



Legislation Text

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COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 211067

Amending Chapter 35, Code of Ordinance, entitled “Housing” by creating a new Article III, entitled “Tenants’ Right to Counsel, ” consisting of Sections 35-20-through 35-25; directing the City Manager to identify funding for the Tenant’s Right to Counsel Program (“the Program”) within 90 days; and directing the City Manager to implement various portions of the Program with varying deadlines, with the goal of increasing tenant access to legal representation in eviction and other proceedings related to rental housing.

WHEREAS, 37,259 evictions have been filed in the state of Missouri since March 15, 2020, despite a national eviction moratorium ordered by the Center for Disease Control during the COVID-19 global pandemic.

WHEREAS, over 2,810 evictions have been filed in Jackson County during the year 2021 alone, with 44% of all renters considered “cost-burdened,” which means they spend more than 30% of their income on rent , and approximately 1800 evictions have been filed in Clay, Platte and Cass Counties; and

WHEREAS, 94,000 households in Missouri are behind on rent as of early August 2021 and tenants are at risk of losing their homes; and

WHEREAS, between 2006-2016, 76,667 cases were adjudicated in Jackson County, and only 161 were decided in favor of the tenant. 99.8% of those cases resulted in evictions; and

WHEREAS, property owners are represented by legal counsel over 85% of the time and, since 2014, KCMO tenants facing eviction filings have been represented an average of only 3% of the time; and

WHEREAS, when tenants are represented by lawyers, they have much more favorable odds of staying in their home;

WHEREAS, local legal service providers began representing larger numbers of tenants in 2020 and have succeeded in stopping the vast majority of evictions filed against their clients through the assertion of legal defenses and through settlement negotiations;

WHEREAS, like many other American cities, Kansas City is haunted by a history of racial segregation, restrictive covenants, redlining, predatory lending, and disinvestment; and

WHEREAS, tenants of color, specifically Black women, are disproportionately impacted by evictions due to decades of inequalities in the American housing system. Black women are two times more likely to have an eviction filed against them compared to white people; and

WHEREAS, evictions on a tenant’s record have a deep, negative impact on a tenant’s ability to secure safe, accessible, and truly affordable housing because of discrimination from property owners who won’t

consider tenant applicants with evictions; and

WHEREAS, in the City of Kansas City, tenants do not have a right to counsel in such proceedings and most tenants face such proceedings without legal representation; and

WHEREAS, it is estimated that for every dollar spent on legal representation to prevent homelessness, the City will save three dollars on emergency assistance; and

WHEREAS, a right to legal counsel benefits both tenant and landlord by ensuring housing stability, payment of rent, and inserting professionalism in the eviction proceedings; and

WHEREAS, the City Council believes that tenants should have the right to legal counsel when facing evictions; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 35, Code of Ordinance, entitled “Housing” is hereby amended by creating a new Article III, entitled “Tenants’ Right to Counsel,” consisting of Sections 35-20-through 35-25, said sections to read as follows:

ARTICLE III. TENANTS’ RIGHT TO COUNSEL

Section 35-20. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Covered area means the geographic regions falling within the city limits of Kansas City, including those areas of Kansas City that fall within the jurisdictions of the 16th Judicial Circuit of Jackson, the 7th Judicial Circuit of Clay County, the 6th Judicial Circuit of Platte County, and the 17th Judicial Circuit Court of Cass County.

Covered individual or tenant means:

- (1) A person, not the legal property owner, legally occupying a residential building or portion thereof as a rental or living unit; or
- (2) An occupant who is legally living in or using a premise or residential property they do not own; or
- (3) An occupant who is legally living in or using a premise or residential property they partially own through cooperative housing; or
- (4) A person who is a lessee and rents residential land or property from a lessor; or
- (5) For purposes of this article, a person under a contract for deed, a mutually agreed upon verbal agreement, rent-to-own agreement, or comparable executory agreement, where the purchaser

resides in the premises and is not the legal property owner of record, unless any such instrument or affidavit of equitable interest which specifically identifies the instrument is properly executed and filed of record with the recorder of deeds for the applicable county and a file-stamped copy thereof, along with a copy of the referenced instrument is provided to the director.

Covered proceedings means any petition or complaint arising from a property located within the City of Kansas City filed by a property owner that demands removal of a tenant from the tenant's current residence, including those seeking possession for the non-payment of rent, property, holdover, retaliatory evictions or proceedings for ejectment. Covered proceedings include cases filed in venues outside Kansas City, such as Independence, Liberty, Platte City, and Harrisonville, where the property at issue sits within Kansas City.

Department means the City of Kansas City, Missouri Housing and Community Development Department.

Legal representation means full-scope representation provided by a licensed attorney for a tenant in a covered proceeding. This includes all activity necessary to zealously represent tenants, including but not limited to, filing responsive pleadings where applicable, appearing on behalf of the tenant in court, and providing legal advice, advocacy, and assistance associated with such matters, and necessary fees and costs related thereto.

Property Owner means a person who:

- (1) has legal title to any building or structure with or without accompanying actual possession thereof; or
- (2) has charge, care or control of any building or structure or part thereof as agent or personal representative of the person having legal title to the building or structure or part thereof; or
- (3) is an agent or designee of a person listed in subsections 1 or 2 herein; or
- (4) any natural person or legal entity including a partnership, corporation, limited liability corporation, trust, or like entity.

Security deposit means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.

Tenant Legal Services & Assistance Director means the individual in the Housing and Community Development Department who will administer and oversee the Tenants' Right to Counsel Program

Unlawful eviction is any attempt by a property owner to evict or displace a tenant(s) without a court judgment.

Section 35-21. Tenants' Right to Counsel Program.

(a) *Establishment.* There is hereby established within the Department, subject to annual appropriations, a Tenants' Right to Counsel Program ("the Program") to provide high-quality legal representation in all covered proceedings. The Tenant Legal Services and Assistance Director will coordinate the Program and oversee the implementation of the goals.

(b) Requirements. The requirements of the Program are:

- (1) To provide high-quality legal representation to covered individuals involved in all covered proceedings immediately after the property owner files suit, and this representation shall last at least until such time as the case is dismissed or a final judgment in the matter is entered. Attorneys representing covered individuals may file applications for trial de novo or appeals where it is determined that such proceedings are appropriate;
- (2) To provide mediation services in landlord-tenant disputes where necessary to avoid eviction proceedings;
- (3) To phase the program in as expeditiously as possible, taking into consideration the capacity of legal services providers to expand their staff and to competently provide representation to covered individuals;
- (4) To require the Tenants Legal Services and Assistance Director to provide written notification of the Program to a tenant within 10 days of eviction filing, with instructions on how to access it;
- (5) To require property owners to provide written notification of the Program to all current tenants and before executing any contracts to rent a property unit with new tenants as part of the required disclosures in the Healthy Rental Homes Program, Chapter 34, ARTICLE XIX, Code of Ordinances; and
- (6) To ensure all tenants who face a covered proceeding are provided access to legal representation from the Program regardless of race, religion, national origin, sex, mental or physical disability, marital status, familial status, yearly income, age, sexual orientation, gender identity, gender expression and ethnic background.

(c) Contracts. The Program shall solicit contracts with non-profit legal representatives and their required staff to represent individuals in covered proceedings and with community organizations to support outreach and training.

Section 35-22. Tenants' Right to Counsel Committee.

(a) Establishment. There is hereby established a Tenant' Right to Counsel Advisory Committee ("the Committee") to ensure that the legislative intent of the Program is fulfilled and to provide advice and recommendations to the Tenant Legal Services and Assistance Director and Department in fulfillment of their duties in administering the Program.

(b) Duties. The duties of the Committee are to:

- (1) provide advice to the City, including the City Council, City Manager, Director and Manager, on matters related to the Program;
- (2) provide oversight and support of the Program, with recommendations on improving the Program's outcomes for tenants needing legal assistance in covered actions;

- (3) assist with any reports on Program outcomes;
- (4) assist the Director with training development, facilitated by a contracted non-profit organization, that shall be mandatory for all legal representatives that participate in the Program;
- (5) provide advice on other potential funding streams to enhance the Program's ability to assist more tenants;
- (6) provide advice on any possible ordinance changes related to the Program;
- (7) Through the appointment of the chairperson to selection committees for contract solicitation under the Program, make recommendations on selection of entities providing legal or other services; and
- (8) Select a chairperson from among voting members to set meeting agendas, preside over meetings, and serve on selection committees for contracts related to the Program.

(c) Committee Membership.

- (1) *Voting Members.* The Committee shall consist of seven (7) members appointed by the Mayor:
 - A. who are tenants in the city of Kansas City, Missouri;
 - B. who do not own real property;
 - C. who include representation from tenants living in Kansas City zip codes with high eviction rates;
 - D. that must include at least one member residing in either Clay, Platte or Cass Counties;
 - E. who are reflective of Kansas City's diverse tenant population whether it involves race, religion, national origin, sex, mental or physical disability, marital status, familial status, yearly income, age, sexual orientation, gender identity, gender expression, or ethnic background;
 - F. who are not associated with a profit motive related to housing, such as representatives from banks, corporations, property owners, property management companies, or developers; and
 - G. who express a commitment to deter and reduce eviction filings.

(d) Non-Voting Members. The Committee shall also include non-voting, advisory positions, with one representative appointed from each of the legal representatives and entities contracted to perform services under the Program.

(e) Membership Terms.

- (1) All Members of Committee shall be appointed for terms of four (4) years.
- (2) No person shall be eligible for appointment to the Tenants' Committee for more than two (2) consecutive terms.
- (3) If a member of the Committee is to become disqualified while serving their active term, the Committee shall notify the Mayor within 30 days requesting the member be removed from the Committee.
- (4) If a member of the Tenants' Committee fails to attend three (3) consecutive meetings, the Committee may vote to recommend to the Mayor that the member be removed.
- (5) Members of the committee shall serve without compensation and shall be subject to removal by the mayor.
- (f) *Meetings.*
 - (1) *Quorum.* Quorum for meetings of the Committee shall be four (4) attending members.
 - (2) The Committee shall meet at least once every quarter or every three (3) months;
 - (3) Committee meetings shall be open to the public and allow for public comment on all decisions to be made;
 - (4) The Committee shall meet annually in January to prepare the goals and plans for the coming year, along with the Director;
 - (5) The Committee may seek meetings with the Mayor and City Council before the annual goals are set to discuss City priorities and goals of the Program;
 - (6) All decisions from the Committee shall require a majority vote from all voting members present.
 - (7) The Department shall provide supporting staff services for the Committee, such as maintenance of Committee records and meeting notices.
 - (8) All meetings and records of the Committee shall be held and conducted in accordance with the Missouri Sunshine Law, Sec. 610.010 RSMo, as amended.

Section 35-23. Administration.

(a) *Tenant Legal Services and Assistance Director.* There shall be established within the Housing and Community Development Department a Tenant Legal Services and Assistance Director who will administer and oversee the Program, as well as any necessary supporting positions.

(b) The Director shall be responsible for:

- (1) contracting with and coordinating the work of qualified legal and community service providers with a history of work on housing issues and tenant rights;

- (2) overseeing the provision of legal representation to all individuals involved in covered proceedings, including the caseloads of attorneys, with a goal of ensuring no attorneys representing tenants in covered proceedings are required to handle more than 120 cases annually;
- (3) contracting with Platte, Clay, Cass, and Jackson County courts for data sharing relating to daily eviction data, and mailing notice to tenants involved in covered proceedings regarding the existence of the Program;
- (4) overseeing a single point-of-contact intake process for tenants;
- (5) providing yearly training, facilitated by a contracted non-profit organization, that is developed in collaboration with the Committee, and that is mandatory for all legal representatives that participate in the Program;
- (6) providing a status report to the Committee at each Committee meeting and participating in such meetings;
- (7) providing outreach through the methods outlined in this Article;
- (8) requiring legal representatives to send out a questionnaire encouraging the tenant to provide feedback on the efficacy and satisfaction of the legal representation provided to gather information for required reports; and
- (9) handling other duties assigned by the Director.

(c) *Reporting.* No later than September 1, 2022 and annually by September 1 thereafter, the Tenant Legal Services and Assistance Director shall submit to the Mayor, City Council and City Manager, a report of the Program and information regarding its implementation, to the extent such information is available, that includes:

- (1) The number of individuals in who participated in a covered proceeding;
- (2) The number of individuals who received legal representation disaggregated by the following characteristics of such individuals:
 - A. Postal code of residence;
 - B. Age of head of household;
 - C. Household size;
 - D. Racial and political ethnic identity;
 - E. gender and sex identity;
 - F. Estimated length of tenancy;

- G. Approximate household income;
 - H. Tenancy in rent-regulated housing;
 - I. Tenancy in housing operated by the Housing Authority of Kansas City;
 - J. Survey results indicating satisfaction of representation service and process; and
 - K. Postal code of residence post-hearing.
- (3) Outcomes immediately following the provision of full legal representation, as applicable and available, including, but not limited to:
- A. the number of case dispositions where a case was dismissed or was otherwise decided substantially in favor of the tenant;
 - B. the number of case dispositions where judgment for possession in favor of property owner was entered;
 - C. the number of case dispositions where a stipulation agreement, or other similar agreement, was made preventing the entry of judgment for a possession;
 - D. the number of case dispositions where a stipulation agreement, or other similar agreement, was made providing a tenant with an opportunity to vacate a judgment for possession at a later date;
 - E. the number of case dispositions where a tenant was required to vacate a residence but was provided additional time to vacate and, in such cases, the amount of additional time provided to such tenants;
 - F. the number of case dispositions that otherwise resulted in a tenant vacating a residence prior to the end of their lease term;
 - G. instances where an attorney was discharged or withdrew; and
 - H. orders for possession filed in county court, writs of restitution issued in county court in forcible entry and detainer proceedings, and residential evictions conducted by the county sheriff.

Section 35-24. Outreach.

To ensure that tenants in Kansas City are fully aware of Program and the benefits of legal representation, the City shall promote and inform residents about the Program through various channels, such as City-owned websites, Channel 2, advertising through kiosks, mailers, magazines, radio, billboards, community events, community canvassing and outreach to neighborhood associations, apartment buildings and tenant unions.

Sections 35-25. Retaliation Prohibited.

(a) No person or property owner shall:

- (1) fail to renew a lease or alter the terms of a lease because a covered individual has received legal representation under this article or the Program;
- (2) cause any service, facility, equipment or utility to be removed, shut off or discontinued in retaliation for receiving legal representation under this article or the Program; or
- (3) charge or demand reimbursement of any fees incurred by property owner relating solely to this article or the Program, unless included in any settlement between the person or property owner and the tenant or ordered in a court judgment.

(b) The Tenant Legal Services and Assistance Director shall investigate any claims of retaliation and upon finding of a violation, shall issue an administrative citation. The citation shall include the property address, a description of the retaliatory act, the amount of the fine and notice of the appeal process.

(c) Violation of this section shall subject the property owner to an administrative citation fine of not less than \$200 but not more than \$1,000.

(d) Payment of the administrative citation fine shall be made within 20 days unless a hearing is requested within the 20-day period.

Sections 35-26-Section 35-40. Reserved.

Section 2. That the City Manager is hereby directed to:

- i. Find initial funding to implement the provisions of this ordinance within 90 days;
- ii. Designate a source of annual funding for the Tenants' Right to Counsel Program;
- iii. Work with the Mayor to ensure that the Tenants' Right to Counsel Committee is in place within 60 days;
- iv. Fill the position of Tenant Legal Services and Assistant Director of the Tenants' Right to Counsel Program within 120 days;
- v. Execute contracts with a non-profit entity to develop and provide training for legal representation within 120 days; and
- vi. Execute a contract(s) with non-profit legal service providers to provide legal representation by June 1, 2022.

Approved as to form and legality:

Joseph A. Guarino
Assistant City Attorney