

First Published in The Wichita Eagle on _____

DATE 8-18-2023

ORDINANCE NO. _____

AN ORDINANCE CREATING CHAPTER 20.12 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO FAIR HOUSING PRACTICES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 20.12.010 of the Code of the City of Wichita is hereby created to read as follows:

Policy.

The Governing Body recognizes the fact that many tenants hesitate to defend their right to a clean, safe and sanitary dwelling unit due to fear of eviction. It is hereby declared to be the public policy of the City that a tenant in good standing should not be evicted from their dwelling unit where the eviction is motivated by the tenant's exercise of a legal right to complain, in good faith, to a landlord or government agency that the dwelling unit endangers or impairs the health and safety of the tenant.

SECTION 2. Section 20.12.020 of the Code of the City of Wichita is hereby created to read as follows:

Definitions.

Any term used in this title that is not defined herein shall have the same meaning and definition as set forth in K.S.A. Chapter 58 and amendments thereto.

- (a) *'Dwelling unit'* means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.
- (b) *'Good standing'* means that a tenant is not in arrears in the payment of rent and is in compliance with the duties of a tenant enumerated in K.S.A. 58-2555 and amendments thereto.
- (c) *'Retaliate'* or *'retalitory eviction'* shall include but not be limited to any of the following actions by a landlord when the conditions Section 20.12.030 of the City Code are met:
 - (1) Commencement of eviction;
 - (2) Increasing the rent; and
 - (3) Reduction of services required to be provided by the landlord pursuant to the rental agreement and/or K.S.A. 58-2553 and amendments thereto.
- (d) *'Tenant'* means a person entitled under a rental agreement to occupy a dwelling unit.

SECTION 3. Section 20.12.030 of the Code of the City of Wichita is hereby created to read as follows:

Unlawful Acts.

- (a) It shall be unlawful for a landlord to retaliate against a tenant if the following conditions are met:

- (1) The tenant has organized or has become a member of a tenant's union or similar organization; or the tenant has submitted a complaint, in writing and in good faith, either to the landlord or to a governmental agency charged with responsibility for enforcement of statutes, ordinances or regulations pertaining to the maintenance of safe and sanitary dwellings, of conditions in or affecting the tenant's dwelling unit which constitute a violation of any statute, ordinance or regulation pertaining to the maintenance of safe and sanitary dwellings; and
- (2) The violation in subsection (a)(1) of this Section imposes responsibility on the landlord; and
- (3) The landlord retaliated against the tenant within six months of either (i) the date the tenant organized or joined a tenant's union or similar organization, or (ii) the date the tenant submitted the complaint.

SECTION 4. Section 20.12.040 of the Code of the City of Wichita is hereby created to read as follows:

Enforcement.

- (a) A tenant subjected to unlawful retaliation as defined by 20.12.030 of the City Code may file a written complaint and affidavit with the City Clerk alleging unlawful retaliation by the landlord. The written complaint and affidavit may be filed personally or through an attorney (or if a minor, through the minor's parent, legal guardian or attorney) and shall be completed on forms provided by the City. The complaint form shall state the names and contact information of the tenant, the

individual(s) and/or entity/entities alleged to have committed the unlawful retaliation alleged, and a description of the alleged unlawful retaliation, and all other information as may be required by the form provided by the City. The complaint form shall only be considered complete if all information required by the City's form has been provided to the extent such information is reasonably available to the tenant.

- (b) The written complaint and affidavit forms must be filed within one-hundred eighty (180) days of the alleged unlawful retaliation, unless the act complained of constitutes a continuing pattern or practice of unlawful retaliation, in which event, it must be filed within one-hundred eighty (180) days of the last act of unlawful retaliation.
- (c) The complaint may be referred to a mediator designated by the City Manager from a list of mediators approved in advance by the City Council. Mediation costs will be paid by the City.
- (d) If mediation is not successfully completed within sixty (60) days of the referral, or a party chooses not to pursue mediation, the complaint shall be referred to the Investigator, who is designed by the City Manager.
- (e) Upon receipt of a completed complaint, the Investigator shall notify the landlord respondent(s) of the complaint, providing sufficient details related to the complaint so the respondent(s) may respond. The Investigator shall give the respondent(s) thirty (30) days to file a written answer to the complaint, and to provide any documentation or evidence related to the complaint. The Investigator may, at the request of respondent(s), extend the answer period an additional thirty (30) Days.

If the respondent accused of violating the provisions of this Chapter is the City, the City will engage an independent Investigator who shall not otherwise be an Employee, agent, or contractor of the City. If the respondent is the City, nothing in this Chapter shall affect the employee grievance processes in contract or policy.

- (f) Following the conclusion of the answer period, the Investigator may initiate an investigation period, requesting that the tenant and/or landlord respondent(s) provide additional information, documentation, statements or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within a reasonable period of time following the submission of additional information, documentation, or testimony.
- (g) Upon conclusion of the investigation period, the Investigator shall forward all evidence and other information received during the investigation to the Law Department. The Law Department will make a determination whether probable cause exists that: (i) the landlord respondent(s) committed unlawful retaliation, and (ii) imposition of a penalty pursuant to this Chapter:
 - (1) Would not constitute an unlawful burden of a person's right to exercise of religion pursuant to Section 7 of the Kansas Constitution Bill of Rights or the Kansas Preservation of Religious Freedom Act (K.S.A. 60-5301 et seq., and amendments thereto), or an unlawful burden of a person's freedom of speech, expression, or association (as protected by the First Amendment of the United States Constitution or the Kansas Constitution); or
 - (2) If imposition of a penalty would constitute a burden, application of such burden to the person would be in furtherance of a compelling governmental

interest and such application would be the least restrictive means of furthering that compelling governmental interest.

- (h) If the Law Department finds that probable cause does not exist, then the Law Department shall notify the tenant and the landlord respondent(s) within a reasonable period of time, and this notification shall be considered a final order and no further action shall be taken by the City.
- (i) If the Law Department finds probable cause does exist, the Law Department shall notify the tenant and the landlord respondent(s) and request conciliation and settlement. If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within sixty (60) days of the date of the finding of probable cause (unless such time is extended by the Law Department for good cause and with the agreement of all parties), the matter shall be referred to a Municipal Court judge of the City for review, who shall sit as an Administrative Judge for purposes of this Chapter.
- (j) Upon referral to the Administrative Judge, the Administrative Judge shall schedule a hearing on the complaint. The parties shall be given ten (10) days' written notice via certified mail of the date, time, and place of the hearing. At such hearing, the parties and the Law Department shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the Administrative Judge, but the rules of evidence used in courts of law need not be strictly enforced.
- (k) Any determination of the Administrative Judge that the landlord respondent(s) committed unlawful retaliation shall be issued in writing within sixty (60) days of

the hearing, shall be based upon the preponderance of the evidence, and shall set forth the essential elements and facts of the determination. If the Administrative Judge finds that a civil violation of this Chapter has occurred, the Administrative Judge may impose penalties as described in Section 20.12.060 of the City Code. The prevailing party is free to pursue their reasonable and necessary costs and fees accrued during the case. Any fines collected under this section shall be used to offset the costs of enforcement of this Chapter. Hearings shall be recorded or transcribed by a court reporter, and transcripts of hearings shall be maintained by Municipal Court.

- (l) The filing of a complaint for the alleged violation of this Chapter or a response thereto shall in no way preclude any party from seeking other relief under state or federal law. Appeals from any final determination of the Administrative Judge shall be made pursuant to K.S.A. 60-2101(d) and its amendments.

SECTION 5. Section 20.12.050 of the Code of the City of Wichita is hereby created to read as follows:

Actions Deemed Not Retaliatory.

- (a) Notwithstanding Section 20.12.030 of the City Code, a landlord may maintain an action to recover possession of the dwelling unit if:
 - (1) The tenant is using the dwelling unit for an illegal purpose or for a purpose which is in violation of the rental agreement or if tenant is not fulfilling a material term of their lease or for nonpayment of rent;

- (2) The complaint was caused by the willful actions of the tenant, the tenant's invitee or another person in the tenant's household; or
 - (3) The landlord seeks to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant before the tenant's complaint; or
 - (4) The landlord must comply with the applicable building or housing code that requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit, though such action to recover possession does not release the landlord from liability for material noncompliance with the rental agreement or K.S.A. 58-2553.
- (b) Notwithstanding Section 20.12.030 of the City Code, a landlord may increase rent if:
- (1) The rent increase does not conflict with the rental agreement; and
 - (2) The increase is made in good faith to compensate the landlord for expenses incurred as a result of acts of God, public utility service rate increases, property tax increases or other increases in costs of operation.

SECTION 6. Section 20.12.060 of the Code of the City of Wichita is hereby created to read as follows:

Penalties – Habitual Violator.

- (a) Punishment for a violation of Section 20.12.030 of the City Code shall be as follows:
- (1) Upon a first conviction, a fine of not more than \$1,000.

- (2) Upon a second conviction, a fine of not less than \$100.00 nor more than \$1,000.
- (3) Upon a third conviction, a fine of not less than \$500.00 nor more than \$1,000.
- (4) Upon a fourth or subsequent conviction, a fine of not less than \$1,000 nor more than \$2,500.

In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed 12 months, or by both such fines and imprisonment.

(b) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section:

- (1) Conviction includes being convicted of a violation of Section 20.12.030 of the City Code and it is irrelevant whether an offense occurred before or after conviction for a previous offense.
- (2) Conviction includes being convicted of a violation of Section 20.12.030 of the City Code or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this chapter.
- (3) Any convictions occurring during the three years prior to the date of the occurrence shall be taken into account when determining the sentence to be imposed.

(c) Each day that any violation of this chapter continues shall constitute a separate offense and may be punishable hereunder as a separate violation.

SECTION 7. This ordinance shall be included in the Code of the City of Wichita, Kansas, and

shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2023.

Brandon Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

Approved as to Form:

Jennifer Magaña, City Attorney and
Director of Law