



Council Communication

To: Mayor and Village Council

From: John Quick, Interim Village Attorney

Date: August 4, 2022

SUBJECT: ORDINANCE AMENDING CHAPTER 22 "HOUSING," OF THE VILLAGE CODE OF ORDINANCES AT ARTICLE I "IN GENERAL" TO CREATE SECTION 22-1 TO REQUIRE FAIR NOTICE OF TERMINATION AND RENT INCREASE FOR RESIDENTIAL TENANCIES

Background:

According to the University of Florida's Shimberg Center for Housing Studies' 2019 Rental Market Study, there are 2.6 million renter households in the State of Florida. During the coronavirus-2019 (COVID-19) pandemic, there has been an influx of people moving to Florida from states with higher wages and cost of living, which has caused an upsurge in rental rates in Florida.

Part II of Chapter 83, Florida Statutes, commonly known as the "Florida Residential Landlord and Tenant Act" (the "Act"), applies to the rental of residential dwelling units and sets forth the rights and duties of landlords and tenants. The Act does not provide specific notification requirements for landlords seeking to increase rental rates.

Although some lease agreements contain provisions regarding increases in rental rates, a landlord generally may not raise rent during the term of a lease. Therefore, a landlord will have to wait until the end of the lease term of the lease to raise the rent and it is expected that notice of such will be provided in accordance with termination notices set forth by law or in accordance with the lease agreement. With respect to notices of termination of tenancy, if there is a written lease, Section 83.575 of the Act provides that the notice required to terminate a tenancy is no more than 60 days' notice. Where there is no lease, on the other hand, Section 83.57 of the Act provides that the landlord should provide a seven-day notice to a tenant renting week-to-week, a 15-day notice to a tenant renting month-to-month, a 30-day notice to a tenant renting quarter-to-quarter, and a 60-day notice to a tenant renting year-to-year.

According to court opinions and Florida Attorney General Opinion No. 94-91, the Florida Legislature has not preempted local governments from enacting ordinances that enlarge the notification period for month-to-month tenancies without a specific duration pursuant to Section

83.57 of the Act. The Attorney General concluded that such enlargement of the notification period would be supplemental to the state statute, and compliance with such ordinance is possible without violating Section 83.57.

In response to the Attorney General's opinion and to assist renters, the Miami-Dade County recently enacted an ordinance that requires 60 days written notification be given by County residential landlords to their tenants prior to increasing the tenants' rent beyond a specified percent. Additionally, states, including Alabama, Alaska, Arizona, California, Indiana, Iowa, Kansas, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, and Texas, have laws that require landlords to provide notice to their tenants prior to increasing their rents.

Analysis:

At the June 2, 2022 Regular Village Council Meeting, the Village Council directed the Interim Village Attorney to draft an ordinance similar to Miami-Dade County's ordinance, to require that residential landlords in the Village who propose to increase the rents of their tenants by five percent or more provide such tenants with advance written notice of such increase. The proposed ordinance also provides for notification period requirements for month-to-month tenancies under Section 83.57 of the Act by enlarging such notification period from 30 days to 60 days.

At its meeting on June 23, 2022, the Village Council approved the ordinance on first reading and requested additional language changes as part of its approval. Thereafter, during the July 14, 2022 Regular Village Council Meeting, the Council requested that the ordinance be brought back before it with those changes removed from the ordinance. Accordingly, the ordinance as originally written was re-advertised for first reading in the *Key West Citizen* on July 20, 2022, to be presented to the Village Council at the August 4, 2022 Regular Village Council Meeting. First reading is required since the ordinance is being presented in a format other than what was approved at the June 23, 2022 Regular Village Council Meeting.

Recommendation:

In accordance with the Village Council's prior directive, staff recommends that the Village Council adopt the attached Ordinance to create Section 22-1 in the Village Code to require landlords to provide written fair notice of termination of monthly residential tenancy without specific duration and written notification requirements related to rental payment increases for all residential tenancies.

ORDINANCE NO. __

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 22 "HOUSING," OF THE VILLAGE CODE OF ORDINANCES AT ARTICLE I "IN GENERAL" TO CREATE SECTION 22-1 "REQUIRED WRITTEN FAIR NOTICE OF TERMINATION OF MONTHLY RESIDENTIAL TENANCY WITHOUT SPECIFIC DURATION AND WRITTEN NOTIFICATION REQUIREMENTS RELATED TO RENTAL PAYMENT INCREASES FOR ALL RESIDENTIAL TENANCIES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, it is the intention of Islamorada, Village of Island (the "Village") to ensure all Village residents receive a fair notice if their rents are to increase; and

WHEREAS, according to the University of Florida's Shimberg Center for Housing Studies' 2019 Rental Market Study, there are 2.6 million renter households in the State of Florida; and

WHEREAS, during the coronavirus-2019 (COVID-19) pandemic, there has been an influx of people moving to Florida from states with higher wages and cost of living which has caused an upsurge in rental rates in Florida; and

WHEREAS, Part II of Chapter 83, Florida Statutes, commonly known as the "Florida Residential Landlord and Tenant Act" (the "Act"), applies to the rental of residential dwelling units and sets forth the rights and duties of landlords and tenants; and

WHEREAS, the Act does not provide specific notification requirements for landlords seeking to increase rental rates; and

WHEREAS, although some lease agreements contain provisions regarding increases in rental rates, a landlord generally may not raise rent during the term of a lease; and

WHEREAS, therefore, a landlord will have to wait until the end of the lease term of the lease to raise the rent and it is expected that notice of such will be provided in

accordance with termination notices set forth by law or in accordance with the lease agreement; and

WHEREAS, with respect to notices of termination of tenancy, if there is a written lease, Section 83.575 of the Act provides that the notice required to terminate a tenancy is no more than 60 days' notice; and

WHEREAS, where there is no lease, on the other hand, Section 83.57 of the Act provides that the landlord should provide a seven-day notice to a tenant renting week-to-week, a 15-day notice to a tenant renting month-to-month, a 30-day notice to a tenant renting quarter-to-quarter, and a 60-day notice to a tenant renting year-to-year; and

WHEREAS, there is no explicit notice provision for increases in rent in the Act; and

WHEREAS, according to court opinions and Florida Attorney General Opinion No. 94-91, the Florida Legislature has not preempted local governments from enacting ordinances that enlarge the notification period for month-to-month tenancies without a specific duration pursuant to Section 83.57 of the Act; and

WHEREAS, the Attorney General concluded that such enlargement of the notification period would be supplemental to the state statute, and compliance with such ordinance is possible without violating Section 83.57; and

WHEREAS, in response to the Attorney General's opinion and to assist renters, the Miami-Dade County recently enacted an ordinance that requires 60 days written notification be given by County residential landlords to their tenants prior to increasing the tenants' rent beyond a specified percent; and

WHEREAS, additionally, states, including Alabama, Alaska, Arizona, California, Indiana, Iowa, Kansas, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, and Texas, have laws that require landlords to provide notice to their tenants prior to increasing their rents; and

WHEREAS, accordingly, the Village Council desires to require that residential landlords in the Village who propose to increase the rents of their tenants by five percent or more shall provide such tenants with advance written notice of such increase; and

WHEREAS, further, the Village Council also desires to provide for notification period requirements for month-to-month tenancies under Section 83.57 of the Act by enlarging such notification period from 30 days to 60 days; and

WHEREAS, the Village Council finds it to be in the best interest of the Village and its residents to adopt this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Code Amendment. Chapter 22 "Housing," Article I "In General," is hereby amended to create Section 22-1 "Required written fair notice of termination of monthly residential tenancy without specific duration and written notification requirements related to rental payment increases for all residential tenancies" to read as follows:¹

Chapter 22 – HOUSING

ARTICLE I. – IN GENERAL

Section 21-1. - Required written fair notice of termination of monthly residential tenancy without specific duration and written notification requirements related to rental payment increases for all residential tenancies

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

¹ Additions to existing City Code text are shown in underline. Deletions to existing text are shown in ~~striketrough~~.

- (1) "Dwelling unit" means:
 - (i) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.
 - (ii) A mobile home rented by a tenant.
 - (iii) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.
- (2) "Landlord" means the owner or lessor of a dwelling unit.
- (3) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.
- (4) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.
- (5) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.
- (6) "Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant for a dwelling unit.
- (b) *Notice of Termination.* A residential tenancy without a specific duration in which the rent is payable on a monthly basis may be terminated by either the landlord or tenant by giving not less than 60 days' written notice prior to the end of any monthly period.
- (c) *Notice of Rent Increase.* A landlord that proposes to increase the rent by more than five percent at the end of a rental agreement for a specific term, or during a residential tenancy without a specific duration in which the rent is payable on a

monthly basis, must provide a minimum of 60 days' written fair notice to the tenant before the tenant must either:

- (1) Accept the proposed rent increase;
- (2) Reach an acceptable compromise; or
- (3) Reject the proposed rent increase.

If the required 60 days' written fair notice has been provided and the tenant has not agreed to the proposed rent increase or an acceptable compromise, the landlord may impose the proposed rent increase or require the tenant(s) to vacate the dwelling unit.

- (d) Except for the notice provisions set forth in subsection (b) and (c), all other provisions set forth in Part II of Chapter 83, Florida Statutes, as such may be amended, shall govern residential tenancies.

Secs. 22-12—22-10. - Reserved.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Islamorada, Village of Islands, Florida; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Repeal of Conflicting Provisions. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

(This space is intentionally left blank)

The foregoing Ordinance was offered by _____, who moved its adoption on first reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Pete Bacheler _____
Vice Mayor Henry Rosenthal _____
Councilman Mark Gregg _____
Councilman Joseph B. Pinder III _____
Councilman David Webb _____

PASSED on first reading this ____ day of _____, 2022.

The foregoing Ordinance was offered by _____, who moved its adoption on second reading. This motion was seconded by _____. and upon being put to a vote, the vote was as follows:

Mayor Pete Bacheler _____
Vice Mayor Henry Rosenthal _____
Councilman Mark Gregg _____
Councilman Joseph B. Pinder III _____
Councilman David Webb _____

PASSED AND ADOPTED on the second reading this ____ day of _____, 2022.

PETE BACHELER, MAYOR

ATTEST:

MARNI MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

VILLAGE ATTORNEY