

**Council Member Balarin introduced the following:**

**LOCAL LAW F OF 2021**

**LOCAL LAW AMENDING PART 2 (COURTS AND LEGAL PROCEDURES) OF CHAPTER 30 (COURTS AND LEGAL PROCEDURES) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO EVICTION PROCEEDINGS**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Article XXII (Rules of Practice of the City Court of Albany) of Part 2 (City Court Act) of Chapter 30 (Courts and Legal Procedures) of Part I (Administrative Legislation) of the Code of the City of Albany is hereby amended by adding a Section 30-323, to read as follows:

**§30-323 Special rules for eviction proceeding**

Filing of Residential Occupancy Permit Required. No action for eviction may be commenced without the Petitioner's having submitted to the Court a copy of the most recently-issued Residential Occupancy Permit issued according to Part 4 of Chapter 231 of this Code for the rental dwelling unit of which the Petitioner is seeking possession or an allegation that deregistration and suspension of said Residential Occupancy permit was done in violation of this Chapter.

**Section 2.** Part 2 (City Court Act) of Chapter 30 (Courts and Legal Procedures) of Part I (Administrative Legislation) of the Code of the City of Albany is hereby amended by adding an Article XXIII, entitled "Prohibition of Eviction Without Good Cause," to read as follows:

**Article XIII Prohibition of Eviction Without Good Cause**

**§ 30-324 Short Title.**

This article shall be cited as the "Prohibition of Eviction Without Good Cause Law."

**§30-325 Definitions.**

- A. The term "housing accommodation," as used in this article, shall mean any residential premises located in the City of Albany.
- B. The term "landlord," as used in this article, shall mean any owner, lessor, sublessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any housing accommodation or an agent of any of the foregoing.
- C. The term "tenant" as used in this article shall mean a tenant, sub-tenant, lessee, sublessee, assignee, manufactured home tenant as defined in paragraph one of subsection (A) of section two hundred thirty-three of this chapter, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the Real Property Actions and Proceedings Law or any other person entitled to the possession, use or occupancy of any housing accommodation.

- D. The term “rent” as used in this article shall mean any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations.
- E. The term “disabled person” as used in this article shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

**§ 30-326 Applicability.**

This article shall apply to all housing accommodations except:

- A. Owner-occupied premises with less than four units;
- B. Premises sublet pursuant to section two hundred twenty-six-b of the Real Property Law or otherwise, where the sublessor seeks in good faith to recover possession of such housing accommodation for their own personal use and occupancy;
- C. Premises where the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated; and
- D. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires “good cause” for termination or non-renewal of such tenancies.

**§ 30-327 Necessity for good cause.**

No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodation except for good cause as defined in section three hundred twenty-eight of this article.

**§ 30-328 Grounds for removal of tenants**

- A. No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:
- (1) The tenant has failed to pay rent due and owing, provided, however, that the rent due and owing, or any part thereof, did not result from a rent increase or pattern of rent increases which, regardless of the tenant's prior consent, if any, is unconscionable or imposed for the purpose of circumventing the intent of this

article. In determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases, the Court may consider, among other factors, i) the rate of the increase relative to the tenant's ability to afford said increase, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c) of the Real Property Actions and Proceedings Law, iv) significant market changes relevant to the subject unit, and v) the condition of the unit or common areas serving the unit, and it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding five percent;

- (2) The tenant is violating a substantial obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article;
- (3) The tenant is committing or permitting a nuisance in such housing accommodation, or is maliciously or by reason of negligence damaging the housing accommodation; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures;
- (4) Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefor; provided however that the City of Albany has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the order to vacate. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to their health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable laws;
- (5) The tenant is using or permitting the housing accommodation to be used for an illegal purpose;

- (6) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee, or other person having a legitimate interest therein;
- (7) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units because of immediate and compelling necessity for their own personal use and occupancy as their principal residence, or the personal use and occupancy as principal residence of their partner, spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable housing accommodation in such building is available. This paragraph shall permit recovery of only one housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a disabled person;
- (8) The landlord seeks in good faith to recover possession of any or all housing accommodations located in a building with less than five units to personally occupy such housing accommodations as their principal residence;
- (9) The owner-landlord has in good faith entered into a contract for the sale of the housing accommodation and such contract requires that the housing accommodation be transferred free and clear of any and all residential tenancy obligations as a condition of such sale where the owner-landlord has no shared financial or other interest with the potential buyer other than the sale of the housing accommodation in question and submitted sufficient proof to the court thereof; or
- (10) Except where notice is issued pursuant this subsection for the purpose of circumventing the intent of this article, where the owner-landlord has notified the tenant in writing of the owner-landlord's intention not to renew a written lease not less than five months in advance of the non-renewal date and the tenant consents, provided that at the time of filing of an eviction proceeding the landlord has in good-faith entered into an enforceable lease agreement with a different party in an arms-length transaction for the premises occupied by the tenant. The non-renewal notice provided for in this section must include language advising the tenant of their right to renew their tenancy and thereby reject the non-renewal, that tenant's consent must be provided in writing and that the tenant may not be subjected to retaliation for such rejection. The tenant's consent may be withdrawn any time prior to the owner-landlord's entrance into new lease agreement for the subject premises.

B. A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (7), (8), or (9) of subsection (A) of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the housing accommodation. In any action or proceeding brought pursuant

to this provision a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees.

C. Nothing in this section shall abrogate or limit the tenant's right, pursuant to section seven hundred fifty-one of the Real Property Actions and Proceedings Law, to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the Real Property Actions and Proceedings Law.

**§ 30-329 Preservation of existing requirements of law.**

No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants including, without limitation, the manner and the time of service of such notice and the contents of such notice.

**§ 30-330 Waiver of rights void.**

Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this article shall be void as contrary to public policy.

**§ 30-331 Severability.**

If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

**§ 30-332 Effective Date**

This article shall take effect upon final passage, public hearing, and filing with the Secretary of State and shall apply to actions and proceedings commenced on or after such effective date.

**Section 3.** This local law shall take effect upon final passage, public hearing and filing with the Secretary of State.

**APPROVED AS TO FORM THIS  
6<sup>TH</sup> DAY OF MARCH, 2021**

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**Corporation Counsel**

**To:** Danielle Gillespie, City Clerk

**From:** Laura Gulfo, Esq., Assistant Corporation Counsel  
Robert Magee, Esq., Deputy Corporation Counsel  
Brett Williams, Esq., Senior Assistant Corporation Counsel

**Re:** Request for Common Council Legislation  
Supporting Memorandum

**Date:** March 1, 2021

**Sponsor:** Council Member Balarin

## **LOCAL LAW F OF 2021**

### **TITLE**

LOCAL LAW AMENDING PART 2 (COURTS AND LEGAL PROCEDURES) OF CHAPTER 30 (COURTS AND LEGAL PROCEDURES) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO EVICTION PROCEEDINGS

### **GENERAL PURPOSE OF LEGISLATION**

#### Section 1:

The purpose of this proposal is to make evictions in City Court more efficient by requiring the filing of an ROP a requirement of commencing an eviction proceeding.

ACC §30-323(A) – Special Rules for Eviction Proceedings, Filing of Residential Occupancy Permit Required – requires that a party seeking to recovery property in the course of an eviction proceeding to file a copy of the active ROP with the City Court along with the petition for eviction.

#### Section 2:

To prohibit residential evictions within the City of Albany without good cause.

The following additions are made to Chapter 30 of the Albany City Code:

**§30-324 Short Title:** Adds short title which shall be cited as the “Prohibition of Eviction Without Good Cause Law.”

**§30-325 Definitions:** Adds definitions of “housing accommodation,” “landlord,” “tenant,” “rent,” and “disabled person.”

**§30-326 Applicability:** Adds exceptions to the applicability of the law, which, in general, applies to all housing accommodations.

**§30-327 Necessity for good cause:** Prohibits landlords from removing tenants from housing accommodations except for good cause, as defined in §30-328.

**§30-328 Grounds for removal of tenants:** Subsection 1 illustrates, in detail, the nine grounds that landlords may establish to meet the “good cause” standard for lawful eviction; landlords are required to satisfy only one of these grounds. Subsection 2 provides tenants with a cause of action (seeking damages, declaratory, and injunctive relief as well as reasonable attorney’s fees) against landlords or purchasers of the housing accommodation who have made fraudulent statements regarding the proposed use of housing accommodation. Subsection 3 reiterates tenants’ protections under the real property actions and proceedings law (“RPAPL”) §751 to permanently stay an eviction, the underlying basis for which is the nonpayment of rent.

**§30-329 Preservation of existing requirements of law:** Provides a tenant with a basis to pursue dismissal of an eviction proceeding where the landlord has failed to comply with all applicable laws governing such a proceeding, including, but not limited to, the laws governing notice to tenants and the provisions under the New York State Housing Stability and Tenant Protection Act (“HSTPA”) of 2019.

**§30-330 Waiver of rights void:** Voids, as contrary to public policy, any agreement wherein a tenant has waived or modified rights afforded under this article.

**§30-331 Severability:** Allows severability of provisions of this article in that if any provision is held to be invalid, said holding shall not affect the validity or effectiveness of any other provision of this article.

**§30-332 Effective Date:** Provides that this article shall take effect immediately and shall apply to actions and proceedings commenced on or after the effective date.

## **NECESSITY FOR LEGISLATION**

### **Section 1:**

Eviction proceedings are usually delayed while it is determined whether an ROP is active for the building in question. This will save significantly on administrative costs by making the filing of an active ROP part of what the landlord files at the outset of the eviction proceedings. This also protects tenants whose rent is subject to a levy by the City for repair costs. Though the Building Department does not do this, it may in the future and if it does it will be important to ensure that tenants subject to a levy are protected.

### **Section 2:**

The New York State Housing Stability and Tenant Protection Act (“HSTPA”) passed in 2019 provide protections for tenants that have the effect of delaying the initiation of an eviction proceeding. Excluded from the HSTPA is any requirement for the landlords or property owners to provide a justification for said eviction or removal of tenants from housing accommodations in the City of Albany. This legislation seeks to bridge that gap.

Good cause eviction law shall prohibit a landlord from removing a tenant from a housing accommodation without an order from a judge who decides whether or not the eviction is for a

good cause. The proposed legislation identifies nine grounds which a landlord may cite when pursuing an eviction or removal of a tenant from a housing accommodation; a landlord must only satisfy one of the nine available grounds. Briefly, those nine grounds contemplate (a) tenant's failure to pay rent, with consideration to a rental increase, if any; (b) tenant's violation of an obligation of the tenancy and failure to cure said violation; (c) nuisance in the housing accommodation either caused or permitted by the tenant; (d) tenant's occupancy of the housing accommodation, which is in violation or causes a violation of law and the landlord is subject to civil or criminal penalties, with considerations; (e) tenant uses or permits the housing accommodation to be used for an illegal purpose; (f) tenant's unreasonable refusal to allow the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation, subject to notice requirements under the HSTPA; (g) landlord's good faith recovery of the housing accommodation in a building with fewer than twelve units, subject to conditions; (h) landlord's good faith recovery of the housing accommodation in a building with fewer than five units for the landlord's personal occupancy, such as their principal residence; and (i) landlord's good faith contract for the sale of the housing accommodation wherein the housing accommodation shall be transferred free and clear of all residential tenancy obligations as a condition of the sale.

To satisfy one of these grounds in an eviction proceeding, the landlord is required to first identify the ground or grounds pursuant to which the landlord seeks removal of the tenant, which will likely require statements from the landlord filed with the complaint or petition in court. As such, this legislation provides tenants with a cause of action for damages, including reasonable attorney's fees, if the landlord has submitted or made fraudulent statements regarding the proposed use of the housing accommodation.

This proposed legislation is generally applicable to housing accommodations within the City of Albany. Notably, however, this proposed legislation excludes owner-occupied units with less than four units, i.e. the property owner's primary residence. Other housing accommodations excluded are sublease arrangements where the sublessor, in good faith, seeks to recover possession for their own personal use and occupancy; and premises where the possession, use, or occupancy which is solely incidental to employment and the employment is lawfully terminated.

## **FISCAL IMPACT**

None.