

ORDINANCE NO. 1461-21

AN ORDINANCE RELATING LANDLORD TENANT; EXTENDING THE 60-DAY PROTECTION PERIOD IN SB 278 (2021) TO 90 DAYS; CREATING NEW PROVISIONS IN TUALATIN MUNICIPAL CODE CHAPTER 9-12; AND DECLARING AN EMERGENCY.

WHEREAS, the State of Oregon provided statewide renter protections in HB 4213 (2020 First Special Session) with effective dates of April 1, 2020 to September 30, 2020. HB 4213 continued and refined the statewide residential eviction moratorium created by the Governor in Executive Order 20-13 and established a statewide six-month repayment grace period;

WHEREAS, the State of Oregon extended statewide renter protections in HB 4401 (2020 Third Special Session). HB 4401 extended the emergency period and the end of the repayment grace period until June 30, 2021 the State of Oregon has updated the State Building Codes; and

WHEREAS, the State of Oregon further extended statewide renter protections in SB 278 (2021 Regular Session). SB 278 provides that if a tenant provides the landlord with documentation that the tenant has applied for rental assistance, for a period of sixty days, a landlord may not deliver a termination notice for nonpayment; or initiate or continue an action for possession based on a termination notice for nonpayment;

WHEREAS, Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended provided \$25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional \$21.55 billion in emergency rental assistance when it passed the American Rescue Plan Act;

WHEREAS, households who have applied for rental assistance could face eviction if they do not receive assistance before the 60-day period set in Senate Bill 278 expires;

WHEREAS, historically, recovery from an economic downturn takes longer for communities of color. Low-income communities of color have always faced disproportionate barriers to economic opportunities that allow them to pay rising rents and other housing costs. But the COVID-19 pandemic created additional obstacles for those communities, which will continue to exist beyond the lifting of public health restrictions and the statewide eviction moratorium. Statewide landlord data on renters' ability to pay rent has shown consistent volatility in properties that are generally more affordable to low-income households;

WHEREAS, extending the protection from eviction established by SB 278 (2021) will ensure that providers have sufficient time to reach these households and process rental assistance applications, mitigating further disproportionate impacts of the COVID-19 pandemic on local communities of color;

WHEREAS, the purpose of this Ordinance is to provide sufficient time for both tenants and landlords to secure emergency financial assistance as provided by funding designed to respond to the economic impacts of the COVID-19 pandemic;

WHEREAS, the purpose of this Ordinance is not to relieve tenants of the obligation to pay rent and the Ordinance does not authorize non-payment; and

WHEREAS, the City of Tualatin wishes to adopt the Ordinance to assist with the COVID-19 emergency and its impacts on tenants and landlords.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Tualatin Municipal Code Chapter 9-12 (Landlord Tenant) is created to read as follows:

TMC 9-12-010 (Protection for Seeking Rental Assistance)

(1) As used in this Chapter the following terms mean:

(a) "Documentation" includes electronic mail, a screenshot or other written or electronic documentation from a rent assistance provider verifying the submission of an application for rental assistance.

(b) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement, and any person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(c) "Nonpayment" means the nonpayment of a payment that is due to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

(d) "Tenant":

(A) Except as provided in paragraph (B) of this subsection:

(i) Means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.

(ii) Means a minor, as defined and provided for in ORS 109.697.

(B) For purposes of manufactured dwelling and floating home spaces, means only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(C) Does not mean a guest or temporary occupant.

(2) The provisions of this section applies only to a notice of termination for nonpayment given on or after July 1, 2021:

(a) If a tenant provides the landlord with documentation that the tenant has applied for rental assistance, a landlord may not:

(A) Deliver a termination notice for nonpayment; or

(B) Initiate or continue an action for possession based on a termination notice for nonpayment.

(b) A tenant may provide documentation by any method reasonably calculated to achieve receipt by the landlord, including by sending a copy or photograph of the documentation by electronic mail or text message.

(c) If 90 days have passed since the tenant provided documentation under this subsection:

(A) A landlord may deliver to the tenant a new termination notice for nonpayment, to which this section does not apply, without providing the notice under subsection (4) of this section; or

(B) If a claim for possession was postponed under subsection (5)(b) of this section, the court shall promptly set the matter for trial.

(3) Except as provided in subsection (2)(c)(A) of this section, a landlord shall deliver the notice described in subsection (4) of this section along with:

(a) Any notice of termination for nonpayment; and

(b) Any summons for a complaint seeking possession based on nonpayment given by the landlord or service processor, including a summons delivered under ORS 105.135 (3)(b).

(4) The notice required under subsection (3) of this section must be in substantially the form provided in Oregon Senate Bill 278 (2021), Section 2(4).

(5) Court Dismissal of Complaint for Possession in Certain Circumstances.

(a) A court shall enter a judgment dismissing a complaint for possession that is based on a termination notice for nonpayment if the court determines that:

(A) The landlord failed to attach the notice as required under subsection (3) of this section.

(B) The tenant's nonpayment was substantially caused by the landlord's failure to reasonably participate with a rental assistance program. This subparagraph does not require that a landlord apply for compensation under section 2, chapter 3, Oregon Laws 2020 (third special session).

(C) The landlord receives rental assistance covering the rent owed under the notice.

(D) The tenant provided the landlord with documentation of application for rental assistance as described in subsection (2) of this section before the claim was filed.

(b) If the tenant provides the landlord or court with documentation of application for rental assistance as described in subsection (2) of this section at any time after the landlord commenced the action for possession and at or before the first appearance, at the first appearance the court shall, on its own motion, postpone the first appearance to a date not earlier than 90 days after the documentation was delivered.

(6) If a landlord violates this section:

(a) A tenant may obtain injunctive relief to recover possession or address any other violation; and

(b) The tenant has a defense to an action for possession by the landlord.

(7) If a claim for possession is dismissed under this section, the tenant is not entitled to prevailing party fees, costs or attorney fees, unless authorized by State law.

Section 2. Automatic Repeal Date. Unless otherwise provided by subsequent Ordinance of the Council, this Ordinance is repealed effective March 1, 2022.

Section 3. Non-Payment of Rent Not Authorized. Nothing in this Ordinance authorizes the non-payment of rent owed by a tenant to a landlord.

Section 4. Severability. Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

Section 5. Emergency. The Council finds that this action is necessary to avoid mass evictions for non-payment of rent directly attributed to the impacts of the COVID-19 pandemic, promote housing stability, and protect the health and safety of community members the City of Tualatin. This Ordinance is necessary for the immediate protection of the public peace, health, safety, and welfare and take effect on October 1, 2021.

ADOPTED by the City Council this ____ day of _____, 2021.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder