

ORDINANCE NO. _____

AN ORDINANCE introduced by Acting City Manager Richard U. Nienstedt, concerning retaliatory eviction, amending § 9.25.010 through § 9.25.030 of the Topeka Municipal Code and repealing original sections and creating § 9.25.040 and § 9.25.050.

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

Section 1. That section 9.25.010, Policy, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Policy.

The ~~Council~~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 ~~no~~a tenant in good standing should not be evicted from their dwelling unit due to retaliatory or harassment motives 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. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.25.020, which said section reads as follows:

Definitions.

"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.

"Good faith" means honesty in fact in the conduct of a transaction.

"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.

“Landlord” means the owner or lessor of a dwelling unit or the building of which the unit is a part.

“Rental agreement” means all agreements, written or oral, embodying the terms and conditions concerning the use and occupancy of a dwelling unit.

“Tenant” means a person entitled under a rental agreement to occupy a dwelling unit.

“Retaliate” or “retaliatory action” shall include but not be limited to any of the following actions by a landlord when such actions penalize a tenant because of an action identified in TMC 9.25.030:

(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.

Section 3. That section 9.25.020, Unlawful actions by landlords, of The Code of the City of Topeka, Kansas, is hereby renumbered as 9.25.030 amended to read as follows:

Unlawful actions by landlords.

(a) It shall be unlawful for any owner or a landlord of any dwelling to commence any action or proceeding to recover possession of a dwelling unit from a tenant, demand an increase in rent from the tenant, decrease services to which the tenant has been entitled, or otherwise cause the tenant to involuntarily quit the dwelling unit within six months after any of the following acts have occurred to retaliate against a

tenant if the following conditions are met:

(a1) The tenant has organized or has become a member of a tenant's union or similar organization; or ~~the tenant has complained~~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 ~~his~~the tenant's dwelling unit which constitutes a violation of any statute, ordinance or regulation pertaining to the maintenance of safe and sanitary dwellings; ~~and/or a government official has filed a notice or complaint of such violation.~~

(2) The violation in subsection (a)(1) imposes responsibility on the landlord; and

(3) The landlord retaliated against the tenant within six (6) 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.

(b) ~~The tenant has organized or has become a member of a tenants' union or similar organization.~~If all of the conditions in subsection (a) are met, the tenant may submit an affidavit, the rental agreement and any other documentation to the City Attorney or designee.

Section 3. That section 9.25.030, Landlord rights, of The Code of the City of Topeka, Kansas, is hereby renumbered as 9.25.040 and amended to read as follows:

Landlord rights Actions deemed not retaliatory.

~~Notwithstanding the provisions in TMC 9.25.020, a landlord may bring an action~~

for possession if:

~~(a) — A violation of an applicable statute, ordinance or regulation was primarily caused by a lack of reasonable care by the tenant or other person in the tenant's household or persons upon the premises with the tenant's consent;~~

~~(b) — The tenant is not current with his rental payments; or~~

~~(c) — Compliance with an applicable statute, ordinance or regulation requires alteration, remodeling or demolition which would effectively deny the tenant the use of the dwelling unit.~~

(a) Notwithstanding TMC 9.25.030, 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.

(b) Notwithstanding TMC 9.25.030, a landlord may increase the 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.

97 Section 4. That the Code of the City of Topeka, Kansas, is hereby amended
98 by adding a section, to be numbered 9.25.050, which said section reads as follows:

99 **Penalties; habitual violator.**

100 (a) Notwithstanding TMC 1.10.070, punishment for a violation of TMC
101 9.25.030 shall be as follows:

102 (1) Upon a first conviction, a fine of not more than one thousand dollars
103 (\$1000).

104 (2) Upon a second conviction, a fine of not less than one hundred
105 dollars (\$100) nor more than one thousand dollars (\$1000).

106 (3) Upon a third conviction, a fine of not less than five hundred dollars
107 (\$500) nor more than one thousand dollars (\$1000).

108 (4) Upon a fourth or subsequent conviction, a fine of not less than one
109 thousand dollars (\$1000) nor more than two thousand five hundred dollars
110 (\$2500).

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

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

116 (1) Conviction includes being convicted of a violation of TMC 9.25.030
117 and it is irrelevant whether an offense occurred before or after conviction for a
118 previous offense.

119 (2) Conviction includes being convicted of a violation of TMC 9.25.030

120 or entering into a diversion agreement in lieu of further criminal proceedings on a
121 complaint alleging a violation of this section.

122 (3) Any convictions occurring during the three years prior to the date of
123 the occurrence shall be taken into account when determining the sentence to be
124 imposed.

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

127 Section 5. That original § 9.25.010 through § 9.25.030 of the Code of the City
128 of Topeka, Kansas, are hereby specifically repealed.

129 Section 6. This ordinance shall take effect and be in force on August 1, 2023
130 after its passage, approval and publication in the official City newspaper.

131 Section 7. This ordinance shall supersede all ordinances, resolutions or rules,
132 or portions thereof, which are in conflict with the provisions of this ordinance.

133 Section 8. Should any section, clause or phrase of this ordinance be declared
134 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
135 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

136 PASSED AND APPROVED by the City Council on _____.

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138 CITY OF TOPEKA, KANSAS

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142 Michael A. Padilla, Mayor

143 ATTEST:

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147 Brenda Younger, City Clerk