

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING
OLYMPIA MUNICIPAL CODE CHAPTER 5.82 RELATING TO THE RENTAL
HOUSING CODE**

WHEREAS, housing affordability and homelessness are a growing problem, and the City Council of the City of Olympia has declared that homelessness is a public health emergency; and

WHEREAS, average rents in Olympia have increased significantly while vacancies in rental housing are low, making it increasingly difficult for tenants, especially people with limited finances, to obtain rental housing; and

WHEREAS, over 7,600 households are cost-burdened in Olympia, which means they spend over 30% of their income on rent, mortgage payments, and other housing expenses; and

WHEREAS, the majority of Olympia residents are renters; and

WHEREAS, the Housing Action Plan finds that “people of color are more likely to rent and more likely to have lower incomes than their white, non-Hispanic counterparts. This makes them particularly vulnerable to eviction when rent increases exceed their ability to pay. This concern is reflected in the population experiencing homelessness, which is also disproportionately people of color”; and

WHEREAS, the City Council finds that adoption of the proposed tenant protections aligns with its Housing Action Plan, Strategy 2 (“Make it easier for households to access housing and stay housed.”) Tenant protections are specifically outlined in Strategy 2a (“Identify and implement appropriate tenant protections that improve household stability.”; and

WHEREAS, in the face of the affordable housing crisis, several other cities, such as Seattle, Auburn, Burien, Kenmore, Kent, Tukwila, and Federal Way, and King County have adopted tenant protections; and

WHEREAS, rent increases may cause a tenant to move due to inability to pay the increased rent; and

WHEREAS, these conditions in the rental market have created a barrier to relocation, because tenants, especially people with limited finances, may be unable to save money to pay security deposits, non-refundable move-in fees, and last month’s rent; and

WHEREAS, before moving into a rental unit, landlords typically require that tenants pay some type of security deposit to ensure that the tenant will comply with certain provisions of the rental agreement, such as payment for damage to the dwelling unit or cleaning the unit when the tenant vacates the unit; and

WHEREAS, some landlords require that before a tenant may move into a rental unit, the tenant must pay non-refundable fees such as fees for cleaning; and

WHEREAS, before moving into a rental unit, landlords typically require that tenants prepay the last month’s rent; and

WHEREAS, payment of security deposits, nonrefundable move-in fees, and last month’s rent in advance of tenancy, especially for people with limited finances, is one of the barriers to obtaining housing; and

WHEREAS, limiting the amount a landlord can charge for a security deposit, non-refundable move-in fees, and last month's rent will help reduce this barrier and allow people to prepare for moving expenses with more certainty; and

WHEREAS, increasing the notice period required for significant rent increases will help tenants to prepare for moving expenses or seek assistance in locating new housing; and

WHEREAS, the City Council desires to amend Chapter 5.82 OMC to adopt the proposed tenant protections, and finds that this ordinance will protect and promote the health, safety, and welfare of the residents of Olympia;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 5.82 Olympia Municipal Code Chapter 5.82, Rental Housing Code, is hereby amended to read as follows:

Chapter 5.82 RENTAL HOUSING CODE

5.82.000 Chapter Contents

Sections:

- 5.82.010 Purpose and Intent.
- 5.82.020 Definitions.
- 5.82.030 Temporary COVID-19 rental enforcement restrictions.
- 5.82.040 Rent Increase Notification.
- 5.82.050 Pet Damage Deposits.
- 5.82.060 Limits to Move in Fees.
- 5.82.070 Violations.

5.82.010 Purpose and Intent

The purpose of this chapter is to establish regulations supporting housing security to reduce homelessness and to establish standards and enforcement mechanisms as they relate to rental housing within the municipal boundaries of the City of Olympia. It is the intent of the Olympia City Council to continue its long-term commitment to maintain healthy, vibrant, and diverse neighborhoods within the City of Olympia. The regulations contained in this chapter balance the needs of the landlord, tenant, and the City of Olympia to ensure safe, healthy, and thriving rental housing within the City's municipal boundaries. The City recognizes that the renting of residential property is a commercial venture where owners and landlords must evaluate risk, profit, and loss. Providing housing for Olympia's residents directly impacts quality of life at the most basic level, and therefore requires regulations to ensure that this commercial venture is equitably undertaken. This chapter ensures housing security for current and future residents within the City of Olympia.

5.82.020 Definitions

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

- A. "Days" means calendar days unless otherwise provided.

B. "Dwelling unit" means a structure or part of a structure used as a home, residence, or sleeping place by one or more persons maintaining a common household, including, but not limited to, single-family residences and units of multiplexes, apartment buildings, mobile homes, and rooms for which occupancy is authorized by a written or oral rental agreement.

C. "Landlord" means a landlord as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the Residential Landlord Tenant Act of 1973 ("RLTA") in effect at the time the rental agreement is executed or occurs. As of the effective day of this ordinance, the RLTA defines "landlord" as "the owner, lessor, or sub-lessor 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 sub-lessor including, but not limited to, an agent, a resident manager, or a designated property manager."

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

E. "Owner" means the owner of record as shown on the last Thurston County tax assessment roll or such owner's authorized agent.

F. "Rent" or "rental amount" means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. These terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees. PROVIDED, however, that if, at the commencement of the tenancy, the landlord has provided an installment payment plan for nonrefundable fees or deposits for the security of the tenant's obligations and the tenant defaults in payment, the landlord may treat the default payment as rent owing.

G. "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

H. "Tenant" means any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

5.82.030 Temporary COVID-19 rental enforcement restrictions

A. During the term of the public health emergency Proclamations issued by the Governor related to the COVID-19 pandemic, including the Governor's Proclamation 20-05, and any amendments and extensions thereto, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 pandemic and its adverse economic impacts, and where it occurred on or after February 29, 2020, the date when the initial State of Emergency was proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident and tenant. The enforcement restrictions set forth herein shall only apply to rental payment amounts during the time the Governor's Emergency Proclamation 20-05, and any amendments and extensions thereto that are in effect.

B. OMC Section 5.82.030 shall automatically expire and shall be repealed without any other action by the Olympia City Council one year after the effective date of this Ordinance, unless extended by legislative action.

C. Where an unlawful detainer action is based on any reason enumerated in OMC Chapter 5.82, it is a defense to eviction if the eviction was initiated because of a failure to pay rent due before or by July 1, 2021. The defense is available only where the reason for termination of the tenancy is based on:

1. The tenant's failure to comply with a fourteen-day notice to pay rent or vacate under RCW 59.12.030(3); or
2. The tenant's habitual failure to comply with the material terms of the rental agreement to pay rent that causes the owner to serve a notice to comply or vacate or a notice to pay rent or vacate three or more times in a twelve-month period.

D. To assert the defense under subsection A of this section, the residential tenant must prove by a preponderance of the evidence that the failure to pay rent was due to the following circumstances occurring as a result of the COVID-19 pandemic:

1. The tenant's illness;
2. Loss or reduction of income;
3. Loss of employment;
4. Reduction in compensated hours of work;
5. Business or office closure;
6. A need to miss work to care for a family member or child, where that care is uncompensated; or
7. Other similar loss of income due to the COVID-19 pandemic.

E. A tenant who fails to pay rent due before or by July 1, 2021, may elect to pay the overdue rent in installments if the failure to pay was due to one or more reasons in subsections C and D of this section. If an unlawful detainer action is based on the circumstances enumerated in subsections A and C of this section, it is a defense to eviction that the landlord refused a request by a tenant to enter into a reasonable repayment plan.

1. The reasons for which a landlord shall allow residential tenants to pay overdue rent on a repayment plan shall be due to one or more of the following circumstances occurring as a result of the COVID-19 pandemic as set forth in subsection D above.
2. A reasonable written installment repayment plan shall be based on the tenant's individual financial, health and other circumstances, including the tenant's income, and shall be negotiated between the landlord and residential tenant in good faith, which shall include the following provisions:

- a. The plan does not require the tenant to pay more than one-third of the overdue rent per month unless agreed to by the tenant in writing; and
- b. All rental debt accumulated resulting from the reasons in subsections A and C of this section shall be paid in full to the landlord by October 1, 2021 or the sunset date of this ordinance, whichever occurs first; and
- c. Late fees, interest or other charges due to late payment of rent shall not accrue from the commencement of the effective date of this ordinance until this ordinance sunsets as provided in OMC 5.82.030.B, except that once a tenant has entered into a reasonable written installment repayment plan with a landlord, any default by the tenant for any reason other than due to COVID-19 as set forth in subsection D above, the tenant shall be responsible for late fees, interest or other charges from and after the date of default in the repayment plan.

5.82.040 Rent Increase Notification

- A. A landlord may not increase a tenant's rent by more than five percent of the rent unless the landlord has provided the tenant with notice of the rent increase at least 120 days before such increase takes effect.
- B. A landlord may not increase the rent of a tenant by more than 10 percent of the rent unless the landlord has provided the tenant with notice of the rent increase at least 180 days before such increase takes effect.
- C. 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 30 days' prior written notice of an increase in the amount of rent to each affected tenant.
- D. Any notice of a rent increase required by this section must be served in accordance with RCW 59.12.040. Notice of any rental increase of five percent or less may be served in accordance with RCW 59.12.040.

5.82.050 Pet Damage Deposits

- A. Except as provided in subsection B of this section, a landlord may require payment of a pet damage deposit that may not exceed 25 percent of one month's rent, regardless of the time when the pet damage deposit is paid.
- B. Exceptions

1. A landlord may not require a pet damage deposit for an animal that serves as an assistance animal for the tenant. This prohibition does not prohibit a landlord from bringing an action for damages resulting from damage to the landlord's property caused by the tenant's assistance animal. For purposes of this subsection, "assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person's disability.

2. A landlord may not charge a pet damage deposit in that type of subsidized housing where the amount of rent is set based on the income of the tenant. This exception for subsidized housing does 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.

C. If the tenant's pet's occupancy begins at the beginning of tenancy, the amount of the pet damage deposit must be specified in a rental agreement. If the tenant's pet's occupancy begins after the beginning of the tenancy, the amount of the pet damage deposit must be specified in an addendum to the rental agreement. The tenant may elect to pay the pet damage deposit in three consecutive, equal monthly installments that begin when the tenant's pet first occupies the rental unit or the tenant may propose an alternative installment schedule. If the landlord agrees to the tenant's alternative installment schedule the schedule must be described in the rental agreement.

D. A landlord may not keep any portion of the pet damage deposit for damage that was not caused by a pet for which the tenant is responsible. Not later than 21 days from the end of the tenancy, the landlord shall return to the tenant any portion of the pet damage deposit not applied to the costs of remediating damage caused by a pet for which the tenant is responsible, or the landlord shall provide to the tenant an itemized list of damages if a portion or the entirety of the deposit is retained for damage caused by a pet for which the tenant is responsible.

E. Other than the pet damage deposit authorized by subsection A of this section, a landlord may not charge the tenant any fee for keeping a pet.

5.82.060 Limits to Move in Fees

A refundable security deposit or last month's rent may be charged by a landlord before a tenant takes possession of a dwelling unit. Landlords are prohibited from charging tenants any other non-refundable fees or one-time fees at the beginning of the tenancy, including a fee to hold a unit prior to the tenant taking possession. The amount of the refundable security deposit or last month's rent may not exceed one month's rent, except in that type of subsidized housing where the amount of rent is set based on the income of the tenant. The exception for subsidized housing does 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. A landlord is prohibited from charging or accepting any move in fee in excess of that allowed in this section. Nothing in this section prohibits a landlord from charging a pet damage deposit, as allowed in OMC 5.82.050.

5.82.070 Violations

A. Any tenant claiming injury from any violation of this chapter may bring an action in Thurston County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this chapter and is entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including declaratory or injunctive relief.

B. A landlord who violates this chapter is liable to the tenant in an action brought by the tenant under subsection A, above, for: (1) any actual damages incurred by the tenant as a result of the landlord's violation or violations of this chapter; (2) double the amount of any security deposit unlawfully charged or withheld by the landlord; (3) reasonable attorney fees and costs incurred by the tenant in bring such action.

C. A landlord's failure to comply with any of the provisions of this chapter is a defense in any legal action brought by the landlord to recover possession of the dwelling unit.

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance takes effect 30 days after passage and publication, as provided by law, except that 5.82.040 subsection A takes effect 120 days after passage and publication, and 5.82.040 subsection B takes effect 180 days after passage and publication.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: