

March 27, 2020

MEMORANDUM

To: Seattle City Councilmembers
From: Asha Venkataraman, Analyst
Subject: Council Bill 119761: Eviction defense during and after the COVID-19 civil emergency

On March 23, 2020, Councilmember González sponsored for introduction and referral [Council Bill \(CB\) 119761](#). This legislation would create a defense to evictions for non-payment of rent during and six months after the end of the March 3, 2020 Proclamation of Civil Emergency. CB 119761 would be effective immediately upon passage. This memorandum provides background on this legislation, describes the bill, and next steps.

Background

In response to developments regarding the spread, transmission, and contraction of COVID-19 in Washington State and the Seattle region, Governor Inslee and Mayor Durkan issued emergency orders placing a moratorium on evictions.

Mayor Durkan issued an emergency order on March 14, 2020, which the Council modified in [Resolution 31938](#) to do the following:

- Places a moratorium on all residential evictions until the end of the civil emergency or 60 days from the effective date of the emergency order, whichever is earlier (May 16);
- Prohibits a residential landlord from initiating an unlawful detainer action, issuing a notice of termination or otherwise acting on any termination notice, including on expiring rental agreements that would terminate while the emergency order is in effect unless the action or notice is due to a tenant's actions that would constitute an imminent threat to the health or safety of neighbors or the tenant or landlord's household members;
- Bans accrual of late fees or other charges due to late payment of rent during the moratorium;
- Creates a defense to evictions occurring during the moratorium unless the tenant's actions constitute an imminent threat to the health or safety of neighbors or the tenant or landlord's household members; and
- Allows the courts to grant a continuance for pending eviction actions after the moratorium has ended, regardless of whether or not the tenant appears in court.

On March 18, Governor Inslee announced a [statewide eviction moratorium](#) in effect through April 17 that prohibits:

- A residential landlord from:
 - Serving a notice of unlawful detainer for failure to pay rent (14-day pay or vacate);
 - Issuing a notice to vacate on periodic rental agreements unless the landlord attaches an affidavit attesting that the action is necessary to ensure the health and safety of the tenant or other individual; and
 - Seeking a writ of restitution if the basis of the action is a failure to timely pay rent.
- Law enforcement from:
 - Serving or acting on eviction orders when the order is on the basis of failure to pay rent. But law enforcement can act on eviction orders not related to failure to pay rent such as waste, nuisance or commission of a crime on the premises.

The Governor's order is in effect through April 17 and the Mayor's order lasts for 60 days or the end of the civil emergency, whichever is earlier. Neither account for the duration of time beyond the civil emergency when the impact to the economy will still likely be present and the corresponding impact on the tenant's ability to pay rent beyond the short-term.

CB 119761

CB 119761 would amend [Section 22.206.180.C](#) of the Seattle Municipal Code to add a defense to eviction actions for the tenant in the following circumstances:

- The basis of the eviction action is a failure to pay rent during or within six months after the end of the civil emergency as proclaimed by the Mayor on March 3;
- The tenant can prove that the failure to pay rent is the result of any of the following, caused by the COVID-19 emergency:
 - illness;
 - loss or reduction of income;
 - loss of employment;
 - reduction in compensated hours of work;
 - business or office closure;
 - a need to miss work to care for a family member or child, where that care is uncompensated; or
 - other similar loss of income.
- The tenant would be required to vacate the residential rental unit during or within six months of the end of the civil emergency, as proclaimed by the Mayor on March 3.

This legislation would address eviction actions more narrowly in scope than the Governor or Mayor's emergency orders, but for a longer period of time. CB 119761 creates a defense to eviction under specific circumstances. It would not place prohibitions on a landlord's ability to file an unlawful detainer action, issue notices of termination, or take any other action related to evictions. Unlike the Mayor's emergency order, the defense to eviction applies in the specific circumstances detailed above rather than applying broadly to any evictions occurring during the moratorium.

CB 119761 also places the burden of proof on the tenant in court to prove that the failure resulted from any of these circumstances, but does not detail how the tenant would prove as much, leaving that determination to the court.

When the Governor or Mayor's emergency orders that established eviction moratoriums expire, this bill would allow tenants who might otherwise be evicted because of their inability to pay rent due to the impacts of the COVID-19 emergency to stay housed during and six months after the end of the civil emergency. Any filed or pending evictions could eventually be resolved after the end of the effective period of this bill. Landlords would still be able to account for how much rent was left unpaid and file an unlawful detainer action, but the defense created in this legislation would allow the court to take action that would delay physical vacation of the unit until six months after the end of the civil emergency.

Next Steps

Central Staff will be working to answer questions and craft potential amendments from Councilmembers for discussion at a subsequent committee or Council meeting, which are currently expected to occur in the next few weeks.

cc: Kirstan Arestad, Executive Director
Aly Pennucci, Supervising Analyst