

## *Local Law Filing*

---

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village

(select one:)

of City of Rochester

Introductory Local Law No. 14 of the year 2021

**A LOCAL LAW TO PROHIBIT EVICTION WITHOUT A CERTIFICATE OF OCCUPANCY  
OR GOOD CAUSE**

Be it enacted by the Rochester City Council as follows:  
[Name of Legislative Body]

**LOCAL LAW # 14 OF ROCHESTER CITY COUNCIL TO PROHIBIT EVICTION WITHOUT A CERTIFICATE OF OCCUPANCY OR GOOD CAUSE**

**JUSTIFICATION:** The New York State Housing Stability and Tenant Protection Act (“HSTPA”) passed in 2019 provides protections for tenants that have the effect of delaying the initiation of an eviction proceeding. Excluded from the HSTPA is any requirement for landlords or property owners to provide a justification for said eviction or removal of tenants from housing accommodations in the City of Rochester. Thousands of regulated tenants in the City of Rochester already benefit from good cause eviction protections; however, the vast majority of tenants in Rochester are unregulated and lack these protections. This legislation seeks to expand these protections and 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.

Eviction proceedings are frequently delayed while it is determined whether a Certificate of Occupancy is active for a building in question. Section 38-1 will save significantly on administrative costs by making the filing of an active Certificate of Occupancy part of what the landlord files at the outset of the eviction proceedings.

**SUMMARY:**

A local law adding a new article 38 of the Rochester City Code to prohibit evictions from occurring during any period of noncompliance with Rochester City Code [§ 90-16](#); and prohibiting evictions without good cause.

**STATEMENT OF AUTHORITY**

This local law is authorized by Municipal Home Rule Law (chapter 36-a of the Consolidated Laws of the State of New York) and the General City Law (chapter 21 of the Consolidated Laws of the State of New York)

---

**LOCAL LAW # 14 OF THE CITY OF ROCHESTER ADDING CHAPTER 38 to the ROCHESTER CITY CODE: PROHIBITION OF EVICTIONS WITHOUT A CERTIFICATE OF OCCUPANCY OR GOOD CAUSE**

**Section 1.** Section 1 of Chapter 38 (Tenant Protections) of Part II (General Ordinances) of the Code of the City of Rochester is hereby amended by adding Chapter 38 Section 1, to read as follows:

**§ 38-1 Short Title.** This Section shall be cited as the “Prohibition of Eviction Without a Certificate of Occupancy”.

**§38-1 A Special rules for eviction proceeding**

Filing of Certificate of Occupancy Required. No action for eviction may be commenced without the Petitioner’s having submitted to the Court a copy of a valid up to date Certificate of Occupancy issued according to [§ 90-16](#) of this Code for the rental dwelling unit of which the Petitioner is seeking possession.

### **§38-1 B Collection of Rents**

No landlord, building manager, owner, agent, or other person in charge -- referred to as “landlord” hereafter -- shall collect rents during any period of noncompliance with [§ 90-16](#) of Rochester City Code which would otherwise be due and owing for the rental of premises unless and until the landlord shall have complied with the provisions herein. Nothing herein shall be construed to prevent a landlord, upon receipt of the rental property registration, from receiving the equitable value of the occupancy of the premises from the earliest date of occupancy, but in no event shall a landlord recover in excess of the agreed rent. Failure on the part of the tenant to pay the equitable value of the occupancy of the premises from the earliest date of occupancy until the landlord’s receipt of the rental property registration may not be used as a basis for eviction.

**Section 2.** Section 2 of Chapter 38 (Tenant Protections) of Part II (General Ordinances) of the Code of the City of Rochester is hereby amended by adding an Section 2 of Chapter 38, entitled “Prohibition of Eviction Without Good Cause,” to read as follows: Chapter 38, Section 2 -Prohibition of Eviction Without Good Cause

**§ 38-2 A Short Title.** This Sections shall be cited as the “Prohibition of Eviction Without a Good Cause Law.”

### **§ 38-2 B DEFINITIONS**

1. The term “housing accommodation,” as used in this article, shall mean any residential premises located in the City of Rochester.
2. 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.
3. The term “tenant” as used in this article shall mean a tenant, sub-tenant, lessee, sublessee, assignee, 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.
4. 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.
5. The term “disabled person” as used in this article shall mean a person who has any condition which substantially limits one or more of such person’s major life activities, and which are expected to be either permanent or to last for more than six months; or a person who is regarded to have such an impairment.

### **§ 38-2 C APPLICABILITY:**

This article shall apply to all housing accommodations except:

1. Owner-occupied premises with less than two units;
2. Premises where the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated; and
3. 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.

#### **§ 38-2 D 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 § 38-2 E of this chapter.

#### **§ 38-2 E GROUNDS FOR REMOVAL OF TENANTS**

1. 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 through the provision of clear and convincing evidence one of the following grounds as good cause for removal or eviction:

- (a) 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 unreasonable 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;

(b) 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;

(c) The tenant is committing or permitting a nuisance in such housing accommodation, or is maliciously or by reason of negligence damaging the housing accommodation;

(d) 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 therefore; provided however that the Department of Neighborhood and Business Development 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;

(e) The tenant has used or permitted the housing accommodation to be used for an illegal purpose;

(f) 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;

(g) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than four 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;

2. 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.

3. 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.

#### **§ 38-2 F 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.

#### **§ 38-2 G 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.

#### **§ 38-2 H 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.

#### **§ 38-3 I Effective Date**

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