



INFORMATIONAL MEMORANDUM

TO: **Planning and Community Development Committee**

FROM: **Laurel Humphrey, Legislative Analyst**
Kari L. Sand, City Attorney
Nora Gierloff, AICP, Director DCD

DATE: **July 27, 2023 [\(UPDATED 10/30/23 – See Page 5\)](#)**

SUBJECT: **Renter Protection Policy Proposals**

ISSUE

The [Transit Riders Union](#) (TRU) approached the City Council about adding additional regulations/protections for tenants in Tukwila.

BACKGROUND

The Planning and Community Development Committee discussed the proposals at its [May 1, 2023 meeting](#) and requested that the City Attorney prepare a preliminary opinion on legal risk prior to any legislation being drafted. This memo provides that analysis as well as comments from the DCD Director on the proposed changes to the Residential Rental Business License & Inspection Program and suggestions for gathering community feedback.

City Attorney Analysis

Attached as Exhibit 1 is a “Renter Protections Comparison Chart” provided by the Transit Riders Union (“TRU”), which shows other jurisdictions that have adopted renter protections greater than Washington state law. Attached as Exhibit 2 is the “TRU Renter Protections Policy Proposal,” which has been color coded based on legal risk using a traffic light metaphor, as explained further below, with some additional comments from the Tukwila City Attorney’s Office. The color-coded categories are explained as follows.

GREEN: Policies that carry a low legal risk and have been enacted by cities of similar size to Tukwila

- The “GREEN” proposed policies include:
 - ~~Requiring additional notice of rent increases regarding 120 days’ notice if the increase is greater than 3% and 180 days’ notice if the increase is greater than 5%;~~
 - Capping move-in costs as proposed by TRU;
 - ~~Enacting just cause protections;~~
 - Establishing a proactive education and outreach program to inform tenants of their rights;
 - Posting requirements in a public area (if possible) and documentation provided at time of lease signing and annually thereafter; and

- Prohibiting rent increases for units not passing inspection due to unsafe or poor conditions.
- Alternatives to some of the proposed policies that would be “green” may include:
 - Capping late fees at 1.5%-2% of monthly rent
- The “green” policies present relatively low risk if approved by the Tukwila City Council and have been enacted by similar cities, including SeaTac. These policies present low legal risk because they have been: (1) unchallenged thus far and (2) do not conflict with state law. This is particularly true regarding just cause protections. The state enacted a just case law in 2021, requiring landlords to specify a reason for refusing to continue a residential tenancy, subject to certain limitations, and allowing cities to impose more expansive just cause provisions, provided they do not prohibit landlords from initiating proper unlawful detainer actions unless specific just cause requirements are met. [RCW 59.18.650](#); see *Rental Housing Ass’n of Wash. v. City of Burien*, 2022 WL 3715061 (Wash. Ct. App. Aug. 29, 2022). The so-called “lease loophole,” as described by TRU, allows landlords to evict people on yearlong leases without reason by not renewing their lease. See [RCW 59.18.650\(1\)\(b\)-\(c\)](#). SeaTac enacted a just cause ordinance that is stronger than the State’s; however, it retained the lease loophole, though other jurisdictions (e.g., Seattle, Auburn, Federal Way, Kenmore, and unincorporated King County) have removed the loophole. See [STMC 4.05.090](#). Additionally, the policies regarding establishing a proactive education and outreach program in addition to posting requirements and providing documentation are similar to “Tenant Information Packets” provided in cities such as Auburn, Burien, and SeaTac. These cities all require that those packets be publicly available and provided to tenants by landlords (note: Tukwila is currently working on a Language Access Plan to provide more city documents in the community’s top languages, and tenant information will be included). Thus, those specific requirements are likely to have a low legal risk and have been implemented in similar cities to Tukwila.

YELLOW: Policies that carry a medium level of legal risk and have not been enacted by similar cities

- The “**YELLOW**” proposed policies include:
 - Allowing tenants to end a lease early for rent increases over 5%;
 - Capping late fees at \$10;
 - Banning most winter evictions;
 - Broadly strengthening Tukwila’s rental property inspection program;
 - Regulating additional fees and costs added to rent;
 - Removing social security number (“SSN”) requirements;
 - Allowing renters on fixed income to change the rent due date; and
 - Banning deceptive and abusive practices.
- The “yellow” policies present a relatively medium level of legal risk and largely have not been enacted by cities similar to Tukwila. These policies present a medium level of legal risk because they are: (1) arguably in conflict with state law, (2) have not been used in cities with limited staff resources, such as Tukwila, and (3) may place an increased burden on the City. Neither the right for tenants to leave a lease early for rent increases over 5%, nor regulation of additional fees and costs added to rent (except for delivery fees in Seattle) have been enacted by *any* city highlighted by TRU. Thus, these proposed policies are largely untested, may be challenged, and may not survive legal scrutiny by a court. Additionally, while the removal of SSN requirements and allowing renters on fixed income to change their rent due date have both been enacted by SeaTac, the proposed policies may conflict with state and/or federal law, and though they have been unchallenged thus far, would carry legal risk as a result. Finally, banning deceptive and unfair practices would require a significant number of resources and would be difficult to enforce based on Tukwila’s relatively limited staffing resources, thereby carrying legal risk; additionally, neither similar cities nor Seattle have enacted this policy. The same is true for broadly strengthening Tukwila’s rental property inspection program. While some specific provisions carry low legal risk, others are untested and may expose the City to difficulty with enforcement and potential legal challenges.

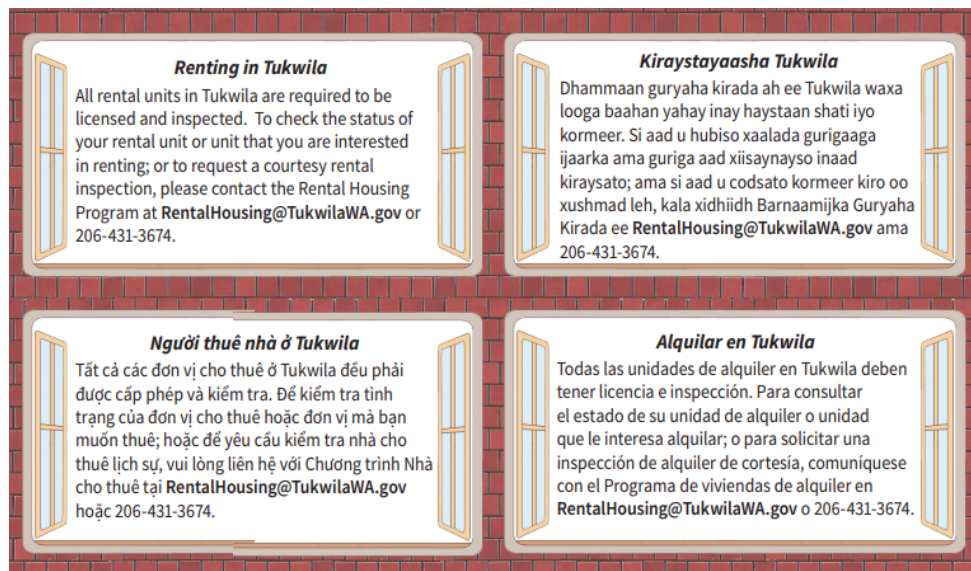
RED: Policies that carry a high legal risk, regardless of enactment by other WA jurisdictions

- The “**RED**” proposed policies include:
 - Requiring relocation assistance for rent increases beyond what is required by the State;
 - Banning most evictions of families and educators during the school year;
 - Enacting a Fair Chance Housing law; and
 - Enacting a first-in-time (“FIT”) rental application law.
- The “red” proposed policies present a relatively high level of legal risk. These policies present a high level of legal risk because they are: (1) clearly in conflict with existing law,

(2) controversial, and (3) place a very high burden on landlords. Additionally, all these policies have *only* been enacted by Seattle, and many have already been subject to legal challenges. Relocation assistance for rent increases as proposed by TRU seems to go far beyond the limitations outlined in State law (note: Tukwila currently requires relocation assistance under chapter 8.46 TMC when a rental unit fails inspection to such a degree that the conditions endanger life safety, and failure to obtain a Certificate of Compliance will result in the non-issuance or revocation of the rental business license for that unit. See TMC 5.06.120.). See [RCW 59.18.440](#). It would additionally impose a significant burden on landlords. For example, while state law only requires relocation assistance for low-income tenants under specific circumstances and limits assistance to \$2,000 or less with the owner only responsible for one-half of the assistance, TRU's proposal would require assistance equal to three months' rent for tenants in all income brackets in some cases and would create a private right of action. This goes far beyond most protections for tenants and would perhaps unfairly burden landlords. While the bans on certain types of evictions have been upheld in some courts, they are still controversial and would likely expose the City up to legal challenge if implemented. The same is true for the proposed first-in-time rental application law. Finally, the fair chance housing law is currently in conflict with existing law, as the Ninth Circuit recently held that Seattle's fair chance housing law was impermissible and that cities may not prohibit landlords from inquiring about the criminal history of current or potential tenants. *Yim v. City of Seattle*, 63 F.4th 783 (9th Cir. 2023). Thus, an enactment of the same policy would be illegal based on the holding in the *Yim* case.

Rental Housing Program

Some of the TRU proposals are already part of Tukwila's practices. For example, we advertise the availability of "courtesy inspections" for tenants concerned about their living conditions on the [rental licensing webpage](#) and in the Hazelnut newsletter, as shown below. However, some tenants are reluctant to ask for inspections due to fear of retaliation, so code language to protect them could be considered.



As a pilot project this year we are offering city inspection of up to 12-unit buildings to assess the impact on staff workload. Legally we must allow any property owner to select a qualified inspector of their choice. We have encountered only a few low-quality outside inspectors over the years, but as TRU suggests, we could consider a more systematic audit of these third-party inspectors rather than the complaint or issue driven process we have now. The annual license renewal process would be an effective way to communicate any changes to rental regulations adopted by Council to Tukwila’s rental property owners.

Public Outreach

Staff suggests conducting outreach to seek feedback on the proposals that the Committee would like to consider. Following are suggested methods:

- Councilmember discussions with constituents
- Online survey
- Article in Hazelnut or E-Hazelnut, depending on timing
- Email to all current Board & Commission members
- Notice to landlords enrolled in Residential Rental Business License and Inspection Program and rental housing associations
- Notice to Community Based Organizations
- Information page on City website

RECOMMENDATION

Staff is seeking Committee direction on next steps, which could include public outreach and developing legislation. It would be helpful to know which specific policy proposals the Committee is interested in pursuing.

October 30, 2023 Update

[On August 7, 2023 the Planning and Community Development Committee discussed the proposal and directed staff to prepare a draft ordinance with certain low-risk tenant protections. Since this issue was last discussed in Committee, the City Attorney has revised](#)

[her recommendation based upon a pending legal challenge against the City of Kenmore for some of its recently adopted tenant protection language. A draft ordinance has been prepared that no longer includes protections associated with Rent Increase Notices or Just Cause Eviction.](#)

[Staff is seeking a Committee recommendation on the draft ordinance and next steps on public outreach.](#)

ATTACHMENTS

Exhibit 1: [TRU Renter Protections Comparison Chart](#)

Exhibit 2: [TRU Renter Protections Policy Proposal with color-coding.](#)

[Exhibit 3: Draft Ordinance](#)

DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, REPEALING ORDINANCE NO. 2526, AS CODIFIED AT TUKWILA MUNICIPAL CODE (TMC) CHAPTER 8.47; REENACTING TMC CHAPTER 8.47, “RENTAL HOUSING TENANT PROTECTIONS;” PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, over the past several years, average rents in South King County have increased, and vacancies for affordable rental housing are at low levels, making it difficult for tenants, especially those with low incomes, to locate affordable rental housing; and

WHEREAS, the King County Regional Affordable Housing Task Force issued its *Final Report and Recommendations for King County, WA*, December 2018 (rev. October 2019) (hereafter referred to as “*Regional Affordable Housing Task Force Final Report*”), which identifies that renting rather than owning a home increases the chances of being severely cost burdened, and recognizes an existing affordable housing crisis in King County; and

WHEREAS, the Regional Affordable Housing Task Force Final Report includes a regional plan with goals, strategies and a Five-Year Action Plan to address the affordable housing crisis, and Goal 4 of the action plan is to “[p]reserve access to affordable homes for renters by supporting tenant protections to increase housing stability and reduce risk of homelessness”; and

WHEREAS, the King County Countywide Planning Policies, developed pursuant to the Washington State Growth Management Act, suggest that local jurisdictions “[a]dopt and implement policies that protect housing stability for renter households; expand protections and supports for moderate-, low-, very low-, and extremely low-income renters and renters with disabilities”; and

WHEREAS, the Tukwila community includes a relatively high percentage of renters compared to the Washington State average, with the most recent census data indicating that just 42.7% of housing units are owner-occupied, which is significantly lower than the statewide average of 63.6%; and

WHEREAS, enhanced tenant protections, in addition to those in the Residential Landlord-Tenant Act (chapter 59.18 RCW), are in the best interests of the residents of Tukwila and will promote the public health, safety, and welfare of the City; and

WHEREAS, the City Council is committed to maintaining vibrant and diverse neighborhoods while balancing the needs of landlords and tenants; and

WHEREAS, to ensure adequate time to educate landlords about the requirements and responsibilities imposed on them as a result of this ordinance, and to give landlords time to update their administrative processes to achieve compliance with this ordinance, the effective date of this ordinance shall be delayed to January 1, 2024.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Repealer. Ordinance No. 2526 is hereby repealed in its entirety, thereby eliminating Tukwila Municipal Code (TMC) Chapter 8.47, "Fair Housing Regulations."

Section 2. TMC Chapter 8.47 Reenacted. TMC Chapter 8.47 is hereby reenacted to read as follows:

CHAPTER 8.47
RENTAL HOUSING TENANT PROTECTIONS

<u>Sections:</u>	
<u>8.47.010</u>	<u>Definitions</u>
<u>8.47.020</u>	<u>Applicability</u>
<u>8.47.030</u>	<u>Distribution of information required</u>
<u>8.47.040</u>	<u>Deposit requirements and installment payments permitted</u>
<u>8.47.050</u>	<u>Late fees</u>
<u>8.47.060</u>	<u>Due date adjustments</u>
<u>8.47.070</u>	<u>Social security numbers not required</u>
<u>8.47.080</u>	<u>Violations and penalties</u>

Section 3. Regulations Established. TMC Section 8.47.010 is hereby established to read as follows:

8.47.010 Definitions

The definitions of this section apply through this chapter unless the context clearly requires otherwise. The definitions of RCW 59.18.030 under the Residential Landlord-Tenant Act (RLTA), as now in effect or as may be subsequently amended, also apply to this chapter unless otherwise defined in this section.

"Dwelling" or "dwelling unit" has the same meaning as RCW 59.18.030(10), as now in effect or as may be subsequently amended, and means a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more

persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

“Landlord” has the same meaning as RCW 59.18.030(16), as now in effect or as may be subsequently amended, excluding the living arrangements identified in RCW 59.18.040, and means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and further 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.

“Rent” has the same meaning as RCW 59.18.030(29), as now in effect or as may be subsequently amended, and means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. Except as provided in RCW 59.18.283(3), rent does not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys’ fees.

“Rental Agreement” or “lease” has the same meaning as RCW 59.18.030(30), as now in effect or as may be subsequently amended, and means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

“Security Deposit” means a refundable payment or deposit of money, however designated, owed by the tenant to the landlord at the commencement of a rental agreement to secure performance of a rental agreement or any part of a rental agreement.

“Subsidized Housing” has the same meaning as RCW 59.18.030(33), as now in effect or as may be subsequently amended, and refers to rental housing for very low-income or low-income households that is a dwelling unit operated directly by a public housing authority or its affiliate, or that is insured, financed, or assisted in whole or in part through one of the following sources: (a) a federal program or state housing program administered by the Department of Commerce or the Washington State Housing Finance Commission; (b) a federal housing program administered by a city or county government; (c) an affordable housing levy authorized under RCW 84.52.105; or (d) the surcharges authorized in RCW 36.22.250 and any of the surcharges authorized in chapter 43.185C RCW.

“Tenant” has the same meaning as RCW 59.18.030(34), as now in effect or as may be subsequently amended, and excluding the living arrangements identified in RCW 59.18.040, and RCW 59.20.030(24), as now in effect or as may be subsequently amended, and means any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement, and RCW 59.20.030 defines “tenant” as any person, except a transient, who rents a mobile home lot.

Section 4. Regulations Established. TMC Section 8.47.020 is hereby established to read as follows:

8.47.020 Applicability

The provisions of this chapter apply to tenancies governed by Chapter 59.18 RCW (Residential Landlord Tenant Act) and Chapter 59.20 RCW (Manufactured/Mobile Home Landlord-Tenant Act) and are in addition to the provisions provided in said chapters of the RCW. The provisions of this chapter shall not apply to rental agreements between an owner and tenant where the owner shares the dwelling unit as a primary residence with the tenant.

Section 5. Regulations Established. TMC Section 8.47.030 is hereby established to read as follows:

8.47.030 Distribution of information required.

A. The City shall prepare, and update as necessary, summaries of this chapter, the Nuisance Code (TMC Section 8.28.020), the Washington State Residential Landlord Tenant Act (Chapter 59.18 RCW), Forcible Entry and Unlawful Detainer (Chapter 59.12 RCW), and Fair Housing laws, describing the respective rights, obligations, and remedies of landlords and tenants, including information about legal resources available to tenants.

B. A landlord shall provide a copy of the summaries prepared by the City as described in subsection A of this section to any tenant or prospective tenant when a rental agreement is offered, whether the agreement is for a new or renewal agreement.

C. Where there is an oral rental agreement, the landlord shall give the tenant copies of the summaries as described in subsection A of this section, either before entering into the oral rental agreement or as soon as reasonably possible after entering into the oral rental agreement.

D. For existing tenants, landlords shall, within thirty (30) days after the summaries are made available by the City, distribute copies of the summaries to existing tenants.

E. The initial distribution of information to tenants must be in written form and landlords shall obtain the tenant's signature documenting tenant's receipt of such information. If a tenant refuses to provide a signature documenting the tenant's receipt of the information, the landlord may draft a declaration stating when and where the landlord provided tenant with the required information. After the initial distribution of the summaries to tenants, a landlord shall provide existing tenants with the most current summaries prepared by the City, which summaries may be distributed in electronic form, unless a tenant specifically requests written summaries in hard copy form.

F. The packet prepared by the City includes informational documents only, and nothing in the summaries therein shall be construed as binding on or affecting any judicial determination of the rights and responsibilities of landlords and tenants, nor is the City liable for any misstatement or misinterpretation of the applicable laws.

Section 6. Regulations Established. TMC Section 8.47.040 is hereby established to read as follows:

8.47.040 Deposit requirements and installment payments permitted.

A. The sum of any security deposits and nonrefundable move-in fees charged by a landlord before a tenant takes possession of a dwelling unit shall not exceed an amount equal to one month's rent, except in subsidized housing where the amount of rent is set based on the income of the tenant. The exception for subsidized housing shall not include tenancies regulated under Section 8 of the Housing Act of 1937, 42 U.S.C. Section 1437f, commonly known as the "choice voucher program."

B. Tenants entering rental agreements with terms lasting six or more months may choose to pay their move-in fees and security deposits in six equal monthly installments over the first six months occupying the dwelling unit.

C. Tenants entering rental agreements with terms lasting fewer than six months or month-to-month rental agreements may choose to pay move-in fees and security deposits in two equal monthly installments over the first two months occupying the dwelling unit.

D. Landlords may not impose any fee, charge any interest, or otherwise impose a cost on a tenant because a tenant elects to pay in installments.

E. Installment payments are due at the same time rent is due.

F. All installment schedules must be in writing, signed by both parties.

G. Paying in installments does not apply to a landlord obtaining a tenant screening report, which report cost paid by the tenant shall be limited to the standard and actual cost of the tenant screening report.

H. No security deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of, or existing damages to, the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the beginning of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement.

I. A landlord must place any required security deposit in a trust account and provide a written receipt and notice of the name, address, and location of the depository and any subsequent change thereof to the tenant, in compliance with the requirements of RCW 59.18.270.

J. Nothing in this section prohibits a landlord from bringing an action against a tenant to recover sums exceeding the amount of the tenant's security deposit for damage to the dwelling unit for which the tenant is responsible. The landlord may seek attorney's fees for such an action as authorized by Chapter 59.18 RCW

Section 7. Regulations Established. TMC Section 8.47.050 is hereby established to read as follows:

8.47.050 **Late fees**

A. Any fees for late payment of rent shall not exceed 1.5% of monthly rent per month. No other fees may be charged for late payment of rent. Any rental agreement provision providing for such fees shall be deemed void with respect to any provision prohibited by this subsection. This subsection shall not apply to or limit decisions, orders, and rulings of courts of competent jurisdiction.

B. Any notice to pay or vacate served under RCW 59.12.030(3) shall include within the notice in at least sixteen (16) point bold font for the following information:

“You have 14 days to pay the rent required by this notice. After 14 days, you may pay the rent but will have to include a late fee totaling at most 1.5% of monthly rent for each month of rent owed. If the landlord has started a court case to evict you and the case is filed in court, you will need to pay court costs as well before the hearing date to avoid eviction.”

Section 8. Regulations Established. TMC Section 8.47.060 is hereby established to read as follows:

8.47.060 **Due date adjustments**

All rental agreements executed after the adoption of this ordinance shall include, or be deemed to include, a provision allowing tenants to adjust the due date of rent payments if the tenant has a regular monthly source of governmental assistance, or fixed income source (e.g., Social Security) that the tenant receives on a date of the month that is incongruent with paying rent on the date otherwise specified in the rental agreement. A landlord shall not refuse to rent to a prospective tenant or terminate a lease based on a request for a due date adjustment.

Section 9. Regulations Established. TMC Section 8.47.070 is hereby established to read as follows:

8.47.070 **Social Security numbers not required**

A landlord may request but shall not require a social security number for the purposes of screening a prospective tenant as allowed under RCW 59.18.257. A landlord shall not refuse to enter into a rental agreement with a prospective tenant or prospective occupant because the prospective tenant or prospective occupant does not agree to provide a social security number. Alternative proof of financial eligibility such as portable screening reports or other proof of income must be accepted, where available, if offered by the tenant or prospective tenant.

Section 10. Regulations Established. TMC Section 8.47.080 is hereby established to read as follows:

8.47.090 Violations and penalties

A landlord found in violation of any of the provisions in this chapter, unless otherwise provided in this chapter, shall be liable to such a tenant in a private right of action for the greater of double the tenant’s economic and noneconomic damages, or three times the monthly rent of the dwelling unit at issue, and reasonable litigation costs and attorneys’ fees.

Section 11. Corrections by City Clerk or Code Reviser Authorized. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 12. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 13. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force January 1, 2024, after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2023.

ATTEST/AUTHENTICATED:

Christy O’Flaherty, MMC, City Clerk

Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____

Passed by the City Council: _____

Published: _____

Effective Date: _____

Ordinance Number: _____

Office of the City Attorney