

ORDINANCE NO. O2022-012

AN ORDINANCE of the City Council of the City of Tumwater, Washington, adding a new chapter entitled Chapter 5.75 *Rental Housing Code* to Title 5 *Business Taxes, Licenses and Regulations*, as more particularly described herein.

WHEREAS, in 2010 the City Council passed Ordinance O2010-022 establishing a policy to assure equal opportunity to all persons to live in decent housing; and prohibiting discrimination, including use of federal housing assistance; and

WHEREAS, in 2018 the City Council passed Resolution R2018-016, which included a number of actions to start to reduce homelessness, increase affordable housing, and continue to work with other jurisdictions and agencies to explore regional solutions to these issues; and

WHEREAS, Resolution R2018-016 included Action #9 under “Boost Housing Affordability” to enact policies to protect tenants experiencing housing instability; and

WHEREAS, after the City Council adopted Resolution No. R2018-016 in the summer of 2018, the City has undertaken a number of actions to address homelessness, increase affordable housing, and continue to work with other jurisdictions and agencies to explore regional solutions to these issues; and

WHEREAS, since 2018, the City has been reviewing actions and measures to take to support tenant protections as a way to make it easier for people in the City who rent to access housing and stay housed; and

WHEREAS, the City has shared its list of potential measures with staff at Thurston County and the cities of Olympia and Lacey with the intent of working on some of the potential measures regionally; and

WHEREAS, since 2018, the state legislature has passed a number of bills on the state level addressing tenant protections in the RLTA; and

WHEREAS, the draft list of potential measures has been updated to reflect these state actions; and

WHEREAS, in 2020 the City Council passed Ordinance O2020-019 adding and updating protected parties and definitions in TMC 5.70 *Unfair Housing Practices*; and

WHEREAS, in September 2021, the City Council adopted the *Tumwater Housing Action Plan*, which will inform the City’s Comprehensive Plan policies and development regulations, guide implementation strategies, and provide actions to help the City meet its housing needs; and

WHEREAS, the *Tumwater Housing Action Plan* contains three strategies and ten actions that the City has agreed to undertake that are most relevant to addressing tenant protections; and

WHEREAS, *Tumwater Housing Action Plan* Action 2.e. states, “Identify and implement appropriate tenant protections that improve household stability”; and

WHEREAS, the General Government Committee held a briefing to discuss tenant protections on February 9, 2022; and

WHEREAS, the City Council held a worksession to discuss tenant protections on March 22, 2022; and

WHEREAS, the General Government Committee held a briefing on the proposed code amendments on October 12, 2022 and the City Council held a worksession on November 22, 2022; and

WHEREAS, on December 6, 2022 the City Council held a public hearing and considered the proposed code amendments; and

WHEREAS, the Tumwater City Council finds it is in the best interests of its residents and supports the health, safety, and welfare to update its policy to include additional tenant protections.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 5.75, “Rental Housing Code,” is hereby added to the Tumwater Municipal Code to read as follows:

Chapter 5.75
RENTAL HOUSING CODE

Sections:

- 5.75.010 Definitions**
- 5.75.030 Distribution of information required**
- 5.75.050 Notice of recurring fees**
- 5.75.070 Notice to increase rent requirements**
- 5.75.090 Notice to vacate requirements**

5.75.130 Compliance and enforcement

5.75.010 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

“Assisted housing development” means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or receives other federal, state, or local government assistance and is subject to use restrictions.

“Change of use” means (I) the conversion of any dwelling unit from a residential use to a nonresidential use; (II) conversion from one type of residential use to another type of residential use, such as a conversion to an adult family home, residential care facility, group foster home, senior housing facility, emergency housing or shelter, or transitional housing as defined in TMC 18.04; or (III) the removal of use restrictions, including those in an assisted housing development; provided that an owner displacing a tenant so that the owner or immediate family member can occupy the rental dwelling unit shall not constitute a change of use. Any “change of use” as provided herein requires displacement of a tenant.

“Days” means calendar days unless otherwise provided.

“Demolition” means the destruction of any dwelling unit. Any “demolition” as provided herein requires displacement of a tenant.

“Deposit” means a refundable payment or deposit of money, however designated, the primary function of which is to secure performance of a rental agreement or any part of a rental agreement. A deposit does not include a fee.

“Director” means the Director of the Community Development Department, or the Director’s designee, as it exists or is hereinafter amended.

“Displacement” or “displaced” means the demolition, substantial rehabilitation, or change of use requiring existing tenants to vacate the dwelling unit, but shall not include the relocation of a tenant from one dwelling unit to another dwelling unit with the tenant’s consent.

“Dwelling unit” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and means a structure or part of a structure used as a home, residence, or sleeping place by one, two, or more persons maintaining a common household, including, but not limited to, single-family residences and multiplexes, apartment buildings, and manufactured or mobile homes.

“Housing costs” means the compensation or fees paid or charged, usually periodically, for the use of any property, land, buildings, or equipment for residential purposes. For purposes of this chapter, housing costs include the basic rent charge, but do not include utility charges based on usage and the tenant has agreed in the rental agreement to pay, unless the obligation to pay those charges is itself a change in the terms of the rental agreement.

“Immediate family member” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and includes state registered domestic partner, spouse, parents, grandparents, children, including foster children, siblings, and in-laws.

“Landlord” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

“Owner” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and means one or more persons, or entities, jointly or severally, in whom is vested:

A. All or any part of the real title to property; or

B. All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

"Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

“Rent” or “rental amount” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. Except as provided in RCW 59.18.283(3), these terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys’ fees.

“Rental agreement” or “lease” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and means all agreements that establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

“Substantial rehabilitation” is defined under RCW 59.18.200, as it exists or is hereinafter amended, and means extensive structural repair or extensive remodeling and requires a building, electrical, plumbing, or mechanical permit for the tenant’s dwelling unit at issue. Any “substantial rehabilitation” as provided herein requires displacement of a tenant.

“Tenant” is defined under RCW 59.18.030, as it exists or is hereinafter amended, and means any person who is permitted to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement and includes those persons who are considered to be tenants under the state RLTA, chapter 59.18 RCW and those tenants whose living arrangements are exempted from the state RLTA under RCW 59.18.040(3). For purposes of this chapter, “tenant” shall not include the owner of a dwelling unit or members of the owner’s immediate family.

5.75.030 Distribution of information required.

A. Distribution of resources by landlord.

1. At the time a prospective tenant applies to reside in a dwelling unit, the landlord shall provide the prospective tenant with the landlord's written rental criteria and, once created by the City, with a City of Tumwater informational website address designated by the City for the purpose of providing housing related information, including rights and responsibilities to tenants.
2. In the event a prospective tenant cannot reasonably access the internet and at their request, a landlord shall provide the prospective tenant a paper copy of the housing related information, including rights and responsibilities to tenants that can be found on the website identified above.

B. Distribution of information packets by landlord.

1. The Director shall obtain and update as necessary, summaries of the Unfair Housing Practices chapter (TMC 5.70), the Rental Housing Code chapter (TMC 5.75), the state RLTA (RCW 59.18), Forcible Entry and Forcible and Unlawful Detainer (RCW 59.12), and Fair Housing laws, describing the respective rights, obligations, and remedies of landlords and tenants, including information about legal resources available to tenants.
2. A landlord shall provide a copy of the summaries prepared by the Director to every tenant or prospective tenant when a rental agreement is offered, whether or not the agreement is for a new or renewal agreement.
3. Where there is an oral rental agreement, the landlord shall give the tenant copies of the summaries described herein, either before entering into the oral rental agreement or as soon as reasonably possible after entering into the oral rental agreement.
4. For existing tenants, landlords shall distribute copies of the summaries to existing tenants within thirty (30) days after the summaries are made available by the City.
5. The initial distribution of information to tenants must be in written form and landlords shall obtain the tenant's signature documenting the tenant's receipt of such information. If a tenant refuses to provide a signature documenting the tenant's receipt of the information, the landlord may draft a declaration stating when and where the landlord provided tenant with the required information. After the initial distribution of the summaries to tenants, a landlord shall provide existing tenants with updated summaries by the City on an annual basis and when the City updates its housing regulations, which may be in electronic form unless a tenant otherwise requests written summaries.
6. The packet prepared by the Director is informational only, and nothing in the summaries therein shall be construed as binding on or affecting any judicial determination of the rights and responsibilities of landlords and tenants, nor is the Director liable for any misstatement or misinterpretation of the applicable laws.

C. Notice of resources. A landlord is required to provide a copy of a resource summary, prepared by the City, to any tenant when the landlord provides a notice to a tenant under RCW 59.12.030.

5.75.050 Notice of recurring fees.

Recurring fees that are not deposits addressed by RCW 59.18.280, RCW 59.18.283, and RCW 59.18.285 shall be included in the written rental agreement. If any moneys are paid to the landlord as a recurring fee and non-refundable, the rental agreement shall be in writing and shall clearly specify that the fee is recurring and non-refundable. If the landlord fails to provide a written rental agreement, the landlord is liable to the tenant for the amount of any fees collected as recurring fees and non-refundable. If the written rental agreement fails to specify that the fee is non-refundable, the fee must be treated as a refundable deposit under RCW 59.18.260, RCW 59.18.270, and RCW 59.18.280.

5.75.070 Notice to increase rent requirements.

A. Special circumstances.

1. A landlord is required to provide a minimum of one hundred and twenty (120) days prior written notice whenever the periodic or monthly housing costs to be charged a tenant will increase by more than five (5) percent of the rent over the periodic or monthly rental rate charged the same tenant for the same housing unit, unless the fixed lease agreement includes agreed-upon rent increases during the term of the tenancy or agreement.
2. A landlord is required to provide a minimum of one hundred and eighty (180) days prior written notice whenever the periodic or monthly housing costs to be charged a tenant will increase by more than ten (10) percent of the rent over the periodic or monthly rental rate charged the same tenant for the same housing unit, unless the fixed lease agreement includes agreed-upon rent increases during the term of the tenancy or agreement.
3. Pursuant to RCW 59.18.140, 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, a landlord shall provide a minimum of thirty (30) days prior written notice of an increase in the amount of rent to each affected tenant.
4. Any notice of a rent increase required by this section must be served in accordance with RCW 59.12.040.

B. Circumstances not addressed by TMC 5.75.070(A).

1. A landlord is required to provide a minimum of sixty (60) days prior written notice whenever the periodic or monthly housing costs to be charged a tenant will increase by five (5) percent or less of the rent over the periodic or monthly rental rate charged the same tenant for the same housing unit, unless the fixed lease agreement includes agreed-upon rent increases during the term of the tenancy or agreement.

2. Notice of any rental increase of five (5) percent or less may be served in accordance with RCW 59.12.040.

5.75.090 Notice to vacate requirements.

A. The notice requirements provided in this subsection apply when premises are rented with monthly or other periodic tenancy.

B. Requirement for notice to tenant when tenant displaced. When a tenant is to be displaced, a landlord may only terminate the tenancy by providing a tenant with written notice of at least one hundred and twenty (120) days preceding the end of the month or period of tenancy. For any notice provided under this subsection, the landlord shall also provide at the same time the information required under TMC 5.75.030.

C. Requirement for notice to tenant for no cause termination. Unless provided otherwise under federal or state law applicable to low-income or affordable housing programs or under subsection B above, a landlord may only terminate a tenancy for no cause by providing the tenant written notice of at least ninety (90) days preceding the end of the month or period of tenancy. Notices that are exempt from this subsection include, but are not limited to, three-day notice to pay or vacate, three-day notice for waste or nuisance, or ten-day notice to comply with the terms of the rental agreement or vacate.

D. Notice requirements, generally.

1. Notices provided in this section shall comply with RCW 59.12.040 and RCW 59.18.650, as they exist and as they hereinafter are amended.
2. The notice shall list the name of the tenant and the dwelling unit number.
3. Proof of any service under this section must be made by the affidavit or declaration of the person providing the notice. When a copy of the notice is sent through the mail as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail.

E. The notices required herein do not apply when:

1. A landlord terminates for nonpayment of rent or for other cause allowed by the state RLTA, chapter 59.18 RCW, or the Forcible Entry and Forcible and Unlawful Detainer Act, chapter 59.12 RCW; or
2. A landlord is required to repair the dwelling unit due to a violation of the "International Property Maintenance Code", TMC 15.18, or other city regulations or is found to be either derelict or unfit.

5.75.130 Compliance and enforcement.

A. Compliance.

1. Any rental agreement or renewal of a rental agreement in a residential unit in the City of Tumwater entered into after _____, 2022, shall include, or

is deemed to include, a provision requiring the provisions outlined in this chapter.

2. A landlord is prohibited from engaging in reprisals or retaliatory actions pursuant to RCW 59.18.240 and RCW 59.18.250, as they exist or are hereinafter amended, including reprisals or retaliatory actions against a tenant's good faith and their lawful rights to organize.

3. Pursuant to provisions of the state RLTA (Chapter 59.18 RCW), landlords may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW 59.18.380).

a. In addition to any other legal defense a tenant may have, it is an additional affirmative defense to an unlawful detainer action that a landlord failed to give a one hundred and twenty (120) day or ninety (90) day "no cause" notice to a monthly or periodic tenant as provided in TMC 5.75.090, with service conforming with RCW 59.12.040, prior to the end of such month or period, unless a different for cause notice period is specifically authorized by law.

b. Any rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this section shall be deemed void and of no lawful force or effect.

4. Joint and Several Responsibility and Liability. Responsibility for violations subject to enforcement under this chapter is joint and several, and the City is not prohibited from taking action against a person where other persons may also be potentially responsible persons, nor is the City required to take action against all potentially responsible persons.

B. Rebuttable Presumption.

1. If a landlord provides a ninety (90) day notice to vacate under TMC 5.75.090(C), and within ninety (90) days after the tenant vacates the dwelling unit, the landlord commences activity to demolish or substantially rehabilitate or change the use of the dwelling unit, the City shall presume that the landlord intended to avoid the one hundred and twenty (120) day notice to terminate requirement in TMC 5.75.090(B).

2. To overcome the presumption in subsection B.1, the landlord must demonstrate by a preponderance of evidence that the termination was either due to proper cause or, in the case of substantial rehabilitation, that the tenant left the dwelling uninhabitable such that substantial rehabilitation was necessary to rent the dwelling.

C. Powers and duties of the Director.

1. The Director is authorized to enforce this chapter and may promulgate rules and regulations consistent with this chapter.

D. Violations.

1. If a violation of this chapter occurs, the Director shall follow the civil enforcement of code process in TMC 1.10.

Section 2. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall become effective one hundred and twenty (120) days after passage, approval, and publication as provided by law.

ADOPTED this _____ day of _____, 2022.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____