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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

RENTAL HOUSING ASSOCIATION OF
WASHINGTON,

Plaintiff,

vs.

CITY OF FEDERAL WAY, a Washington
municipal corporation,

Defendant.

No. 19-2-32370-1 KNT

Notice of Appeal

Plaintiff, the Rental Housing Association of Washington, files this Notice of Appeal to the Washington State Court of Appeals, Division I, of the decision of the Superior Court dated January 4, 2021 (attached hereto as Exhibit A) which became final upon the voluntary dismissal of remaining claims on October 5, 2021.

RESPECTFULLY SUBMITTED this 2nd day of November, 2021.

By: STEPHENS & KLINGE LLP
/s/ Richard M. Stephens
Richard M. Stephens, WSBA #21776
Attorneys for Plaintiffs

STEPHENS & KLINGE LLP
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 453-6206

1 **DECLARATION OF SERVICE**

2 I, Richard M. Stephens, declare:

3 I am not a party in this action. I reside in the State of Washington and am
4 employed by Stephens & Klinge LLP in Bellevue, Washington. On November 2,
5 2021, I caused a true copy of the Notice of Appeal and this Declaration of Service
6 to be served on the following persons via the following means:

7 J. Ryan Call

First Class U.S. Mail

E-Mail:

Ryan.call@cityoffederalway.com

9 Kim Adams Pratt
10 Eileen M. Keiffer
11 Madrona Law Group PLLC
12 14205 SE 36th Street
Suite 100, PMB 440
Bellevue, WA 98006

Other: Court's e-service

13 Knoll Lowney
14 Smith & Lowney, PLLC
15 2317 East John Street
Seattle, WA 98112

Other: Court's e-service

1 I declare under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct. Executed this 2nd day of November, 2021,
3 at Woodinville, Washington.

4 */s/ Richard M. Stephens*
5 Richard M. Stephens

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Exhibit A

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RENTAL HOUSING ASSOCIATION OF WASHINGTON, a Washington public benefit corporation,

Plaintiff,

vs.

THE CITY OF FEDERAL WAY, a Washington municipal corporation,

Defendants.

NO. 19-2-32370-1 KNT

ORDER DENYING PLAINTIFF RENTAL HOUSING ASSOCIATION OF WASHINGTON'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANT CITY OF FEDERAL WAY'S CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT

This MATTER having come before the Court on October 29, 2020 upon Plaintiff Rental Housing Association of Washington's ("RHA") Motion for Partial Summary Judgment relating to the City of Federal Way's ("City") ordinance adopted as local Initiative 19-001.

Plaintiff RHA's Motions for partial summary judgment are DENIED. Defendant City of Federal Way's motions for partial summary judgment are GRANTED.

The Court considered the oral argument of the parties, the pleadings and papers on file in this matter, including but not limited to the following:

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

1. Plaintiff RHA's Motion for Partial Summary Judgment filed on September 17, 2020;
2. The Declaration of Richard M. Stephens in Support of Plaintiff's Motion for Partial Summary Judgment, and the Exhibits thereto filed September 17, 2020;
3. Defendants' Response to RHA's Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment filed on October 1, 2020 and supporting documents;
4. The Declaration of Edmund Witter in Support of Defendant's Motion for Summary Judgment, and the Exhibits thereto filed October 1, 2020;
5. Intervenor Washington Community Action Network's Opposition to Motion for Summary Judgment and Cross-Motion filed October 1, 2020;
6. The Declaration of Knoll Lowney in Support of Intervenor's Opposition to Motion for Summary Judgment and Cross-Motion and Exhibits thereto, filed October 1, 2020;
7. Intervenor Washington Community Action Network's Motion to Dismiss filed October 5, 2020;
8. The Declaration of Knoll Lowney in Support of Intervenor's Motion to Dismiss and Exhibits thereto, filed October 5, 2020;
9. Plaintiff RHA's Opposition to Intervenor's Motion to Dismiss and supporting Declarations of William Shadbolt, Harold Nyberg, and Richard Stephens and Exhibits thereto filed October 12, 2020;
10. Plaintiff RHA's Opposition to City's and Intervenor's Cross Motions for Summary Judgment and Reply in Support of Plaintiff's Motion for Partial Summary Judgment and supporting Declarations of William Shadbolt, Harold Nyberg, and Richard Stephens and Exhibits thereto filed October 12, 2020;
11. The files and records within RHA v. Ferguson, No. 19-2-19834-6 KNT, to include, Order Denying Motion for Pre-Election Injunctive Relief issued by Judge Michael Scott (sub 22).

PROCEDURAL BACKGROUND AND UNDISPUTED FACTS

1. In June of 2019, the City received an initiative petition requesting the City Council of the City to pass an ordinance prohibiting evictions except for

1 “good cause” in an effort to protect families and tenants and reduce
2 homelessness. This initiative was assigned No. 19-001.

- 3 2. The city issued a determination within five days of receipt of the petition,
4 stating that a determination of appropriateness would not be made due to
5 likely conflicts with state law. (Stephens Decl. at Ex. D).
- 6 3. On July 12, 2019, Plaintiff RHA contacted the City Attorney and informed
7 him the City was not following the proper initiative procedure regarding
8 issuing a determination as to the appropriateness of the topic and formulating
9 an impartial initiative statement. RHA contends this is in violation of City
10 Code and State Law. (RCW 29A.72.040-060, FWRC 1.30.030-050)
- 11 4. On July 16, 2019, the City Council voted to place Initiative No. 19-001 on the
12 ballot, contingent upon the County certifying the number of signatures.
- 13 5. In July of 2019 RHA sought injunctive relief to prevent Initiative 19-001 from
14 being included on the November ballot. *RHA v. Ferguson*, No. 19-2-19834-6
15 KNT.
- 16 6. On November 6, 2019, voters of the City of Federal Way adopted Initiative
17 No. 19-001, a copy of which is attached hereto as Exhibit A. It is now
18 codified under FWRC Chapter 20.05.
- 19 7. The title of Initiative 19-001 that voters found on the ballot provided as
20 follows:

21 City of Federal Way Initiative No. 19-001 concerns enacting rental requirements
22 for landlords and rental rights for tenants:

23 This citizen initiative would enact an ordinance to amend the Federal Way
24 Revised Code to require landlords to comply with existing rental laws; to
25 establish obligations and duties for landlords, and defenses and rights for tenants,
regarding: requirements that landlords must meet before evicting tenants,
retaliatory actions, rental agreements, and rental agreement renewals; to create
classes of tenants afforded additional rental rights; and to adopt penalties for
landlords and procedures to enforce the measures. Should this citizen initiative
be enacted into law?

8. The present action was brought by Plaintiff RHA to determine the legality of
Federal Way’s Initiative 19-001 now codified under FWRC Chapter 20.05.

1 9. In the present case, RHA's First Amended Complaint (corrected) (sub 16)
2 seeks relief under Eight Causes of Action:

- 3 1) Violation of RCW 35A.12.130 (Single Subject)
- 4 2) Improper use of the Initiative for Administrative Matters
- 5 3) Violation of Article XI, Section 11 of the Washington State
6 Constitution and RCW Chapter 59.18 (Preemption)
- 7 4) Taking of property under Article I, Section 16 of the Washington State
8 Constitution.
- 9 5) Damaging of property under Article I, Section 16 of the Washington
10 State Constitution.
- 11 6) Violation of Substantive Due Process under Article I, Section 3 of the
12 Washington State Constitution.
- 13 7) Violation of the Impairment of Contracts Clause in Article I, Section
14 23 of the Washington State Constitution.
- 15 8) Violation of the City's Initiative Process.

16 10. This matter comes before the Court upon

- 17 a. Plaintiff RHA's motions for partial summary judgment on claims 1, 2
18 and 8, and
- 19 b. City of Federal Way's motions for partial summary judgment on
20 claims 1, 3 and 6.

21 STANDARD FOR SUMMARY JUDGMENT

22 Summary judgment is appropriate when there are no genuine issues of material
23 fact and the moving party is entitled to judgement as a matter of law. CR 56 (c);
24 *Lakehaven Water and Sewer District v. City of Federal Way*, 195 Wn.2d 742, 752, 466
25 P.3d 213 (2020); *Coluccio v. King County*, 82 Wn.App. 45, 917 P.2d 145 (1996), rev.
den. 130 Wn2d 1015 (1996).

The moving party bears the initial burden of showing the absence of an issue of

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1 material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).
2 After the moving party submits adequate affidavits, the nonmoving party must set forth
3 specific facts which sufficiently rebut the moving party's contentions and disclose the
4 existence of a genuine issue as to a material fact. *Meyer v. Univ. of Wash.*, 105 Wn.2d
5 847, 852, 719 P.2d 98 (1986). The court views all facts and reasonable inferences in the
6 light most favorable to the nonmoving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437,
7 656 P.2d 1030 (1982).

8 The Court addresses the parties' cross motions in the order in which they were
9 presented

10
11 **RHA'S MOTIONS FOR PARTIAL**
12 **SUMMARY JUDGMENT ARE DENIED**

13 Plaintiff brings their Motions for Partial Summary Judgment before the Court
14 claiming that the City's Initiative No. 19-001 is illegal as it:

- 15 (1) violates initiative processes outlined by FWRC 1.30.030-050 and RCW
16 29A.72.040-060.
17 (2) violates the Single Subject and Subject in Title Rule under RCW 35A.12.130,
18 (3) contains provisions that are administrative in nature as opposed to legislative;

19 **1. Initiative 19-001 was Correctly Reconciled in Favor of State Law**

20 Plaintiff requests summary judgment on their eighth cause of action claiming that
21 Initiative 19-001 violated the City's Initiative Process because the City of Federal Way
22 Attorney did not issue a determination as to the appropriateness of the topic. RHA
23 contends the City attorney's failure is in violation of City Code and State Law. (RCW
24 29A.72.040-060, FWRC 1.30.030-050) and requires that the initiative be struck down.
25 They are incorrect.

The City of Federal Way Attorney correctly refused to issue a determination of

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1 appropriateness. The Federal Way Revised Code (“FWRC”) provision that attempted to
2 add this appropriateness determination violates State law. The City of Federal Way
3 Attorney accurately and appropriately reconciled the conflict between the FWRC in favor
4 of state law

5 The City of Federal Way is a non-charter code city. Its initiative procedures
6 are governed by RCW Title 35A. RCW 35A.11.100 establishes field preemption with
7 respect to the initiative process. *See Filo Foods LLC v. City of SeaTac*, 179 Wn. App.
8 401, 406, 319 P.3d 817 (2014) (“RCW 35.17.240–.360 governs the exercise of the
9 initiative power by SeaTac voters.”). The City of Federal Way may not establish new
10 procedures or regulations on this process.

11 Specifically, the City may not create an internal process whereby local officials
12 determine the validity or appropriateness of an initiative. Determining an initiative’s
13 validity is “exclusively a judicial function.” *Eyman v. McGehee*, 173 Wn. App. 684, 686–
14 87, 294 P.3d 847 (Div. 1, 2013); *See also Philadelphia II v. Gregoire*, 128 Wn.2d 707,
15 714, 911 P.2d 389 (1996).

16 Judge Scott ruled on this exact issue in *RHA v. Ferguson*, No. 19-2-19834-6 KNT
17 (sub 22).

18 [T]he City of Federal way was justified in not enforcing its local initiative procedures
19 given that the state law has granted code cities the authority to adopt the initiative
20 process, but not to adopt new relations on the process. RCW 35A.11.100. If a code city
21 adopts the initiative process, it “shall be exercised in the manner set forth for the
22 commission form of government in RW [sic] 35.17.240 through 35.17.360.” [citing to
23 *Huff v. Hyman*, 184 Wn.2d 643 (2015)]. Thus, there is field preemption that prevents the
24 adoption of local initiative procedures. *See, Filo Foods, v. City of SeaTac*, 179
25 Wn.App.401 (2014), cert denied, 181 Wn.2d 1006 (2014). Moreover, the local
procedures at issue in this case which purport to adopt additional pre-signature gathering
procedures and add requirements for qualifying an initiative are inconsistent with state
law. *See, State v. Evergreen Freedom Found.*, 192 Wn2nd 782 (2019) (local initiative is
commenced by submitting signatures). The requirement that the City Attorney pre-judge
the initiative’s validity is inconsistent with numerous precedents including *Eeman v.*
McGehee, 173 Wn. App. 684, 686 (2013) (“[A] court may review the substance of an
initiative petition to determine whether it is valid. Such a determination is exclusively a
judicial function”).

23 *RHA v. Ferguson*, No. 19-2-19834-6 KNT (sub 22, p.3).

24 Plaintiff’s motion for summary judgment on Count 8 of the Amended Petition is
25 DENIED.

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1 **2. Initiative 19-001 does not violate the Single Subject Rule under RCW**
2 **35A.12.130**

3 Plaintiff's seek summary judgment on their first cause of action, asserting that the
4 Initiative violates the Single Subject Rule in violation of RCW 35A.12.130. Plaintiff has
5 not established sufficient facts to overcome the presumption of validity and has not
6 proven that this Initiative violates RCW 35A.12.130 beyond a reasonable doubt.

7 RCW 35A.12.130 provides that "[n]o ordinance shall contain more than one
8 subject and that must be clearly expressed in its title." The statute provides that an
9 ordinance (or initiative) is prohibited from including more than one general subject and is
10 required to clearly express the single subject in its title.

11 RCW 35A.12.130 is modeled after Article II, Section 19 of the Washington State
12 Constitution which applies to statewide initiatives. Since an initiative measure is "an
13 exercise of the reserved power of the people to legislate," it carries a presumption of
14 constitutionality. *Belas v. Kiga*, 135 Wn.2d 913, 920, 959 P.2d 1037 (1998). Article II,
15 Section 19 is "liberally construed in favor of upholding legislation". *Washington Ass'n*
16 *for Substance Abuse & Violence Prevention v State*, 174 Wash.2d 642, 654, 278 P.3d 632
17 (2012)(Hereinafter WASAVP).

18 Initiatives shall be "presumed constitutional and overturned only if there is no
19 reasonable doubt that it violates the constitution." *Amalgamated Transit Union Local 587*
20 *v. State of Washington*, 142 Wn. 2d 183, 204, 11 P.3d 762 (2000) (Hereinafter *ATU*).
21 Thus, challengers have the burden of demonstrating an initiative violates the constitution
22 **beyond a reasonable doubt.** *Belas*, at 920. See also, *Washington Association for*
23 *Substance Abuse and Violence Prevention v. Gruss*, 174 Wn.2d 642, 654, 278 P.3d 632
24 (2012).

25 Article II, section 19 serves three purposes. *State ex rel. Wash. Toll Bridge Auth. v. Yelle*,
32 Wash.2d 13, 24, 200 P.2d 467 (1948). First, it prevents "logrolling," where a popular
measure is attached to an unpopular one to ensure passage of the unpopular measure.
Pierce County I, 150 Wash.2d at 429-30, 78 P.3d 640 (citing *Wash. Fed'n of State Emps.*
v. State, 127 Wash.2d 544, 554, 901 P.2d 1028 (1995)). Second, it "enlighten[s] the
members of the legislature [and voters considering initiatives] against provisions in bills
of which the titles give no intimation." *Yelle*, 32 Wash.2d at 24, 200 P.2d 467. Third, it
informs the public through the regular publication of legislative proceedings about the
subjects being considered. *Id.* Initiatives that contain more than one subject are void in
their entirety. *City of Burien v. Kiga*, 144 Wash.2d 819, 825, 31 P.3d 659 (2001) (citing

1 *Power, Inc. v. Huntley*, 39 Wash.2d 191, 200, 235 P.2d 173 (1951)). We construe
2 legislation liberally to avoid a multiple subject problem, but we do not shirk from our
3 responsibility to enforce the constitution's mandates. *See, e.g., Lee v. State*, 185 Wash.2d
4 608, 622-23, 374 P.3d 157 (2016) (finding a two subjects violation in an initiative that
5 both set a sales tax rate and proposed a constitutional amendment requiring a
6 supermajority vote or voter approval to raise taxes); *ATU*, 142 Wash.2d at 217, 11 P.3d
7 762 (finding a two subjects violation when an initiative set car tab fees at \$30 and
8 required a supermajority vote or voter approval to raise taxes).

9 *Garfield County Transportation Authority v. State*, 196 Wash.2d 378, 386, 473,
10 P.3d 1205 (2020). (Hereinafter cited as *GCTA*); See also, *Am. Hotel & Lodging Ass'n v.*
11 *City of Seattle*, 6 Wn. App. 2d 928, 938-939, 432 P.3d 434, review granted, 193 Wn.2d
12 1008, 439 P.3d 1069 (2019).

13 The first step in the single subject analysis is to determine whether the Initiative
14 carries a broad or restrictive title. *Id.* at 939. If the ballot title is general in nature, the
15 Court looks for rational unity among the matters in the initiative and whether those
16 matters “are germane to the general title and one another.” *Id.* If the title is broad, it will
17 be liberally construed and even “incidental” provisions may be included “so long as they
18 are related.” *State ex rel. Washington Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 26, 200
19 P.2d 467 (1948); *Am. Hotel & Lodging Ass'n v. City of Seattle*, 6 Wn. App. 2d 928 at 940
20 (2019). Only if the ballot title is restrictive, is there a requirement that the provisions
21 “must fall squarely within the restrictive language.” *Id.*

22 It is undisputed that the initiative title of Initiative 19-001 is broad and
23 encompasses the overarching topic of landlord and tenant rights within the City of
24 Federal Way. The initiative title clearly states its broad intent to “establish obligations
25 and duties for landlords, and defenses and rights for tenants...” It goes on to clearly set
forth the subjects addressed to include eviction requirements and defenses, retaliatory
actions, rental agreements/renewals and “classes of tenants afforded additional rental
rights”.

Here, all that is required is that there should be a “rational unity between the
general subject and the incidental subdivisions”. *Washington Ass'n for Substance Abuse
& Violence Prevention v State*, 174 Wash.2d 642, 656, 278 P.3d 632 (2012). *State v.*
Grisby, 97 Wash.2d 493, 498, 647 P.2d 6 (1982).

“[T]he existence of rational unity or not is [determined] by whether the matters within the
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1 body of the initiative are germane to the general title and whether they are germane to
2 one another.” *Kiga*, 144 Wash.2d at 826, 31 P.3d 659 (citing *ATU*, 142 Wash.2d at 209-
3 10, 11 P.3d 762).

4 *GCTA*, at 389.

5 Plaintiff contends that the provision containing eviction protections for certain
6 occupations and classes was included to provide emotional support for the initiative and
7 is not germane to the other subjects of the initiative.

8 In *Wash. Toll Brid Auth. V. State*, 49 Wn.2d 520, 523, 304 P.2d 676 (1956)
9 legislation that established a permanent state agency and also created funding for a
10 narrow in scope one-time event (a toll road between Tacoma, Seattle, and Everett) were
11 not sufficiently germane to each other.

12 In *Amalgamated Transit Union Local 587 v. State* 142 Wn.2d 183, 11 P.3d 762
13 (2000) the Supreme Court found that an initiative which set license tab fees at \$30, and
14 which provided a continuing method of approving all future tax increases were unrelated
15 and not germane.

16 Similarly, In *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001), the
17 Supreme Court found that an initiative that sought to nullify various 1999 tax increases,
18 impose a refund of those taxes, to change the method for assessing property taxes, and to
19 impose a 2% cap for property tax increases violated the single subject rule. The Court
20 found that retroactive tax refund provision and that the property tax assessment provision
21 related to the general topic of tax relief. However, the Court found that the nullification
22 and one-time refund of miscellaneous tax increases and monetary charges were not
23 related to permanent and systemic changes in property tax assessments. The Court made
24 similar findings in *Garfield County Transportation Authority v. State*, 196 Wash.2d 378,
25 386, 473, P.3d 1205 (2020) when it found that an initiative title was misleading because
an “average informed lay voter would not think that the initiative [with a title that related
to the reduction of motor vehicle tabs would also] eliminate the statutory mechanism for
voters to approve charges in the future.” *Id* at 402.

In *Am. Hotel & Lodging Ass'n v. City of Seattle*, 6 Wn. App. 2d 928, 432 P.3d
434, (Div I) *review granted*, 193 Wn.2d 1008, 439 P.3d 1069 (2019) the Court of

Appeals found that an ordinance related to the working conditions of hotel workers dealt

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1 with multiple subjects that were not germane to each other. That ordinance dealt with
2 four distinct areas of the law: Part one protected employees from violent and sexual
3 assaults; Part 2 protected employees from on-the-job injuries; Part 3 improved workers'
4 access to affordable medical care; Part 4 provided job security when there was a change
5 in hotel ownership. The Court of Appeals found that initiative provisions "arguably
6 related to the ballot title because each 'may facilitate' the 'health, safety and labor
7 conditions' of certain hotel workers." *Id.* at 942. However, the Court found that the
8 operative provisions were completely unrelated with four distinct purposes. The Court
9 distinguished its holding in *Am. Hotel & Lodging Ass'n* from its holding in *Filo Foods,*
10 *LLC v. City of SeaTac*, 183 Wash.2d 770, 357 P.3d 1040 (Div 1, 2015).

11 In *Filo Foods, LLC*, the Court found that the contents of a ballot proposition did
12 NOT violate the single subject rule. The Court found that the broad form of Ballot
13 "Proposition No. 1 concerns labor standards for certain employers" included the
14 following topics and that they were sufficiently germane to be included within the single
15 subject rule.

16 This Ordinance requires certain hospitality and transportation employers to pay specified
17 employees a \$15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and
18 safe time of 1 hour per 40 hours worked. Tips shall be retained by workers who performed the
19 services. Employers must offer additional hours to existing part-time employees before hiring
20 from the outside. SeaTac must establish auditing procedures to monitor and ensure
21 compliance. Other labor standards are established
22 *Id.* at 783.

23 Similarly, in *Washington Ass'n for Substance Abuse & Violence*
24 *Prevention v State*, 174 Wash.2d 642, 665, 278 P.3d 632 (2012), the Court upheld the
25 scope and structure of an initiative. Initiative 1183 earmarked a portion of revenue
raised from liquor license fees for the funding of public safety programs, including
police, fire, and emergency services. *Id.* at 650, 278 P.3d 632. There the ballot title
stated:

"Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor).
"This measure would close state liquor stores and sell their assets; license private parties
to sell and distribute spirits; set license fees based on sales; regulate licensees; and change
regulation of wine distribution.

Id. at 647, 278 P.3d 632 .

Like the structure of Proposition 1 (*Filo Foods, LLC*), Initiative 1183 indicated a

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1 general topic and then listed most of its operational measures. Like Initiative 19-001, the
2 titles of both Proposition 1 and Initiative 1183 were general in nature.

3 The Court initially described “the public safety earmark's connection with the
4 measure's liquor privatization provisions [to be] as arguably tenuous”. However, the
5 Court subsequently found an “obvious connection” between liquor sales and public
6 safety” *Id.* At 656. As recently as October 2020, the Court described its findings in
7 WASAVP as follows:

8 “We found a close connection between liquor and wine, especially as they “share the
9 common distinction of being liquor and have been governed as such by the same act for
10 decades.” *Id.* at 659, 278 P.3d 632. We concluded that advertising was clearly germane
11 and that policy changes were not separate subjects for purposes of [article II, section 19.](#)
12 *Id.* at 659-60, 278 P.3d 632.

13 *GCTA*, at 392-93.

14 Here, each provision of Initiative 19-001 falls squarely within the overall subject
15 of Landlord and Tenant rights. Each is reasonably germane to the rest of the initiative
16 because all of the subjects involve the operational fulfillment of the tenant. The creation
17 of protections for classifications of tenants who have been the subject of unprotected
18 discriminatory treatment (military personnel, first responders, etc), is well related to the
19 overall policy of the initiative and germane to the other operational provisions.

20 Plaintiff’s motion for Summary Judgment with respect to Plaintiff’s motion for
21 summary judgment on Count 1 of their Amended Complaint is DENIED.

22 **3. Initiative 19-001 is Legislative and not Administrative**

23 Plaintiffs seek summary judgment and a finding that portions of Initiative 19-001
24 are administrative rather than legislative. Initiative 19-001 is permanent and general in
25 character and prescribes a new policy with provisions for its accomplishment. The
ordinance is

Plaintiffs are correct that the local initiative power must be limited to “legislative
powers that are within the authority of the city.” *Spokane Entrepreneurial Ctr. v. Spokane*
Moves to Amend Constitution, 185 Wn.2d 97, 107, 369 P.3d 140 (2016). They are
correct that local administrative matters are outside the scope of local initiative power
and may not be subject to initiative or referendum. *Id.* (quoting *Our Water—Our*
Choice!, 170 Wn.2d at 8, 239 P.3d 589 (2010)).

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However, actions that are permanent and general are generally legislative while actions that are temporary and of “special character” are usually administrative. *Leonard v. City of Bothell*, 87 Wn.2d 847, 850, 557 P.2d 1306, 1308 (1976). The question is ultimately “whether the proposition is one to make new law or to execute law already in existence.” *Glob. Neighborhood v. Respect Washington*, 7 Wn. App. 2d 354, 394, 434 P.3d 1024, 1046, *review denied*, 193 Wn.2d 1019, 448 P.3d 69 (2019), *cert. denied*, 140 S. Ct. 638, 205 L. Ed. 2d 389 (2019). “The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself” *Id.*

Initiative 19-001 establishes new policy that restricts landlords from evicting tenants in many instances except for “good cause.” This establishes new policy that applies broadly and generally to all landlords within the City of Federal Way. By any measure, the clear policy statement and the provisions for its enactment are not temporary but permanent.

Plaintiffs argue that sections 6-8 of the Initiative are administrative because they deal with details related to the implementation of the initiative. They argue that the inclusion of “subjects such as enforcement of the initiative, definitions and miscellaneous provisions such as service of notices, waiver of provisions, the size of the font to be used in certain notices, and rescission of agreements between landlords and tenants” are “administrative details” that are not legislative. Defendant correctly points out that such details are crucial to the effective implementation of the policies and procedures within the initiative. These provisions do not alter or negate any previous policy of the City or any policy already in existence. Rather, these provisions speak to the “fundamental and overriding purpose of the initiative”. *Glob. Neighborhood v. Respect Washington*, 7 Wn. App. 2d at 395.

Plaintiff’s motion for summary judgment on Count 2 of their Amended and Corrected Complaint is DENIED.

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CITY’S MOTION FOR PARTIAL SUMMARY JUDGMENT

The City of Federal Way also brings a motion for partial summary judgment. The City argues specifically that there are no genuine issues of material fact as to Plaintiff’s Causes of Action 1, 3, and 6. The City seeks dismissal of those Counts.

The City contends Initiative 19-001 is valid because (1) the initiative does not violate the Single Subject and Subject in Title Rule under RCW 35A.12.130, (2) Initiative 19-001 is not preempted by state law as the initiative’s protections do not conflict, or may be harmonized, with state statute, and, (3) Initiative 19-001 is consistent with Due Process Protections under Article I, Section 3 of the Washington State Constitution because it has a rational basis.

There are no issues of material fact. Defendant’s motions are Granted.

1. Initiative 19-001 does not Violate RCW 35A.12.130 (Single Subject)

As discussed above, Initiative 19-001 does not violate RCW 35A.12.120. Defendant’s motion for Summary Judgment with respect to Count 1 of Plaintiffs’ Amended Complaint is GRANTED. Count 1 of plaintiffs’ Amended Complaint is dismissed.

2. Initiative 19-001 is not Preempted by State Law

The Residential Landlord Tenant Act and conflict preemption does not apply to Initiative 19-001 as the initiative can be reconciled in harmony with RCW 59.18.

Preemption occurs in two ways. First, field preemption occurs when “the legislature either expressly or by necessary implication states its intention to preempt the field.” *Seattle v. Long*, 61 Wn. 737, 380 P.2d 472 (1963). Conflict preemption occurs “when a state statute and local ordinance are in such direct conflict they cannot be reconciled.” *Kennedy v. City of Seattle*, 94 Wn.2d 376, 384, 617 P.2d 713 (1980).

Whether a statute has a preemptive effect is a question of law for the courts to determine. *Kitsap County v. Kitsap Rifle and Revolver Club*, 1 Wn.App.2d 393, 405, 405 P.3d 1026 (2017).

Defendants urge the court to follow the precedent laid out in *Kennedy v. City of*

1 *Seattle, supra.* In that case, the Washington Supreme Court determined an ordinance
2 making it unlawful to evict a tenant from a houseboat without good cause was not
3 preempted by RCW 59.18. Plaintiffs argue that there is vast discrepancy between what
4 the Residential Landlord Tenant Act governed in 1980 compared to what it covers now.

5 The precedent of *Kennedy v. City of Seattle* is still valid. Field preemption does
6 not prevent Initiative 19-001 from taking effect. The real question is whether Conflict
7 preemption creates issues between Initiative 19-001 and RCW 59.18 that are
8 irreconcilable. It does not.

9 Initiative 19-001 creates defenses to evictions and expands remedies provided by
10 RCW 59.18.080. It also preserves a landlord's right to evict a tenant for failing to pay
11 rent but creates a defense when withholding rent due to violations of RCW 59.18. In
12 *Kennedy*, the Supreme Court spoke to many of the issues present in this conflict
13 preemption analysis. Although Initiative 19-001 creates more defenses and protections
14 for tenants, it preserves a landlord's rights to eviction under RCW 59.18. Nothing in the
15 Initiative allows what the statute forbids, or forbids what the statute allows. Therefore,
16 Initiative 19-001 is not preempted by RCW 59.18.

17 Defendant's motion for Summary Judgment with respect to Count 3 of Plaintiffs'
18 Amended Complaint is GRANTED. Count 3 of plaintiffs' Amended Complaint is
19 dismissed.

20 **3. Initiative 19-001 has a rational basis to a legitimate state interest under**
21 **Article I, Section 3 of the Washington State Constitution**

22 Defendants move for summary judgment with respect to Plaintiff's sixth cause
23 of action, Violation of Washington State Constitution Article I, Section 3, (Substantive
24 Due Process) and ask the court to enter summary judgment on the limited question as to
25 whether there is a rational basis for the regulation of the Landlord/Tenant relationship
and the property rights of landlords. The parties distinguish between the Plaintiffs' void
for vagueness claims under this cause and any Takings or Damaging of property claims
asserted under Counts 4 and 5 of Plaintiffs' Complaint.

The standard of review for a determination of a Substantive Due Process claim
with respect to regulations impacting the landlord/tenant relationship was set forth in *Yim*

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v. *City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019).

Article I, section 3 of the Washington State Constitution provides, “No person shall be deprived of life, liberty, or property, without due process of law.” Our state due process protection against “the arbitrary exercise of the powers of government” has both procedural and substantive components. *State v. Cater’s Motor Freight Sys., Inc.*, 27 Wash.2d 661, 667, 179 P.2d 496 (1947). The procedural component provides that “[w]hen a state seeks to deprive a person of a protected interest,” the person must “receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation.” *Amunrud v. Bd. of Appeals*, 158 Wash.2d 208, 216, 143 P.3d 571 (2006). Meanwhile, the substantive component of due process “protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” *Id.* at 218-19, 143 P.3d 571. This case concerns only the substantive component.

In a substantive due process claim, courts scrutinize the challenged law according to “a means-ends test” to determine if “a regulation of private property is effective in achieving some legitimate public purpose.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005) (emphasis omitted). The level of scrutiny to be applied depends on “the nature of the right involved.” *Amunrud*, 158 Wash.2d at 219, 143 P.3d 571. “State interference with a fundamental right is subject to strict scrutiny,” which “requires that the infringement is narrowly tailored to serve a compelling state interest.” *Id.* at 220, 143 P.3d 571. Meanwhile, “[w]hen state action does not affect a fundamental right, the proper standard of review is rational basis,” which requires only that “the challenged law must be rationally related to a legitimate state interest.” *Id.* at 222, 143 P.3d 571.

Yim, at 688.

In *Yim*, the Supreme Court held that a rational basis review applies to a Landlord’s substantive due process challenge to a municipal regulation of the landlord/tenant relationship. *Id.* at 693. The proper standard of review for this matter is rational basis review and requires only that the challenged law be rationally related to a legitimate state interest. *Id.* at 689.

In the related case of *Chong Yim v. City of Seattle*, 194 Wash.2d 651, 451 P.3d 675 (2019), our Supreme Court distinguished between substantive due process claims and takings claims.

In *Chong Yim*, the City of Seattle adopted a “first in time” (FIT) rule that required Seattle landlords seeking to fill vacant tenancies to follow specific procedures and to accept the first qualified tenant subject to certain exceptions. The plaintiffs, Seattle landlords, were granted summary judgment that found that the FIT facially effected a *pers se* regulatory taking, infringed on the plaintiff’s substantive due process rights, and

1 infringed on their plaintiffs’ rights of free speech. On direct review, our Supreme Court
2 reversed.

3 With respect to the takings claim, the *Chong Yim* Court found that the plaintiffs
4 failed to show that the FIT fit into either of the per se taking categories in by failing to
5 show that the FIT rule required landlords to suffer any permanent physical invasion of
6 their properties, or deprived them of any economically beneficial use of their properties.

7 With respect to the substantive due process claim, the *Chong Yim* Court held:

8 Therefore, a law regulating the use of property violates substantive due process only if it
9 “fails to serve any legitimate governmental objective,” making it “arbitrary or irrational.”
10 *Chevron U.S.A.*, 544 U.S. at 542, 125 S.Ct. 2074; *see also Kentner v. City of Sanibel*, 750
11 F.3d 1274, 1280-81 (11th Cir. 2014), *cert. denied*, — U.S. —, 135 S. Ct. 950, 190
12 L.Ed.2d 831 (2015); *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir.),
13 *cert. *675 denied*, 568 U.S. 1041, 133 S.Ct. 652, 184 L.Ed.2d 482 (2012). This test
14 corresponds to rational basis review, which requires only that “the challenged law must
15 be rationally related to a legitimate state interest.” *Amunrud*, 158 Wash.2d at 222, 143
16 P.3d 571.

17 *****

18 Rational basis review requires that “the challenged law must be rationally related to a
19 legitimate state interest.” *Id.* Rational basis review is highly deferential because “a court
20 may assume the existence of any necessary state of facts which it can reasonably
21 conceive in determining whether a rational relationship exists between the challenged law
22 and a legitimate state interest.” *Id.*

23 *Chong Yim*, at 675.

24 Here it is undisputed that Initiative 19-001 offers eviction protections to tenants.
25 It is undisputed that “no cause” evictions are one of the leading causes of homelessness,
and that homelessness is a growing epidemic in King County and surrounding areas. This
problem has been recognized across all levels of state government. It is undisputed that
Initiative 19-001 was created and passed in an effort to prevent retaliatory and
discriminatory evictions and to protect those most vulnerable.

“Rational basis review does not invite a demanding inquiry by this court into
whether the [proposed regulation] is good policy.” *Id.* at 676.

On its face, Initiative 19-001 is rationally related to a state interest. Defendant’s
motion for summary judgment on this issue is GRANTED.

CONCLUSIONS

- 1 2. Plaintiff’s first cause of action, that the Initiative violates the Single Subject
2 Rule in RCW 35A.12.130, is dismissed with prejudice. Plaintiff has not
3 established sufficient facts to overcome the presumption of validity and has
4 not proven that this Initiative violates RCW 35A.12.130 beyond a reasonable
5 doubt.
- 6 2. The Plaintiff’s second cause of action, that Initiative 19-001 is administrative
7 rather than legislative, is dismissed with prejudice. Initiative 19-001 is
8 legislative because it is permanent and general and prescribes new policy with
9 provisions for its accomplishment.
- 10 3. Plaintiff’s third cause of action, that Initiative 19-001 is preempted by RCW
11 59.18 is dismissed with prejudice. Like *Kennedy*, landlord-tenant rights is not
12 field preempted by the Residential Landlord Tenant Act and conflict
13 preemption does not apply to Initiative 19-001 as it can be reconciled in
14 harmony with RCW 59.18.
- 15 4. Defendants’ motion for Summary Judgment with respect to Plaintiff’s sixth
16 cause of action, Violation of Washington Constitution Article I, Section 3,
17 (substantive due process) is granted as the proposed regulation of the
18 Landlord Tenant relationship and the impacts of the property of Federal Way
19 Landlords has rational basis. Plaintiffs’ void for vagueness claim is reserved.
- 20 5. Plaintiff’s eighth cause of action, that Initiative 19-001 violated the City’s
21 Initiative Process, is dismissed with prejudice. Based on the record before it,
22 this Court agrees with Judge Scott’s previous decision, that the City Attorney
23 was correct to reconcile the conflict between the Federal Way Revised Code
24 and state law in favor of state law.

CONCLUSION

25 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
26 DECREED that Plaintiff RHA’s Motions for Partial Summary Judgment are DENIED
27 and Defendant City of Federal Way’s Motions for Partial Summary Judgment are
28 GRANTED.

ORDER DENYING PLAINTIFF’S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT’S MOTION FOR PARTIAL
SUMMARY JUDGMENT

DONE this ____ day of January, 2021

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Judge Matthew Williams

ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

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EXHIBIT A

ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

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FWRC Chapter 20.05

FEDERAL WAY GOOD CAUSE EVICTION ORDINANCE¹

Sections:

- 20.05.010 Findings.
- 20.05.020 Establishing a defense to eviction where the landlord violates tenant protection laws or lacks good cause to terminate the tenancy.
- 20.05.030 Prohibiting retaliatory evictions.
- 20.05.040 Prohibiting evictions based upon tenant's status as a member of the military, first responder, senior, family member, health care provider, or educator.
- 20.05.050 Prohibiting retaliation and discrimination in lease renewal actions.
- 20.05.060 Adopting penalties and procedures.
- 20.05.070 Definitions.
- 20.05.080 Miscellaneous.

20.05.010 Findings.

(1) The people of the city of Federal Way hereby adopt the citizen initiative codified in this chapter for the purpose of protecting families and tenants and reducing homelessness. This measure is intended to: (a) require landlords to comply with tenant protection laws and show good cause before evicting a tenant; (b) prohibit retaliatory evictions; (c) prohibit discriminatory evictions based upon the tenant's status as a member of the military, first responder, senior, family member, health care provider, or educator; (d) extend these protections to lease renewal actions; and (e) adopt penalties and procedures.

(2) The city of Federal Way faces an unprecedented housing affordability and homelessness crisis. This crisis has made tenants vulnerable to abuse, including violations of tenant protection laws and retaliatory and discriminatory evictions. These related abuses negatively impact our community.

(3) To protect families, promote community, stabilize the rental market, and reduce homelessness, landlords must comply with tenant protection laws and show good cause before evicting a tenant.

(4) Landlords are prohibited from evicting tenants based upon their status as members of the military, first responders, seniors, family members, health care providers, or educators. These individuals serve an essential role in our community and/or have been subject to discrimination in the rental housing market, and therefore need protections from discrimination in evictions.

(5) Landlords are prohibited from evicting tenants as retaliation for asserting their rights under tenant protection laws. Tenants deserve access to safe and healthy housing, but many tenants in our city live in substandard housing. Good cause eviction protection allows tenants to raise concerns with the habitability of a rental without the fear of retaliation in the form of a no-cause eviction, whether carried out through a traditional eviction or a lease renewal action.

(6) To protect the community and help our economy thrive, and to support basic fairness, the city will prohibit landlords from terminating a tenancy unless they comply with tenant protection laws and show good cause for the eviction, and the city will prohibit retaliatory evictions and evictions that discriminate against members of the military, first responders, seniors, family members, health care providers, or educators. These protections are extended to lease renewal actions.

(Initiative Measure No. 19-001, § 1, approved by voters at November 2019 election, certified November 26, 2019.)

ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

20.05.020 Establishing a defense to eviction where the landlord violates tenant protection laws or lacks good cause to terminate the tenancy.

(1) It is the intent of this section to require landlords to comply with tenant protection laws and to show good cause before taking action to terminate a tenancy.

(2) A tenant threatened with eviction shall be entitled to a defense from eviction as set forth in this section.

(3) It shall be a defense against eviction to show that the landlord seeking an eviction either is in violation of tenant protection laws, or lacks good cause for eviction as set forth in this section.

(4) It shall be a defense against eviction that the landlord is, at time of eviction, in violation of tenant protection laws.

(5) It shall be a defense against eviction that the landlord lacks good cause to evict the tenant. Only the following justifications constitute good cause under this chapter:

(a) The tenant fails to pay rent, and meets all requirements for an unlawful detainer under state law, after receiving all notices required under state law and having failed to cure within the time required by state law. However, this subsection (5)(a) shall not constitute grounds for eviction where the tenant has withheld rent due to conditions that deprive the tenant or occupants of normal use of the dwelling unit.

(b) The tenant substantially and materially breaches a non-monetary requirement of the rental agreement, and meets all requirements for an unlawful detainer under state law, after receiving all notices required under state law and having failed to take reasonable steps to cure the breach within the time required by state law.

(c) The tenant has committed or permitted waste upon the premises, unlawful activity, or an ongoing, substantial interference with the use and enjoyment of the premises by the landlord or neighbors of the tenant, and meets all requirements for an unlawful detainer under state law, after receiving all notices required under state law.

(d) A person enters upon land of another without the permission of the owner and without having color of title thereto and refuses to vacate, and meets all requirements for an unlawful detainer under state law, after receiving all notices required under state law. This provision shall not apply to an immediate family member of a tenant of record absent a violation of legal occupancy limits.

(e) The landlord, in good faith, without ulterior reasons and with honest intent, seeks to remove the dwelling unit from the rental market for one of the following reasons, after providing the tenant with 120-day advanced written notice of the eviction: (i) the landlord or his or her immediate family seeks to occupy the dwelling unit as their principal residence; (ii) the landlord seeks to convert the dwelling unit to a condominium pursuant to RCW 64.34.440; (iii) the landlord seeks to demolish or substantially rehabilitate the dwelling unit; (iv) a governmental entity has prohibited the continued rental of the dwelling unit to the tenant; or (v) the landlord intends to remove the dwelling unit from the rental market for at least a 24-month period. There is a rebuttable presumption that the landlord did not act in good faith, if, after the landlord terminates the tenancy under subsection (5)(e)(i) of this section, the landlord or their immediate family fails to occupy the unit as a principal residence for at least 90 consecutive days during the 120 days immediately after the tenant vacated. Moreover, if the landlord owns a similar vacant unit, and chooses instead to take possession of the dwelling unit occupied by a tenant, there shall be a rebuttable presumption that the landlord is acting in bad faith. A landlord may not recover possession pursuant to subsection (5)(e)(i) of this section more than once in any 36-month period. No notice is required to take possession when the tenant is a former owner of the dwelling unit and the landlord is the new owner of the dwelling unit.

(f) The tenant continues in possession after the expiration of a rental agreement after having declined to enter a new or extended rental agreement offered pursuant to FWRC 20.05.050.

ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

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(g) The tenant continues in possession after having received a 30-day notice to quit due to chronic, unexcused, and unjustified failure to pay rent, with such pattern documented in the filing of numerous unlawful detainer actions over a 12-month period.

(h) The dwelling unit was provided to the tenant as part of a transitional housing program or other program which receives public funding and operates on a model that provides temporary housing.

(i) The landlord resides in the dwelling unit and no longer wishes to cohabit with the tenant.

(j) The landlord establishes other good cause under FWRC 20.05.060.

(6) If a tenant dies, vacates, or voluntarily or involuntarily abandons the dwelling unit, the protections of this section apply to any remaining co-tenants in the dwelling unit. However, the landlord may require any remaining co-tenant to take over the existing rental agreement as a condition of remaining in the dwelling unit.

(Initiative Measure No. 19-001, § 2, approved by voters at November 2019 election, certified November 26, 2019.)

20.05.030 Prohibiting retaliatory evictions.

(1) It shall be a violation of this chapter and a defense against eviction for a landlord to threaten, commence, or carry out retaliation or a retaliatory eviction due to the tenant having asserted rights and protections afforded by this chapter or another tenant protection law.

(2) There shall be a rebuttable presumption that the landlord's action was retaliatory if the action occurred within nine months of the tenant asserting a right or defense afforded by this chapter or another tenant protection law.

(3) A landlord who retaliates against a tenant for asserting rights or defenses afforded by this chapter or under another tenant protection law shall be liable to the tenant for penalties and other relief under FWRC 20.05.060.

(Initiative Measure No. 19-001, § 3, approved by voters at November 2019 election, certified November 26, 2019.)

20.05.040 Prohibiting evictions based upon tenant's status as a member of the military, first responder, senior, family member, health care provider, or educator.

(1) The people of the city of Federal Way hereby declare their intent to outlaw discriminatory evictions against members of the military, first responders, seniors, family members, health care providers, and educators. Additional protection is provided to these groups of tenants because they serve an essential role in our community, they have been subject to documented discrimination in the rental housing market, or they are likely to face discrimination in the rental market.

(2) It shall be a violation of this chapter and a defense against eviction for a landlord to evict a tenant based upon the tenant's status as a member of the military, first responder, senior, family member, health care provider, or educator.

(3) To carry out the policy protecting family members, it shall be a violation of this chapter and a defense against eviction for a landlord to evict a tenant or the tenant's immediate family members based upon a tenant's immediate family members residing in the unit, absent a violation of occupancy limits under federal, state, or local law.

(Initiative Measure No. 19-001, § 4, approved by voters at November 2019 election, certified November 26, 2019.)

20.05.050 Prohibiting retaliation and discrimination in lease renewal actions.

(1) It has been documented that some landlords circumvent tenant protections by carrying out retaliatory or discriminatory evictions through lease renewal actions, including refusing to renew a rental agreement or imposing new, non-financial terms which are known to be incompatible with the tenant's continued tenancy. The intent of this section is to enforce the protections of this chapter by extending its protections to lease renewal actions to the extent permitted by law.

(2) Between 60 and 90 days prior to the expiration of the existing rental term, the landlord must offer a tenant the opportunity to enter into a new rental agreement or to extend the existing rental agreement, either on a term or month-to-month basis, unless the existing lease provides for automatic extension on a month-to-month basis. The landlord may change the duration and financial terms of the agreement, but the proposal cannot include other material changes from the terms of the expiring lease. The landlord must deliver the proposed new or extended rental agreement to the tenant in accordance with RCW 59.12.040 and give the tenant 30 days to accept or decline the proposed new or extended rental agreement. If the tenant declines to enter a new or extended rental agreement, the landlord may end the tenancy according to the term of the expiring rental agreement.

(3) Lease renewal actions are subject to prohibitions on retaliation and discrimination in FWRC 20.05.030 and 20.05.040.

(4) A landlord may decline to offer a new or extended lease to a tenant under this section for good cause as defined in FWRC 20.05.020, in which case the landlord must provide the tenant with notice identifying the good cause. The notice shall be provided at least 60 days prior to the expiration of the existing rental term unless a different notice period applies under FWRC 20.05.020.

(5) If the city is found to lack authority to prohibit evictions for failure to comply with this section, the purposes of this chapter and section shall be carried out by allowing tenants to obtain penalties and other remedies for noncompliance with the mandates of this section, regardless of whether the tenant remains in the dwelling unit.

(Initiative Measure No. 19-001, § 5, approved by voters at November 2019 election, certified November 26, 2019.)

20.05.060 Adopting penalties and procedures.

(1) Any tenant claiming injury from any violation of this chapter shall be entitled to bring an action in King County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this chapter, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including declaratory or injunctive relief. A tenant who prevails in any action to enforce this chapter shall be awarded his or her costs, reasonable attorneys' fees, and expenses.

(2) A landlord who violates this chapter shall be liable for penalties of up to four and one-half times the monthly rent of the dwelling unit at issue.

(3) Failure of a landlord to comply with any of the provisions of this chapter shall provide the tenant with a defense in any legal action brought by the landlord to recover possession of the dwelling unit.

(4) A tenant or an organization representing tenants may seek injunctive relief on their own behalf or on behalf of other affected tenants.

(5) A landlord may seek a court order allowing a particular eviction or exempting them from a provision of this chapter if they can show that a provision of this chapter, if fully enforced, would constitute either (a) an undue and significant economic hardship; or (b) a takings under the United States or Washington State Constitutions; or (c) that the chapter as applied is preempted by federal or state law.

(6) Remedies provided in this section are in addition to any other existing legal remedies and are not intended to be exclusive.

ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

1 (Initiative Measure No. 19-001, § 6, approved by voters at November 2019 election, certified November
26, 2019.)

2 **20.05.070 Definitions.**

For the purposes of this chapter:

3 *“ Dwelling unit ”* or *“ unit ”* is a structure or that part of a structure which is used as a home, residence, or
4 sleeping place by one person or by two or more persons maintaining a common household, including but
not limited to single-family residences, units of multiplexes, units of apartment buildings, and mobile
5 homes.

6 *“ Eviction ”* or *“ evict ”* is an effort by the landlord to terminate or discontinue the tenancy through any
means, including unlawful detainer, refusing to offer a new lease pursuant to this chapter, or seeking a
7 mutual termination agreement.

8 *“ Immediate family ”* includes: spouse, domestic partner, or partner in a committed intimate relationship;
and parents, grandparents, children, grandchildren, siblings, nieces, and nephews, whether related by blood,
9 marriage, domestic partnership, or committed intimate relationship.

10 *“ Landlord ”* means the owner, lessor, or sublessor 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 sublessor including,
but not limited to, an agent, a resident manager, or a designated property manager.

11 *“ Lease renewal actions ”* include actions taken in the lease renewal process which could have the effect of
ending the tenancy, including but not limited to a landlord’s refusal to renew a rental agreement or the
12 addition of new material non-financial terms to a renewed rental agreement.

13 *“ Mutual termination agreement ”* means any agreement by a landlord and tenant to terminate a tenancy.

14 *“ Rent ”* means any recurring or periodic payments for the use and occupancy of the dwelling unit, which
may include utilities. Rent does not include any nonrecurring charges such as late fees, notice fees,
attorneys’ fees, court costs, damages, or other fees.

15 *“ Rental agreement ”* means all agreements subscribed to in writing by the tenant which establish or modify
the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a
16 dwelling unit.

17 *“ Retaliation ”* has the same meaning as “reprisal or retaliatory action” under RCW 59.18.240.

18 *“ Retaliatory eviction ”* is an eviction in response to a tenant’s assertion of rights or protections afforded
under this chapter or another tenant protection law.

19 *“ Tenancy ”* refers to the right of a tenant to reside in a dwelling unit for living or dwelling purposes.

20 *“ Tenant ”* is any person who occupies a dwelling unit primarily for living or dwelling purposes.

21 *“ Tenant protection laws ”* includes this chapter, RCW 59.18.060, 59.18.240, and any other federal, state, or
local law or regulation designed to protect tenants, regardless of whether such laws or regulations are
enacted before or after this chapter.

22 *“ Transitional housing ”* means housing units owned, operated, or managed by a nonprofit organization or
23 governmental entity in which supportive services are provided to individuals and families that were
formerly homeless, with the intent for them to move to permanent housing.

24 (Initiative Measure No. 19-001, § 7, approved by voters at November 2019 election, certified November
26, 2019.)

25 ORDER DENYING PLAINTIFF’S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
GRANTING DEFENDANT’S MOTION FOR PARTIAL
SUMMARY JUDGMENT

20.05.080 Miscellaneous.

1 (1) Nothing in this chapter eliminates a tenant's rights under a rental agreement, including the right to civil
2 relief if a landlord terminates a rental agreement before its expiration.

3 (2) All written notices required under this chapter must be served in a manner consistent with RCW
4 59.12.040. Any notice served pursuant to this section shall identify the facts and circumstances that
5 support the cause or causes with enough specificity for the tenant to be able to respond and assert any
6 defense that may be available. Failure to comply with notice requirements constitutes a violation of this
7 chapter.

8 (3) Any notice issued pursuant to this chapter shall include the following, in bold letters of at least 16 point
9 font: "If you are a Veteran of the U.S. Military, you may be able to access housing resources by calling 2-1-
10 1 or contacting the King County Veterans Program for assistance with rent, relocation, or other support
11 services."

12 (4) Except as provided in FWRC 20.05.020(5)(e), (f) or (g), or in FWRC 20.05.050, a notice may not form
13 a part of any basis for an eviction action if more than 60 days have passed since issuance of the notice.

14 (5) The provisions of this chapter may not be waived, and any term of any rental agreement, contract,
15 mutual termination agreement, or other agreement which purports to waive or limit a tenant's substantive
16 or procedural rights under this chapter is contrary to public policy, unenforceable, and void. A landlord
17 may not coerce a tenant to sign a mutual termination agreement. A tenant may rescind a mutual termination
18 agreement by: (a) delivering written or electronic notice of rescission to the landlord within 10 business
19 days after signing the agreement; or (b) at a later time, by establishing that the tenant improvidently entered
20 into the agreement, which may be demonstrated by an examination of the unequal bargaining power
21 between the parties, vulnerability of the tenant, legitimacy of landlord's reasons for seeking termination,
22 and whether tenant was able to procure alternative housing within the time allotted in the agreement.

23 (6) The provisions of this chapter are declared to be separate and severable. If any provision of this chapter,
24 or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any
25 other provision or application of this chapter that can be given effect without the invalid provision or
application. Moreover, if a provision or its application is declared invalid due to preemption by state or
federal law, then the remainder shall remain valid.

(7) Any ambiguity in this chapter shall be construed in favor of the tenant. Statements that noncompliance
with certain provisions constitutes a violation of this chapter and/or are subject to penalties are provided for
emphasis only and such statements shall not be construed to mean that noncompliance with other
provisions does not constitute a violation subject to penalties.

(8) This Act shall be known as the Federal Way Good Cause Eviction Ordinance.

(Initiative Measure No. 19-001, § 8, approved by voters at November 2019 election, certified November
26, 2019.)

¹ Code reviser's note: This chapter was adopted by citizen initiative and can only be amended or repealed by a vote of
the people.

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-32370-1
Case Title: RENTAL HOUSING ASSOC OF WA VS CITY OF FEDERAL WAY
Document Title: ORDER RE MOTIONS - PARTIAL SUMMARY JUDGMENT
Signed By: Matt Williams
Date: January 04, 2021



Judge: Matt Williams

This document is signed in accordance with the provisions in GR 30.

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