ordinance builds on those protections, to offer additional protections that are necessary for the public health, welfare and safety of the residents of King County. This ordinance includes the following additional protections:

1. A just cause for reducing the number of tenants in response to a notice and order. The county has regulations in place that limit the number of people that may reside in a dwelling unit. That just cause adds a protection for the landlord in a case where the county has found a violation of those regulations and the landlord seeks to comply with that notice, but the tenant continues in possession of the dwelling unit;

2. A just cause for a landlord who seeks to discontinue residential use of an accessory dwelling unit. Chapter 212, Laws of Washington 2021, does not contemplate accessory dwelling units as rental units. Accessory dwelling units are an important supply of rental housing in unincorporated King County, and this ordinance provides the same protections to tenants of those types of units as other types of rental housing;

3. Two just causes for owners seeking to discontinue renting out an owner's primary residence or an accessory dwelling unit on an owner's primary residential property. Those protections provide an owner with more rights to discontinue renting out parts of their primary residence or primary residential property;

4. Protections for victims of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon. This ordinance clarifies the status of those victims, in order to provide them safe housing; and

5. A provision limiting security deposits to a maximum of one month's rent and capping late fees and administrative costs of the landlord. The county finds that use of these fees can pose a financial hardship for tenants, and placing a cap on these fees will allow more individuals and families to obtain stable housing.

NEW SECTION. SECTION 2. Sections 3 through 16 of this ordinance should constitute a new chapter of K.C.C. Title 12.

NEW SECTION. SECTION 3. There is hereby added to the new K.C.C. chapter established in section 2 of this ordinance a new section to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. The definitions in RCW 59.18.030 also apply to this chapter unless otherwise defined in this section.

A. "Dwelling" or "dwelling unit" has the same meaning as "dwelling unit" in RCW 59.18.030, in addition to any vacant land that is offered for sale or lease for mobile and manufactured homes.

B. "Landlord" has the same meaning as "landlord" in RCW 59.18.030.

C. "Occupancy" means the formal designation of the primary purpose of the building structure or portion thereof.

D. "Owner" has the same meaning as "owner" in RCW 59.18.030.

E. "Tenant" has the same meaning as "tenant" in RCW 59.18.030 or 59.20.030, depending on the context, and excludes living arrangements identified in RCW 59.18.040.

NEW SECTION. SECTION 4. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A. Except as otherwise specifically required or allowed by K.C.C. Title 12 or by the Washington state Residential Landlord-Tenant Act of 1973, chapter 59.18 RCW, it is unlawful for any landlord to:

1. Remove or exclude from the premises a tenant except under a court order authorizing the removal or exclusion; or

2. Evict, reduce services, increase the obligations of a tenant or otherwise impose, threaten or attempt any punitive measure against a tenant for the reason that the tenant has in good faith asserted, exercised or attempted to exercise any legal rights granted tenants by law and arising out of the tenant's occupancy of the dwelling unit.

NEW SECTION. SECTION 5. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A. In addition to the just causes allowed under state law, a landlord shall not evict a tenant, refuse to continue a tenancy or terminate a tenancy except for the just causes enumerated and otherwise provided under this section:

1. The tenant continues in possession after the tenant fails to comply with:

a. a notice to pay rent or vacate in accordance with RCW 59.12.030(3);

b. a notice to comply or vacate in accordance with RCW 59.12.030(4); or

c. a notice to vacate for waste, nuisance, including a drug-related activity nuisance in accordance with chapter 7.43 RCW, or maintenance of an unlawful business or conduct in accordance with RCW 59.12.030 (5);

2. The tenant fails to comply with a ten-day notice to comply or vacate requiring compliance with a material term of the rental agreement or that requires compliance with a material obligation under chapter 59.18 RCW;

3. The tenant continues in possession after the landlord seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building, and the landlord has given the tenant at least ninety days' advance written notice of the date the tenant's possession is to end. For the purposes of this subsection A.3., "immediate family" includes the owner's domestic partner registered under chapter 26.60 RCW or the owner's spouse, parents, grandparents, children, brothers and sisters of the owner, of the owner's spouse

or of the owner's domestic partner. There is a rebuttable presumption of a violation of this subsection A.3. if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least sixty consecutive days during the ninety days immediately after the tenant vacated the unit in accordance with a notice of termination or eviction using this subsection A.3. as the cause for eviction;

4. The tenant continues in possession after the owner elects to sell a single-family dwelling unit and gives the tenant at least ninety days' written notice before the date set for vacating, which date shall coincide with the end of the term of a rental agreement, or if the agreement is month-to-month, with the last day of a monthly period. For the purposes of this subsection A.4., an owner "elects to sell" when the owner, at a minimum, lists the dwelling for sale at fair market value, such as with a realty agency or advertising in a newspaper of general circulation. There shall be a rebuttable presumption that the owner did not intend to sell the unit if:

a. within thirty days after the tenant has vacated, the owner does not list the single-family dwelling for sale at fair market value, or

b. within ninety days after the date the tenant vacated or the date the property was listed for sale, whichever is later, the owner withdraws the rental unit from the sales market, rents the unit to someone other than the former tenant or otherwise indicates that the owner does not intend to sell the unit;

5. The tenant continues in possession after the landlord seeks to do substantial rehabilitation in the building, but only if the owner or designee submitted a complete application for at least one permit required under K.C.C. Title 16 for the rehabilitation. The landlord shall serve the tenant with advance written notice in accordance with RCW 59.18.200(2)(c). Substantial rehabilitation has the same meaning as "substantially rehabilitate" in RCW 59.18.200(2)(c);

6. The tenant continues in possession after the landlord:

a. elects to demolish the building, convert it to a cooperative or convert it to a nonresidential use, though the owner or designee must obtain a permit necessary to demolish before terminating any tenancy. The

landlord shall serve the tenant with advance written notice in accordance with RCW 59.18.200(2)(c); or

b. elects to withdraw the premises to pursue a conversion in accordance with RCW 64.34.440 or RCW 64.90.655. The landlord shall serve the tenant with advance written notice in accordance with RCW 64.34.440 and RCW 64.90.655;

7.a. The tenant continues in possession after the landlord seeks to reduce the number of occupants who reside in one dwelling unit to comply with the legal limit, and:

(1) the landlord has served the tenants with a thirty-day written notice, informing the tenants that the number of occupants exceeds the legal limit and must be reduced to the legal limit; however, a thirty-day notice is not required if the number of occupants was increased above the legal limit without the knowledge or consent of the landlord;

(2) after expiration of the thirty-day notice required by subsection A.7.a.(1) of this section, or any time after receipt of the notice and order if a thirty-day notice is not required in accordance with subsection A.7.a.(1) of this section, the landlord has served the tenants and the tenants have failed to comply with a ten-day notice to comply with the maximum legal limit on the number of occupants or vacate; and

(3) if there is more than one rental agreement for the unit, the landlord may choose which agreements to terminate; however, the landlord may terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants.

b. For any violation of the maximum legal limit on the number of individuals allowed to reside in a dwelling unit that occurred with the knowledge or consent of the landlord, upon creation of a relocation assistance program, the landlord is required to pay relocation assistance to the tenant or tenants of each such a unit as the program dictates;

8. The tenant continues in possession after the landlord seeks to discontinue residential use of an accessory dwelling unit;

9. The tenant continues in possession after a landlord or owner receives a notice and order issued

under K.C.C. Title 16 or 23 and violations identified in the notice and order have not been corrected, but only if the notice and order restricts the tenant's ability to reside in the dwelling unit. The landlord shall be required to make a showing of medical or financial hardship to the tenant that the landlord could not correct the violations identified in the notice order. However, the tenant may elect to repair and stay in the dwelling unit as set forth in RCW 59.18.100;

10.a. The tenant continues in possession after the owner intends to discontinue leasing to a tenant of the owner's own dwelling unit in which the owner resides;

b. The owner intends to evict a tenant, to refuse to continue a tenancy, or to terminate the tenancy of an accessory dwelling unit accessory to the dwelling unit in which the owner resides; or

c. The owner seeks to evict a tenant, refuse to continue a tenancy, or terminate the tenancy in a single-family dwelling unit and the owner resides in an accessory dwelling unit on the same lot;

11.a. The tenant continues in possession after the tenant, or with the consent of the tenant, the tenant's subtenant, sublessee, resident or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises. For purposes of this subsection A.11., a person has "engaged in criminal activity" if the person:

(1) engages in a drug-related activity that would constitute a violation of chapters 69.41, 69.50 or 69.52 RCW;

(2) engages in activity that is a crime under the laws of this state, but only if the activity substantially affects the health or safety of any person. An activity substantially affects the health or safety of other tenants or the landlord if:

(a) the activity is imminently hazardous to the physical safety of any person;

(b) the activity entails physical assaults upon another person that result in an arrest; or

(c) the activity entails the unlawful use of a firearm or other deadly weapon, as defined in RCW 9A.04.110, that results in an arrest, including threatening another tenant or the landlord with a firearm or other

deadly weapon under RCW 59.18.352; or

(3) The activity renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences.

b. In determining whether a tenant's activity substantially effects the health or safety of other tenants or the landlord, a court may consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the tenant's activities at the property, damage done by the tenant to the property, including the property of other tenants or neighbors, harassment or threats made by the tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the tenant, and the tenant's criminal history.

c. Nothing in this subsection A.11. shall authorize the termination of tenancy or eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon; or

12. The tenant continues in possession after the tenant, or with the consent of the tenant, the tenant's subtenant, sublessee, resident or guest:

i. Knowingly allows to reside in the dwelling unit, without receiving written consent from a landlord before moving into the dwelling unit, an animal that has been declared vicious by the manager of the regional animal services section in accordance with K.C.C. Title 11; or

ii. Knowingly continues to maintain in the dwelling unit an animal that is declared vicious by the manager of the regional animal services section in accordance with K.C.C. Title 11 during the terms of the rental agreement.

B. Any rental agreement provision that waives or purports to waive any right created by this chapter shall be deemed void and of no lawful force or effect. No rental agreement may provide that the tenant agrees to waive or to forgo rights or remedies under this ordinance. A provision prohibited in this ordinance included in a rental agreement is unenforceable. If a landlord knowingly uses a rental agreement containing provisions

known by the landlord to be prohibited, the tenant may recover actual damages sustained by the tenant, and exemplary damages not to exceed two times the monthly rent charged for the unit, and reasonable litigation costs and attorneys' fees.

C. Whenever a termination notice is required by law, a landlord refusing to continue a tenancy or seeking to terminate a tenancy protected by this chapter shall serve the notice in a manner consistent with RCW 59.12.040 and identify the facts and circumstances known and available to the landlord at the time of the issuance of the notice that support the cause or causes with enough specificity so as to enable the tenant to respond and prepare a defense to any incidents alleged. The landlord may present additional facts and circumstances regarding the noticed allegations if such evidence was unknown or unavailable at the time of the issuance of the notice.

D. Landlords shall provide at least thirty days' written notice when evicting a tenant, refusing to continue a tenancy or terminating a tenancy for a just cause enumerated in subsection A. of this section, unless a longer noticing period is required by state law or the rental agreement.

E. It shall be a violation of this chapter for any landlord to remove or cause to remove a tenant from a dwelling unit using a notice that references subsection A.3., 4., 5. or 6. of this section as grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such a tenancy within sixty days after the tenant has vacated, unless another time frame is specified in subsection A.3., 4., 5. or 6. of this section.

F. Nothing in this chapter is intended to affect or limit a landlord's rights to pursue an action for unlawful detainer as defined by RCW 59.12.030, except as specifically set forth in this chapter.

NEW SECTION. SECTION 6. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

Sections 7 through 16 of this ordinance apply to tenancies governed by chapter 59.20 RCW and are in addition to the provisions provided to those tenancies in RCW 59.20.080.

NEW SECTION. SECTION 7. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A. All move in fees and security deposits charged by a landlord before a tenant takes possession of a dwelling unit shall not exceed one month's rent, except in subsidized tenancies where the amount of rent is set based on the income of the tenant. The exception for subsidized housing shall not include tenancies regulated under Section 8 of the Housing Act of 1937, 42 U.S.C. Sec. 1437f, commonly known as the choice voucher program.

B. Tenants entering rental agreements with terms lasting six or more months may elect to pay their move in fees and security deposits in six equal monthly installments over the first six months occupying the unit.

C. Tenants entering rental agreements with terms lasting fewer than six months or month-to-month rental agreements, may choose to pay move in fees and security deposits in two equal monthly installments over the first two months occupying the unit.

NEW SECTION. SECTION 8. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

Late fees or costs due to nonpayment of rent charged to a tenant shall not exceed one and one-half percent of the tenant's monthly rent.

NEW SECTION. SECTION 9. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

Any rental agreement or renewal of a rental agreement shall include, or shall be deemed to include, a provision requiring not less than one hundred twenty days' notice for rent increases greater than three percent. If the rental agreement governs a subsidized tenancy where the amount of rent is based on the income of the tenant or circumstances specific to the subsidized household, the landlord shall provide a minimum of thirty days' prior written notice of an increase in the amount of rent to each affected tenant.

NEW SECTION. SECTION 10. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A. Landlords are prohibited from unfair or abusive acts or practices or deceptive acts or practices as defined in this section.

B. For the purposes of this section:

1. "Deceptive acts or practices" means representations, omissions, acts or practices that mislead or are likely to mislead a tenant; the tenant's interpretation of the representation, omission, act or practice is reasonable under the circumstances; and the representation, omission, act or practice is material. "Deceptive acts or practices" includes threatening to evict a tenant for nonpayment of charges except as authorized by section 5 of this ordinance.

2. "Unfair or abusive acts or practices" means those representations, omissions, acts or practices that:

a. Materially interfere with the ability of any tenant to understand a term or condition of the rental agreement or the tenancy; or

b. Take unreasonable advantage of a lack of understanding on the part of the tenant regarding the conditions of the tenancy or rights under the law or the inability of the tenant to protect the tenant's interests.

NEW SECTION. SECTION 11. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

Except as otherwise provide in Section 2(2)(n)(i), Chapter 212, Laws of Washington 2021, a landlord's acceptance of rent waives the right to declare forfeiture or evict based solely on any prior breach or breaches of the rental agreement. This section does not waive any landlord's remedy for nonpayment of rent if additional rent is outstanding.

NEW SECTION. SECTION 12. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A landlord shall not increase the rent to be charged to a tenant by any amount if the dwelling unit has

defective conditions making the dwelling unit uninhabitable or is in violation of RCW 59.18.060. If the tenant believes the dwelling unit has defective conditions making the unit uninhabitable or is in violation of RCW 59.18.060, the tenant shall notify the landlord in writing in accordance with RCW 59.18.070 specifying the premises involved, the name of the owner, if known, and the nature of the defective condition before the effective date listed in the notice of housing costs increase the tenant received from the landlord.

NEW SECTION. SECTION 13. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

Rental agreements shall include a provision stating that when late fees may be assessed after rent becomes due, the tenant may propose that the due date be altered to a different date of the month. Additionally, the provision shall specify that, according to RCW 59.18.170(3), a landlord shall agree to such a proposal if it is submitted in writing and the tenant can demonstrate that his or her primary source of income is a regular, monthly source of governmental assistance that is not received until after the date rent is due in the rental agreement. A landlord shall not refuse to enter into a rental agreement with a prospective tenant because the prospective tenant requests such accommodations.

NEW SECTION. SECTION 14. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A landlord found in violation of any of the provisions in this chapter, unless otherwise provided in this chapter, shall be liable to such a tenant in a private right of action for the greater of double the tenant's economic and noneconomic damages or three times the monthly rent of the dwelling unit at issue, and reasonable litigation costs and attorneys' fees.

NEW SECTION. SECTION 15. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A landlord serving a notice to the tenant to pay rent or vacate under RCW 59.12.030(3) must include on the notice substantially in the form of the following statement in sixteen-point, bolded font: "Pursuant to RCW

58.12.030(3), you have fourteen days to pay the rent required by this notice. After fourteen days, the landlord is required by RCW 59.18.410(2) to allow you to pay the rent up to five court days after a judgement in an eviction proceeding, but you may be subject to a late fee, if a late fee is required in the rental agreement and any court costs incurred at the time of payment. Attorneys' fees may also be requested by the landlord and may be awarded to the landlord by a judge."

NEW SECTION. SECTION 16. There is hereby added to the chapter established in section 2 of this ordinance a new section to read as follows:

A. A landlord shall not require a social security number for the purposes of screening a prospective tenant, as allowed under RCW 59.18.257. A landlord may request a social security number and screen prospective tenants. A landlord shall not refuse to enter into a rental agreement with a prospective tenant because the prospective tenant does not agree to provide a social security number. A landlord may utilize information including, but not limited to, previous names, addresses, personal references and work history to screen prospective tenants. A landlord shall maintain the right to take adverse action because of inaccurate, unfavorable or unavailable screening results.

B. A landlord found in violation of subsection A. of this section shall be liable to such a prospective tenant in a private right of action for the greater of double the tenant's economic and noneconomic damages or one month of rent of the dwelling unit at issue, and reasonable litigation costs and attorneys' fees

SECTION 17. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are hereby amended to read as follows:

A. Legal defense services through the department shall be made available to all eligible persons for whom counsel is constitutionally required. In addition, legal defense services through department shall be made available when funds are available: to any eligible person in legal proceedings arising in King County that may result in the person's loss of liberty by an act of King County or any of its agencies, including, but not limited to, criminal proceedings alleging a violation of any law of the state of Washington or ordinance of King

County, juvenile matters, mental illness and similar commitment proceedings, revocations and habeas corpus proceedings when they arise in King County; ~~((and))~~ to eligible parents and children in dependency proceedings arising in King County; and to tenants whose rental agreements have been terminated or tenants who are subject to unlawful detainer actions by a landlord whom the tenant alleges terminated a tenancy or initiated an unlawful detainer action in violation of any King County ordinance.

B. Legal defense services through the department may be made available to a person charged in King County with a felony of public notoriety, at the person's expense, when the court finds that the defendant is unable to employ adequate private counsel as a result of the public notoriety. The county public defender shall establish a reasonable fee for the legal defense services, subject to the approval of the court.

SECTION 18. The following are hereby repealed:

- A. Ordinance 16223, Section 3, and K.C.C. 12.47.010;
- B. Ordinance 16223, Section 4, and K.C.C. 12.47.020;
- C. Ordinance 16223, Section 5, and K.C.C. 12.47.030; and
- D. Ordinance 16223, Section 6, and K.C.C. 12.47.040.

SECTION 19.

A. The executive shall develop standard notices required to be used by landlords who are terminating a month-to-month tenancy, failing to renew a fixed-term lease or evicting due to one or more of the causes enumerated in section 5.A. of this ordinance. The notices shall provide information for tenants on how to access legal services for eviction prevention. The executive shall translate the notice into the ten most common languages used in King County. In developing the notices, the executive shall consult with organizations that represent landlords and tenants and provide a minimum thirty-day public comment period.

B.1. The executive shall transmit a tenant protections access plan to the council by June 30, 2022, with the goal of expanding knowledge of and access to tenant protections in the King County Code. The plan shall include at least the following components, and if the executive is already conducting the work identified in a.

through d. of this subsection B.1., the plan shall include an explanation of the work being done, the funding mechanism to accomplish scope of work, and how it addresses the goals of this subsection B.1.:

a. recommendations on providing information about tenant protections in King County and access to those protections to residents with limited English proficiency;

b. recommendations on providing tenant protections to undocumented residents who may have a fear of accessing tenant protections through the court system;

c. a "know your rights" campaign with the objective of spreading awareness of the new provisions in this ordinance. The plan shall utilize partnerships with community organizations and the King County immigrant and refugee commission;

d. 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; and

e. a phone number, either internal to the county or through a request for proposals to outside entities, for tenants who believe their rental agreement has been unlawfully terminated or who believe a landlord failed to renew a rental agreement unlawfully. The phone number should be staffed by the department of community and human services, the department of public defense, or a designee to provide information on protections afforded to tenants in state law and King County Code. The plan shall include an analysis of the level of funding the executive would need to create and staff such a phone number.

2. The executive shall transmit a landlord outreach plan by June 30, 2022, with the goal of expanding knowledge of tenant protections contained in King County Code to landlords.

3. The tenant protections access plan and the landlord outreach plan shall be electronically transmitted to the clerk of the council with motions that should acknowledge receipt of the plans and a proposed ordinance making recommended changes from the tenant protections access plan, if recommendations necessitate an ordinance. The clerk of the council shall provide an electronic copy to all councilmembers, the council chief of

staff and the lead staff for the community, health and housing services committee, or its successor.

SECTION 20. Severability. If any provision of this ordinance or its application

to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.