



MEMORANDUM

TO: City of Ann Arbor Renters Commission
FROM: Milton Dohoney Jr., City Administrator
DATE: February 15, 2023
SUBJECT: Enforcement Processes and Challenges for Right to Renew and Early Leasing Ordinances

The purpose of this memorandum is to inform the Renters Commission about the enforcement of City of Ann Arbor Code Section 8:530, the Early Leasing Ordinance and Right to Renew ordinances.

Early Leasing Ordinance

Effective August 15, 2021, the Early Lease Ordinance (ELO) amended Ann Arbor's Housing Code by:

- Requiring landlords to provide each tenant with the terms and conditions of a successive lease period no later than 180 days before the end of the current lease;
- Requiring the notice to the tenant to be sent via electronic communications and either personal delivery or US mail;
- Requiring that the notice specify the date by which a tenant must notify the landlord of the tenant's acceptance of a successive lease, which shall be no sooner than 150 days before the end of the current lease period;
- Requiring a second notice to a tenant if the landlord provided a first notice earlier than 240 days before the end of the current lease;
- Prohibiting entry into leased premises for the purpose of showing the premises to prospective tenants until 150 days before the end of the lease; and
- Prohibiting a landlord from entering into an agreement to rent the leased premises to another tenant for a subsequent lease period until 150 days before the end of the current lease period.

Simply put, the last provision outlaws the "early leasing" of premises to another tenant until a certain date has passed.

Anticipating complaints regarding violations of the new ELO, the City's Rental Housing Services unit added a paragraph to the existing *How To File a Complaint* section on the *Tenant Resources* section of the city's website. The complaints are received by Ms. Janet Farrell, Community Services Management Assistant, and handled as follows:

- A Leasing Ordinance Complaint, available on the City's website, is completed and e-mailed to Ms. Farrell.

- Ms. Farrell reviews the complaint and any accompanying documentation (such as e-mails, letters, portions of leases, etc.) then determines if the allegations appear to violate the ELO.
- If Ms. Farrell has questions about whether there may be an ELO violation, she contacts Senior Assistant City Attorney John Reiser for advice.
- If the complaint does not violate the ELO, Ms. Farrell informs the complainant either by e-mail or telephone that the complaint does not violate the ordinance.
- The vast majority of the ELO complaints have been unfounded (or closed out) because:
 - A landlord notified an existing tenant, early into a lease period, that a tenant could contact them to renew early (e.g., to lock in low rates for the next leasing season),
 - A landlord informed a tenant that they could be placed on a waiting list, or other mechanism to obtain a lease in the future, or
 - A tenant has since found new housing and is no longer interested in pursuing a complaint.
- If the evidence provided indicates that a violation may have occurred, Ms. Farrell will contact the City Attorney's Office for guidance on how to proceed.
- A landlord (or rental agent) will be contacted to get their account of the incident. If a landlord was unaware of the ELO but commits to following it in the future, the complaint will be closed out and a civil infraction ticket will not be issued. Educating the landlord and encouraging good faith efforts to adhere to the ordinance are the priority for city staff and serve as a best practice for enforcing code violations such as these.
- If further enforcement is necessary, the matter is turned over to a rental housing inspector who has authority to issue a citation under Section 1:17 (Code violation citations) of the Ann Arbor City Code.
- Once a civil infraction is issued, the matter will appear on Judge Perry's docket and will be prosecuted by Senior Assistant City Attorney John Reiser and the Rental Housing Inspector.

Right to Renew Ordinance

On October 16, 2022, a Right to Renew provision of Section 8:530 of the City's Housing Code became effective. The ordinance applies to leases entered-into, renewed, or renegotiated after that date. There have been some complaints from tenants who believed that they had a right to renew a lease that was entered into prior to the effective date, and those complaints were closed out because the ordinance did not apply to those leases.

The ELO and Right to Renew ordinances allow enforcement through civil infractions issued by the city, or through an aggrieved tenant bringing a civil action for injunctive relief or damages. The Right to Renew ordinance requires a landlord, who does not make a good faith offer to renew, to pay relocation assistance (equal to two months' rent) to a tenant, absent good cause for not doing so.

The good cause exceptions to the right to renew are:

- A tenant has not timely accepted a renewal offer,

- A tenant has not returned a signed lease to a landlord within ten days of receipt of the offer,
- The owner of the premises seeks possession so that a member of the owner's immediate family may occupy the unit as that person's principal residence,
- The owner will not rent the premises for the succeeding term, or
- The landlord can demonstrate a justification for not offering a renewal, that is in existence within the time renewal is to be offered, that would permit a termination of tenancy under the Summary Proceedings Act, MCL 600.5714.

A difficulty in enforcing the Right to Renew ordinance will be the application of Michigan's Summary Proceedings Act to the allegations contained in a tenant's complaint. A landlord may claim that he/she has good cause not to renew a lease based on the express terms of a lease, or due to grounds set forth in Michigan Law. Interpretation of these provisions of state law can be nuanced and complicated. City staff, whether in the Rental Housing department, Community Services, or the City Attorney's Office would be required to review the terms of a complainant's lease and the statutory provisions contained in MCL 600.5714 before taking any enforcement action.

Discussion of Enforcement Powers in City Code

To date, the city unit that has been primarily responsible for enforcement of these ordinances is Building and Rental Services. This may seem logical on its face, however there are challenges associated with this arrangement. Our rental and housing inspectors are technical experts, trained in trades and building safety issues. They are not trained to examine contracts, analyze state contract or leasing law, or make determinations of legal compliance based on nuanced evidentiary standards related to landlord-tenant disputes.

Additionally, much of the work that rental and housing inspectors do is aimed toward gaining compliance from property owners. Our inspection unit works to build positive working relationships with property owners so they may cooperatively gain access to properties in a timely manner and achieve compliance without legal proceedings or issuing civil infractions, which can be time consuming and costly for the City and result in poor enforcement outcomes. For these reasons, working to achieve compliance cooperatively represents a best practice in housing and building inspection across the industry. Staff is concerned that tasking our inspectors with taking enforcement actions in landlord-tenant leasing disputes will negatively impact their ability to more easily achieve compliance in other important areas of the housing code.

Finally, there is a financial compliance issue with this enforcement arrangement. Ms. Farrell's position in our rental inspection unit is paid for out of the construction code fund. These funds are limited in their use by law to only activities that further the enforcement and compliance of our structural building codes and building safety standards. We cannot expend money from this fund on other activities. This limits the amount of time that can be dedicated from her on the enforcement of the early leasing ordinance and the right to renew ordinance.

These reasons are why the City Attorney's Office has taken such a prominent role in enforcement activities to date, however this is not a sustainable model and a separate

enforcement entity should be identified and funded at some point in the future. We can likely maintain the current level of enforcement activity for the time being as we have received a relatively small number of complaints and enforcement activities have been de minimis on staff time. However, should demand for enforcement increase, city staff will have to discuss reprioritizing investments in this activity over other Council priorities given the city's financial limitations and projected deficits.

The City Code allows for our fire inspectors or community standards—the code enforcement arm of the police department—to also enforce these ordinances. Staff are exploring alternatives for enforcement with these agencies now and may make a recommendation for reassigning these activities in the medium term.

CC: City Council
City Attorney Kaur
Deputy City Administrator Fournier
Community Services Area Administrator Delacourt