

May 1, 2020

## MEMORANDUM

**To:** Seattle City Councilmembers  
**From:** Asha Venkataraman, Analyst  
**Subject:** Council Bill 119784: Providing a Defense to Eviction for Unpaid Rent

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On Monday, May 4, 2020, the Council is expected to vote on [Council Bill \(CB\) 119784](#), a “substitute” for [Council Bill 119761](#) (“original” bill). The original bill would have created 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](#). To address the effects of an amendment that modifies the duration of when this defense can be raised, a title change was necessary, requiring the introduction of the substitute bill. The substitute bill would create a defense to evictions for non-payment of rent after the expiration of the [Mayor’s Emergency Order](#) that placed a moratorium on residential evictions and provided a defense to evictions if an eviction action occurs during this moratorium period (“Mayor’s Emergency Order”).

The [March 27, 2020 Central Staff memo](#) describes the background and substance of the original bill as introduced. This memorandum briefly describes the original bill and highlights the differences between that proposal and the substitute bill. This memo also describes the differences, where applicable, from the Mayor’s Emergency Order. The Governor’s extension and expansion of the [statewide eviction moratorium](#) does not contain any defenses to eviction and thus does not impact this bill. Lastly, it describes proposed amendments to the substitute.

Attachment A to this memo provides a redline comparison of the original bill and the substitute bill for your reference.

### **CB 119761 (Original Bill)**

The original bill would have amended [Section 22.206.180.C](#) of the Seattle Municipal Code (SMC) to add a defense to eviction actions for a 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, 2020.
- The tenant can show 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 after the end of the civil emergency, as proclaimed by the Mayor on March 3, 2020.

### **Changes from CB 119761**

The substitute bill would amend SMC [Section 22.206.180.C](#) to add a defense to eviction if the eviction would result in the tenant having to vacate the unit within a certain period of time, but changes the provisions of the original bill in the following ways:

1. The Mayor's Emergency Order provides a defense to any eviction action if the eviction would occur during the moratorium unless the eviction is based on a tenant's action constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members. The original bill would provide an eviction defense effective if the eviction would occur during and six months after the end of the Mayor's civil emergency and would have superseded the eviction defense in the Mayor's Emergency Order. In contrast, the substitute bill would provide a defense to eviction only after the expiration of the defense provided in the Mayor's Emergency Order.<sup>1</sup> The change in the timing to use this defense avoids providing multiple, potentially conflicting defenses to eviction at the same time. This change also necessitated the change in title in the original bill, as it described the defense as available at any time during the civil emergency. As long as the eviction would result in the tenant having to vacate the housing unit within six months after the termination of the Mayor's Emergency Order, the defense is applicable.
2. The original bill would allow use of this defense for non-payment of rent if the failure to pay is a result of the COVID-19 emergency (e.g., illness or loss or reduction of income). In contrast, the substitute would allow use of this defense for non-payment of rent for any reason; it does not require that the non-payment is a result of the COVID-19 emergency. Councilmember Herbold and Council President González proposed this change to address concerns that requiring a tenant to prove non-payment of rent as a result of the COVID-19 emergency would increase the burden on tenants and create additional barriers for tenants who could not access documentation or were in vulnerable employment positions.
3. The original bill listed specific types of eviction actions associated with the failure to pay rent for which a tenant could raise the defense: A 14-day notice to pay rent or vacate; a ten-day notice to comply with a material term of the rental agreement to pay rent; and three or more ten-day notices for failure to habitually pay rent. The substitute bill also lists a 14-day notice to pay rent or vacate, but removes the ten-day notice provision, and changes the

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<sup>1</sup> The Emergency Order placing a moratorium on residential evictions and providing this defense will expire on May 15 unless extended by the Mayor.

habitual notice provision to four or more pay rent or vacate notices. The bill includes this change to account for the state legislature's 2019 amendments to RCW unlawful detainer provisions to limit any eviction notices regarding failure to pay rent to 14-day notices, making the ten day notice irrelevant to this bill. Therefore, if the basis of the eviction is a 14-day pay or vacate notice or four or more pay-or-vacate notices within 12 months, and the eviction would result in tenant having to vacate the housing unit within six months after the termination of the Mayor's Emergency Order, the defense is applicable.

4. The original bill included sections requesting that the Governor enact a state-wide eviction moratorium. It also addressed a procedural issue regarding the effective date of another recently passed ordinance, [Ordinance 126041](#). On March 18, 2020, the Governor enacted a state-wide eviction moratorium, which was extended and expanded until June 4, 2020. Ordinance 126041 has now gone into effect. These developments eliminate the need to include either section in the substitute bill.

In addition to those specific differences, the following additions reflect amendments proposed by Council President González after introduction of the original bill with the exception of the additional provision about attorneys' fees, which would have been an amendment sponsored by Councilmembers Herbold and Morales in collaboration with Council President González:

#### Notice

The substitute bill adds a requirement that a landlord must provide specific information on a notice to terminate tenancy. Failure to do so allows the Seattle Department of Construction and Inspections (SDCI) to direct the landlord to rescind an incorrect notice and reissue it, and if not corrected, is a defense to eviction (22.206.180.C.9.b).

#### Installment Plans

The substitute bill adds language stating that if a tenant successfully asserts the defense to eviction, the Council intends that the court automatically put the tenant on an installment plan to pay back rent in arrears (22.206.180.C.9.c).

#### Attorneys' Fees

Unless allowed by state law, awards of attorneys' fees to landlords are prohibited (22.206.180.9.d). Where the law allows for attorneys' fees per the court's discretion, this bill includes a recital stating the City's intent that the court use its discretion to not award attorneys' fees to landlords.

#### Recitals and Legislative Findings

The substitute bill changes the recitals and legislative findings to correct grammatical errors and include new developments occurring since the original bill was introduced, including the Governor's extension and expansion of the eviction moratorium and extension of the "Stay Home Stay Healthy" order.

## Severability

The substitute bill includes a severability clause. If someone were to challenge this bill in court and the court struck down part of the bill, the severability clause makes clear the intent to keep valid any remaining parts of the bill.

## **Proposed Amendments**

1. Technical corrections and legislative findings (sponsored by CP González)

These amendments would make a grammatical correction, revise references to the date of the Mayor's Emergency Order to include a reference to the Council's amendments in Resolution 31938, and add legislative findings stating compliance with [Governor's Order 20-28](#), that the action is necessary in response to the COVID-19 emergency.

2. Exemptions for small landlords (sponsored by CM Pedersen)

This amendment would limit the applicability of this defense to a tenants who live in a unit owned by a person owning more than four rental housing units. The defense would not be valid against eviction actions if the tenant lives in a unit that is owned by a person owning four or fewer rental housing units.

3. Requiring a good faith effort to access rental assistance funds (sponsored by CM Pedersen)

This amendment would require that tenants who want to use the defense apply or make a good faith effort to secure funds from a rental assistance program. Such programs include [HomeBase](#) or the [Washington State Tenancy Preservation Program](#) (TPP).

The Council should vote on Proposed Amendment 3a if Proposed Amendment 2 passes. It should vote on Proposed Amendment 3b if Proposed Amendment 2 fails.

## **Next Steps**

The substitute bill is anticipated for a vote at the Council meeting on May 4, 2020. If the Council votes to pass this legislation, it would go into effect immediately upon signature by the Mayor.

## **Attachments:**

- A. Redline Comparison of CB 119761 and CB 119784

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

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CITY OF SEATTLE

ORDINANCE \_\_\_\_\_

COUNCIL BILL \_\_\_\_\_

..title

AN ORDINANCE relating to termination of residential rental tenancies; providing a defense to evictions ~~during and after the COVID-19 state of emergency~~occurring within six months after the termination of the Mayor’s residential eviction moratorium as amended by Resolution 31938; amending Section 22.206.160 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

..body

WHEREAS, the coronavirus disease 19 (COVID-19) outbreak was declared a pandemic by the World Health Organization on March 11, 2020; and

WHEREAS, self-distancing (keep ~~six~~6 feet of distance between individuals) has been recommended to deter the spread of the virus; and

WHEREAS, the Governor of Washington has declared a state of emergency, prohibited gatherings of 50 or more people, and closed K-12 schools statewide in an effort to slow transmission and contraction of the disease; and

WHEREAS, such a ban in conjunction with self-distancing means cancellations of large events and a decrease in the number of people patronizing places of business, resulting in reduced work and loss of income for workers in multiple industries, including the service and entertainment industries; and

WHEREAS, a decrease in income can result in financial instability and uncertainty about how to allocate resources to continuing expenses, including rent; and

WHEREAS, the economic disruptions caused by COVID-19 will increase the likelihood of tenants facing eviction; and

WHEREAS, evictions can often result in homelessness given the rental housing market in Seattle; and

1 WHEREAS, people experiencing homelessness are at risk of transmitting and contracting  
2 COVID-19 because of the nature of close quarters in encampments and shelters, and do  
3 not have consistent access to locations for handwashing or other hygiene facilities; and

4 WHEREAS, the City has a heightened interest in preventing more individuals and families from  
5 becoming homeless to avoid the increased risk of transmission and spread of COVID-19;  
6 and

7 WHEREAS, The City of Seattle provides residential tenants defenses to eviction through the  
8 City’s Just Cause Eviction Ordinance; and

9 WHEREAS, the Mayor issued an emergency order creating a moratorium on residential  
10 evictions that could last through the end of the civil emergency; and

11 WHEREAS, the Governor has issued an eviction moratorium until June 4, which could be  
12 extended further; and

13 WHEREAS, the Council recognizes that economic impacts from the COVID-19 emergency are  
14 likely to last much longer than the civil emergency itself; and

15 WHEREAS, the Council intends that upon a tenant’s successful assertion of a defense to  
16 eviction, a court will prohibit the award of attorneys’ fees to a landlord, regardless of  
17 whether the court finds that the landlord or tenant is the prevailing party; and

18 WHEREAS, on March 24, the National Multifamily Housing Council recommended, and some  
19 landlords have adopted, a plan to support tenants by halting evictions for 90 days,  
20 offering lease renewals without a rent increase, creating payment plans for overdue rent,  
21 and waiving late fees; and

22 WHEREAS, the Council recognizes the impact of eviction prevention measures on small  
23 landlords and intends to assess the continuing need for such protections on a weekly

1 basis, in conjunction with consideration of the weekly reports requested from the Mayor  
2 in Section 5 of Resolution 31937, which modified the Mayor’s Proclamation of Civil  
3 Emergency, beginning March 20, 2020; and

4 WHEREAS, the Council will continue to explore and implement strategies to support small  
5 landlords during the state of emergency; NOW, THEREFORE,

6 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

7 Section 1. The City Council (“Council”) makes the following legislative findings of fact  
8 and declarations:

9 A. In the exercise of the City of Seattle’s police powers, the City is granted authority to  
10 pass regulations designed to protect and promote public peace, health, safety, welfare, and  
11 prosperity.

12 B. On January 24, 2020, the Seattle Office of Emergency Management announced that  
13 the first reported case in Washington and in the United States of novel coronavirus (COVID-19)  
14 occurred in Snohomish County.

15 C. On February 28, 2020, Public Health – Seattle and King County announced the first  
16 King County and United States death due to COVID-19 at Evergreen Hospital in Kirkland,  
17 Washington.

18 D. On February 29, 2020, Washington Governor Jay Inslee declared a state of emergency  
19 in response to new cases of COVID-19, directing state agencies to use all resources necessary to  
20 prepare for and respond to the outbreak.

21 E. On March 3, 2020, Mayor Jenny Durkan issued a proclamation of civil emergency in  
22 response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers  
23 necessary for the protection of the public peace, safety, and welfare.

1 F. On March 11, 2020, Washington Governor Jay Inslee amended his emergency order to  
2 prohibit gatherings of 250 people or more for social, spiritual and recreational activities  
3 including, but not limited to, community, civic, public, leisure, faith-based, or sporting events;  
4 parades; concerts; festivals; conventions; fundraisers; and similar activities.

5 G. On March 13, 2020, Washington Governor Jay Inslee amended his emergency order  
6 closing all schools in King, Snohomish, and Pierce Counties through April 24, 2020 to apply  
7 statewide.

8 H. On March 13, 2020, the U.S. President declared that the COVID-19 outbreak  
9 constituted a national emergency.

10 I. On March 14, 2020, Mayor Durkan signed an emergency order creating a moratorium  
11 on residential evictions for non-payment of rent through the earlier of the end of the civil  
12 emergency or 60 days after the effective date of the emergency order, prohibiting a landlord from  
13 issuing a notice of termination or initiating an eviction action for non-payment of rent or  
14 otherwise acting on a termination notice, and creating a defense to a pending eviction action for  
15 non-payment of rent that the eviction would occur during the moratorium.

16 J. On March 16, 2020, Washington Governor Jay Inslee mandated the immediate two-  
17 week closure of all restaurants, bars, and entertainment, and recreational facilities and amended  
18 his emergency order to prohibit gatherings of 50 people or more.

19 K. On March 17, 2020, Public Health – Seattle and King County confirmed 518 cases of  
20 COVID-19, including 46 deaths, in King County.

21 L. On March 18, 2020, Washington Governor Jay Inslee announced a statewide  
22 moratorium on evictions, prohibiting landlords from serving a notice of unlawful detainer for  
23 default payment of rent and issuing a 20-day notice for unlawful detainer, unless the landlord

1 provides an affidavit stating that the action is believed necessary to ensure the health and safety  
2 of the tenant or others.

3 MM. On March 23, 2020, Governor Inslee announced a “Stay-Home Stay Healthy” order  
4 that required that all non-essential businesses be closed and banned all gatherings for two weeks,  
5 and on April 2, extended the order until May 4.

6 N. On April 6, 2020, Washington Governor Jay Inslee extended school closures through  
7 the end of the 2019-2020 school year and prohibited most forms of in-person instruction through  
8 June 19.

9 O. On April 16, 2020, Washington Governor Jay Inslee extended the statewide  
10 moratorium on evictions until June 4, 2020 and expanded the order to: include more types of  
11 dwelling situations; prohibit enforcement of agreements to vacate; prohibit a landlord from  
12 assessing or threatening to assess late fees; prohibit rent where access to the unit was prevented  
13 as a result of COVID-19; prohibit increased rent or deposits; and prohibit landlords from treating  
14 unpaid rent and charges as enforceable debt unless the landlord demonstrates by a preponderance  
15 of the evidence to a court that the resident was offered, and refused or failed to comply with, a  
16 reasonable repayment plan that was reasonable based on the individual financial, health, and  
17 other circumstances of that resident.

18 P. In light of COVID-19 spreading person-to-person and particularly between people who  
19 are in close contact with one another, the Centers for Disease Control and Prevention (CDC) has  
20 recommended that: those who are mildly ill self-isolate by staying home, avoiding public areas,  
21 and avoiding transportation; sensitive populations avoid people who are sick; and everyone  
22 practice self-distancing.

1           NQ. Public Health – Seattle and King County has recommended that people at higher risk  
2 of severe illness stay home and away from large groups of people as much as possible. People at  
3 higher risk include people: over 60 years of age; with underlying health conditions, including  
4 heart disease, lung disease, or diabetes; with weakened immune systems; and who are pregnant.

5           OR. Public Health – Seattle and King County has recommended that employers take  
6 steps to make it more feasible for their employees to work in ways that minimize close contact  
7 with large numbers of people, including maximizing telecommuting options and maximizing  
8 flexibility in sick leave benefits for those who are ill or at high risk.

9           PS. The Washington State Legislature has declared a state policy to help residents who  
10 are experiencing a temporary crisis in retaining stable housing to avoid eviction from their  
11 homes, as expressed in Laws of 2019, ch. 356, § 1.

12           QT. The September 2018 Seattle Women’s Commission and the King County Bar  
13 Association’s report *Losing Home: The Human Cost of Eviction in Seattle* (“Losing Home  
14 Report”) found that the most disadvantaged groups face the highest likelihood of eviction.

15           RU. The Losing Home report found that most evicted respondents became homeless,  
16 with 37.5 percent completely unsheltered, 25.0 percent living in a shelter or transitional housing,  
17 and 25.0 percent staying with family or friends. Only 12.5 percent of evicted respondents found  
18 another apartment or home to move into.

19           SV. A 2018 investigation by the King County Medical Examiner’s Office (KCMEO)  
20 found that over half of 107 presumed homeless deaths investigated occurred outside and  
21 attributed approximately 121, or 62 percent, of presumed homeless deaths investigated to non-  
22 natural causes (drug overdose, accidents (including hypothermia), suicide, homicide, and

1 undetermined), making it clear that people experiencing homelessness have a much higher risk  
2 than the general population of developing exposure-related conditions.

3 ~~FW~~. Persons with underlying health conditions are at greater risk of fatality if they catch  
4 COVID-19, and preventing individuals from becoming higher-risk patients will protect the  
5 public health, safety, and welfare of the region.

6 ~~UX~~. The impacts of the emerging public health crisis on the economy, employment, job  
7 retention, child care, and businesses may result in: workers being unable to go to work because  
8 of illness; the need to care for children home from day care or school or for other family  
9 members without paid sick or safe time; and reduced hours due to reduced demand, furlough, or  
10 unemployment as businesses struggle during the state of emergency. These risks are  
11 compounded especially for workers without paid sick or safe time, those in the “gig economy,”  
12 and others without protections that help stabilize income. Historically disadvantaged populations  
13 are already at greater risk of eviction. Compounding existing risk with the impacts from the  
14 COVID-19 emergency may increase the likelihood of exposure, spread, and contraction of the  
15 virus.

16 ~~VY~~. Providing a defense to eviction for certain causes ~~resulting from the COVID-19~~  
17 ~~pandemic~~ is necessary as an additional step to protect public health to support stable housing,  
18 decrease the likelihood that individuals and families will fall into homelessness, and decrease  
19 exposure while the COVID-19 emergency exists.

20 Section 2. Subsection 22.206.160.C of the Seattle Municipal Code, which section was  
21 last amended by Ordinance 126041, is amended as follows:

22 **22.206.160 Duties of owners**

23 \* \* \*

1 C. Just cause eviction

2 1. Pursuant to provisions of the Washington State Residential Landlord-Tenant  
3 Act (RCW 59.18.290), an owner may not evict a residential tenant without a court order, which  
4 can be issued by a court only after the tenant has an opportunity in a show cause hearing to  
5 contest the eviction (RCW 59.18.380). An owner of a housing unit shall not evict or attempt to  
6 evict any tenant, or otherwise terminate or attempt to terminate the tenancy of any tenant, unless  
7 the owner can prove in court that just cause exists. Regardless of whether just cause for eviction  
8 may exist, an owner may not evict a residential tenant from a rental housing unit if: the unit is  
9 not registered with the Seattle Department of Construction and Inspections if required by Section  
10 22.214.040; or if subsections 22.206.160.C.8 or 22.206.160.C.9 provide((s)) the tenant a defense  
11 to the eviction.

12 An owner is in compliance with the registration requirement if the rental housing  
13 unit is registered with the Seattle Department of Construction and Inspections before issuing a  
14 notice to terminate tenancy. The reasons for termination of tenancy listed below, and no others,  
15 shall constitute just cause under this Section 22.206.160:

16 a. The tenant fails to comply with a 14 day notice to pay rent or vacate  
17 pursuant to RCW 59.12.030(3); a ten day notice to comply or vacate pursuant to RCW  
18 59.12.030(4); or a three day notice to vacate for waste, nuisance (including a drug-related  
19 activity nuisance pursuant to chapter 7.43 RCW), or maintenance of an unlawful business or  
20 conduct pursuant to RCW 59.12.030(5);

21 b. The tenant habitually fails to pay rent when due which causes the owner  
22 to notify the tenant in writing of late rent four or more times in a 12 month period;

1 c. The tenant fails to comply with a ten day notice to comply or vacate that  
2 requires compliance with a material term of the rental agreement or that requires compliance  
3 with a material obligation under chapter 59.18 RCW;

4 d. The tenant habitually fails to comply with the material terms of the  
5 rental agreement which causes the owner to serve a ten day notice to comply or vacate three or  
6 more times in a 12 month period;

7 e. The owner seeks possession so that the owner or a member of the  
8 owner's immediate family may occupy the unit as that person's principal residence and no  
9 substantially equivalent unit is vacant and available in the same building, and the owner has  
10 given the tenant at least 90 days' advance written notice of the date the tenant's possession is to  
11 end. The Director may reduce the time required to give notice to no less than 20 days if the  
12 Director determines that delaying occupancy will result in a personal hardship to the owner or to  
13 the owner's immediate family. Personal hardship may include but is not limited to hardship  
14 caused by illness or accident, unemployment, or job relocation. For the purposes of this Section  
15 22.206.160, "Immediate family" includes the owner's domestic partner registered pursuant to  
16 Section 1 of Ordinance 117244 or the owner's spouse, parents, grandparents, children, brothers  
17 and sisters of the owner, of the owner's spouse, or of the owner's domestic partner. There is a  
18 rebuttable presumption of a violation of this subsection 22.206.160.C.1.e if the owner or a  
19 member of the owner's immediate family fails to occupy the unit as that person's principal  
20 residence for at least 60 consecutive days during the 90 days immediately after the tenant  
21 vacated the unit pursuant to a notice of termination or eviction using this subparagraph as the  
22 cause for eviction;

1 f. The owner elects to sell a single-family dwelling unit and gives the  
2 tenant at least 90 days' written notice prior to the date set for vacating, which date shall coincide  
3 with the end of the term of a rental agreement, or if the agreement is month to month, with the  
4 last day of a monthly period. The Director may reduce the time required to give notice to no less  
5 than 60 days if the Director determines that providing 90 days' notice will result in a personal  
6 hardship to the owner. Personal hardship may include but is not limited to hardship caused by  
7 illness or accident, unemployment, or job relocation. For the purposes of this Section  
8 22.206.160, an owner "elects to sell" when the owner makes reasonable attempts to sell the  
9 dwelling within 30 days after the tenant has vacated, including, at a minimum, listing it for sale  
10 at a reasonable price with a realty agency or advertising it for sale at a reasonable price in a  
11 newspaper of general circulation. There shall be a rebuttable presumption that the owner did not  
12 intend to sell the unit if:

13 1) Within 30 days after the tenant has vacated, the owner does not  
14 list the single-family dwelling unit for sale at a reasonable price with a realty agency or advertise  
15 it for sale at a reasonable price in a newspaper of general circulation, or

16 2) Within 90 days after the date the tenant vacated or the date the  
17 property was listed for sale, whichever is later, the owner withdraws the rental unit from the  
18 market, rents the unit to someone other than the former tenant, or otherwise indicates that the  
19 owner does not intend to sell the unit;

20 g. The tenant's occupancy is conditioned upon employment on the  
21 property and the employment relationship is terminated;

22 h. The owner seeks to do substantial rehabilitation in the building;  
23 provided that, the owner must obtain a tenant relocation license if required by Chapter 22.210

1 and at least one permit necessary for the rehabilitation, other than a Master Use Permit, before  
2 terminating the tenancy;

3 i. The owner (i) elects to demolish the building, convert it to a cooperative,  
4 or convert it to a nonresidential use; provided that, the owner must obtain a tenant relocation  
5 license if required by Chapter 22.210 and a permit necessary to demolish or change the use  
6 before terminating any tenancy, or (ii) converts the building to a condominium provided the  
7 owner complies with the provisions of Sections 22.903.030 and 22.903.035;

8 j. The owner seeks to discontinue use of a housing unit unauthorized by  
9 Title 23 after receipt of a notice of violation. The owner is required to pay relocation assistance  
10 to the tenant(s) of each such unit at least two weeks prior to the date set for termination of the  
11 tenancy, at the rate of:

12 1) \$2,000 for a tenant household with an income during the past 12  
13 months at or below 50 percent of the County median income, or

14 2) Two months' rent for a tenant household with an income during  
15 the past 12 months above 50 percent of the County median income;

16 k. The owner seeks to reduce the number of individuals residing in a  
17 dwelling unit to comply with the maximum limit of individuals allowed to occupy one dwelling  
18 unit, as required by Title 23, and:

19 1)  
20 a) The number of such individuals was more than is lawful  
21 under the current version of Title 23 but was lawful under Title 23 or Title 24 on August 10,  
22 1994;

1 b) That number has not increased with the knowledge or  
2 consent of the owner at any time after August 10, 1994; and

3 c) The owner is either unwilling or unable to obtain a  
4 permit to allow the unit with that number of residents.

5 2) The owner has served the tenants with a 30 day notice,  
6 informing the tenants that the number of tenants exceeds the legal limit and must be reduced to  
7 the legal limit,

8 3) After expiration of the 30 day notice, the owner has served the  
9 tenants with and the tenants have failed to comply with a ten day notice to comply with the limit  
10 on the number of occupants or vacate, and

11 4) If there is more than one rental agreement for the unit, the owner  
12 may choose which agreements to terminate; provided that, the owner may either terminate no  
13 more than the minimum number of rental agreements necessary to comply with the legal limit on  
14 the number of occupants, or, at the owner's option, terminate only those agreements involving  
15 the minimum number of occupants necessary to comply with the legal limit;

16 1.

17 1) The owner seeks to reduce the number of individuals who reside  
18 in one dwelling unit to comply with the legal limit after receipt of a notice of violation of the  
19 Title 23 restriction on the number of individuals allowed to reside in a dwelling unit, and:

20 a) The owner has served the tenants with a 30 day notice,  
21 informing the tenants that the number of tenants exceeds the legal limit and must be reduced to  
22 the legal limit; provided that no 30 day notice is required if the number of tenants was increased  
23 above the legal limit without the knowledge or consent of the owner;



1 required to pay relocation assistance to the tenant household residing in such a unit at least two  
2 weeks prior to the date set for termination of the tenancy, at the rate of:

3 1) \$2,000 for a tenant household with an income during the past 12  
4 months at or below 50 percent of the county median income, or

5 2) Two months' rent for a tenant household with an income during  
6 the past 12 months above 50 percent of the county median income;

7 n. An emergency order requiring that the housing unit be vacated and  
8 closed has been issued pursuant to Section 22.206.260 and the emergency conditions identified  
9 in the order have not been corrected;

10 o. The owner seeks to discontinue sharing with a tenant of the owner's  
11 own housing unit, i.e., the unit in which the owner resides, seeks to terminate the tenancy of a  
12 tenant of an accessory dwelling unit authorized pursuant to Sections 23.44.041 and 23.45.545  
13 that is accessory to the housing unit in which the owner resides, or seeks to terminate the tenancy  
14 of a tenant in a single-family dwelling unit and the owner resides in an accessory dwelling unit  
15 on the same lot. This subsection 22.206.160.C.1.o does not apply if the owner has received a  
16 notice of violation of the development standards of Section 23.44.041. If the owner has received  
17 such a notice of violation, subsection 22.206.160.C.1.m applies;

18 p. A tenant, or with the consent of the tenant, the tenant's subtenant,  
19 sublessee, resident, or guest, has engaged in criminal activity on the premises, or on the property  
20 or public right-of-way abutting the premises, and the owner has specified in the notice of  
21 termination the crime alleged to have been committed and the general facts supporting the  
22 allegation, and has assured that the Seattle Department of Construction and Inspections has

1 recorded receipt of a copy of the notice of termination. For purposes of this subsection  
2 22.206.160.C.1.p, a person has "engaged in criminal activity" if the person:

3 1) Engages in drug-related activity that would constitute a  
4 violation of chapters 69.41, 69.50, or 69.52 RCW, or

5 2) Engages in activity that is a crime under the laws of this state,  
6 but only if the activity substantially affects the health or safety of other tenants or the owner.

7 2. Any rental agreement provision which waives or purports to waive any right,  
8 benefit or entitlement created by this subsection 22.206.160.C shall be deemed void and of no  
9 lawful force or effect.

10 3. With any termination notices required by law, owners terminating any tenancy  
11 protected by this Section 22.206.160 shall advise the affected tenant or tenants in writing of the  
12 reasons for the termination and the facts in support of those reasons.

13 4. If a tenant who has received a notice of termination of tenancy claiming  
14 subsection 22.206.160.C.1.e, 22.206.160.C.1.f, or 22.206.160.C.1.m as the ground for  
15 termination believes that the owner does not intend to carry out the stated reason for eviction and  
16 makes a complaint to the Director, then the owner must, within ten days of being notified by the  
17 Director of the complaint, complete and file with the Director a certification stating the owner's  
18 intent to carry out the stated reason for the eviction. The failure of the owner to complete and file  
19 such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction  
20 action based on this ground.

21 5. In any action commenced to evict or to otherwise terminate the tenancy of any  
22 tenant, it shall be a defense to the action that there was no just cause for such eviction or  
23 termination as provided in this Section 22.206.160.

1                   6. It shall be a violation of this Section 22.206.160 for any owner to evict or  
2 attempt to evict any tenant or otherwise terminate or attempt to terminate the tenancy of any  
3 tenant using a notice that references subsections 22.206.160.C.1.e, 22.206.160.C.1.f,  
4 22.206.160.C.1.h, 22.206.160.C.1.k, 22.206.160.C.1.l, or 22.206.160.C.1.m as grounds for  
5 eviction or termination of tenancy without fulfilling or carrying out the stated reason for or  
6 condition justifying the termination of such tenancy.

7                   7. An owner who evicts or attempts to evict a tenant or who terminates or  
8 attempts to terminate the tenancy of a tenant using a notice which references subsections  
9 22.206.160.C.1.e, 22.206.160.C.1.f or 22.206.160.C.1.h as the ground for eviction or termination  
10 of tenancy without fulfilling or carrying out the stated reason for or condition justifying the  
11 termination of such tenancy shall be liable to such tenant in a private right for action for damages  
12 up to \$2,000, costs of suit, or arbitration and reasonable attorney's fees.

13                   8. Except as provided in subsection 22.206.160.C.8.d, it is a defense to eviction if:

14                   a. The eviction would result in the tenant having to vacate the housing unit  
15 at any time between December 1 and March 1; and

16                   b. The tenant household is a moderate-income household as defined in  
17 Section 23.84A.016; and

18                   c. The housing unit that the tenant would have to vacate is owned by a  
19 person who owns more than four rental housing units in The City of Seattle. For purposes of this  
20 subsection 22.206.160.C.8.c, “owns” includes having an ownership interest in the housing units.

21                   d. If the reason for termination of the tenancy is due to conditions  
22 described in subsections 22.206.160.C.1.e, 22.206.160.C.1.f provided that the tenant was  
23 provided at least 90 days' written notice prior to the date set for vacating the unit,

1 22.206.160.C.1.j, 22.206.160.C.1.k, 22.206.160.C.1.m, 22.206.160.C.1.n, 22.206.160.C.1.o, or  
2 22.206.160.C.1.p, or if the reason for termination is due to the tenant's failure to comply with a  
3 three day or ten day notice to vacate for a drug-related activity nuisance pursuant to chapter 7.43  
4 RCW or maintenance of an unlawful business or conduct pursuant to RCW 59.12.030(5) or  
5 because the tenant's conduct has a substantial detrimental impact on, or constitutes an imminent  
6 threat to, the health or safety of other tenants in the rental building or the owner, the eviction may  
7 occur as otherwise allowed by law.

8 e. A rent mitigation fund is created to provide funds to eligible low-  
9 income tenant households at risk of residential eviction during the period described in subsection  
10 22.206.160.C.8, if other sources of funds are not available to assist the tenant, or to provide  
11 financial assistance to a non-profit corporation or other housing provider that cannot evict a  
12 tenant from a rental housing unit during the period described in subsection 22.206.160.C.8  
13 because the unit is subject to restrictions on tenant incomes or rent as a condition of that  
14 assistance.

15 1) Tenant eligibility. To be eligible to receive funds, (1) the reason  
16 for termination must include nonpayment of rent; and (2) the tenant household must be a low-  
17 income household as defined in Section 23.84A.016; and (3) the tenant must demonstrate that the  
18 tenant does not have the financial resources to avoid eviction; and (4) the tenant must request  
19 mitigation funds on or before the date a writ of restitution is executed.

20 2) Housing provider eligibility. To be eligible to receive funds the  
21 housing provider shall (1) demonstrate that an eviction was delayed during this period because  
22 the tenant raised the defense described in subsection 22.206.160.C.8; and (2) demonstrate that  
23 the tenant does not have financial resources available to pay rent during the period described in

1 subsection 22.206.160.C.8; and (3) demonstrate that the tenant resides in a unit that is subject to  
2 restrictions on tenant incomes or rent; and (4) sign an agreement stating that the housing provider  
3 will not report the tenant’s delinquency on rent payment to credit reporting agencies.

4 3) The Director shall have rulemaking authority to administer the  
5 fund. This authority includes the ability to have the fund administered by a public or private  
6 organization having experience administering or capable of administering similar tenant  
7 assistance programs. If by rule the Director determines that payments shall be made directly to a  
8 landlord, the landlord shall sign an agreement with the Director prior to payment stating that the  
9 landlord will not report the tenant’s delinquent rent payment to credit reporting agencies.

10 4) The availability of funds is subject to the existence of budget  
11 appropriations for that purpose. A request for funding shall be denied if insufficient funds are  
12 available. The City is not civilly or criminally liable for failure to provide funding and no penalty  
13 or cause of action may be brought against the City resulting from the provision or lack of  
14 provision of funds.

15 5) When a landlord issues a notice to terminate tenancy due to  
16 nonpayment of rent, the notice must contain information to the tenant about how to access the  
17 tenant mitigation fund. The landlord is not required to provide this information if insufficient  
18 funds have been appropriated by the City Council to provide the funds for mitigation. The  
19 information for the notice shall be adopted by the Seattle Department of Construction and  
20 Inspections by rule.

21 9. If termination of the tenancy is due to any reason enumerated in this subsection  
22 22.206.160.C.9, it

1 a. It is a defense to eviction if the eviction would result in the tenant  
2 having to vacate the housing unit ~~before, or~~ within six months after, the termination of the ~~civil~~  
3 emergency proclaimed by the Mayor on March 3, 2020. The defense is available Mayor’s  
4 eviction moratorium, and if the reason for ~~termination of~~terminating the tenancy is:

5 a.1) The tenant fails to comply with a ~~14-~~day notice to pay rent or  
6 vacate pursuant to RCW 59.12.030(3); ~~for rent due during the pendency, or within six months~~  
7 after, the termination of the Mayor’s residential eviction moratorium; or

8 b. The tenant fails to comply with a ten day notice to comply or vacate that  
9 requires compliance with the material term of the rental agreement to pay rent; or

10 e.2) The tenant habitually fails to ~~comply with the material terms~~  
11 of the rental agreement which causes the owner to serve a ten day notice to comply or vacate  
12 three times pay rent resulting in four or more pay-or-vacate notices in a ~~12-~~month period.

13 To assert this defense, the tenant must prove that the failure alleged in subsections  
14 22.206.160.C.9.a-e resulted in the tenant’s: illness; loss or reduction of income; loss of  
15 employment; reduction in compensated hours of work; business or office closure; a need to miss  
16 work to care for a family member or child, where that care is uncompensated; or other similar  
17 loss of income due to the civil emergency proclaimed by the Mayor on March 3, 2020.

18 For purposes of this subsection 22.206.160.C.9, “termination of the Mayor’s  
19 residential eviction moratorium” means termination of subsection 1.C (creating a defense to a  
20 pending eviction action) of the moratorium on residential evictions ordered by the Mayor’s  
21 March 14, 2020 civil emergency order, as amended by the Council in Resolution 31938.

22 b. If a landlord issues a notice to terminate a tenancy due to a reason listed  
23 in subsections 22.206.160.C.9.a.1-2, and if the landlord issues that notice within six months after

1 the termination of the Mayor’s residential eviction moratorium, the notice must contain the  
2 following statement: “If you cannot pay rent, during or within 6 months after the end of the  
3 Mayor’s moratorium on evictions, your inability to pay is a defense to eviction that you may  
4 raise in court.” It is a defense to eviction if the notice does not contain that statement.

5 c. A court may require a tenant who successfully asserts a defense  
6 provided in subsection 22.206.160.C.9.a to pay any rent in arrears in installments.

7 d. An award of attorneys’ fees and statutory court costs to a landlord  
8 arising from an eviction proceeding arising from a notice to terminate a tenancy due to a reason  
9 listed in subsections 22.206.160.C.9.a.1-2 is prohibited unless otherwise allowed by law.

10 ~~Section 4. The City Council requests that the Washington State legislature enact a~~  
11 ~~temporary, state-wide moratorium on evictions during the COVID-19 state of emergency to~~  
12 ~~provide all tenants relief from the unlawful detainer process.~~

13 Section 3. Based on the findings of fact set forth in Section 1 of this ordinance, the  
14 Council finds and declares that this ordinance is a public emergency ordinance, which shall take  
15 effect immediately and is necessary for the protection of the public health, safety, and welfare.

16 ~~Section 6. Due to the emergency nature of this ordinance, it might take effect before~~  
17 ~~Ordinance 126041. The City Council does not intend to alter the effective date of Ordinance~~  
18 ~~126041 by display pending amendments to Section 22.206.160 in this ordinance.~~

1           Section 4. The provisions of this ordinance are declared to be separate and severable. If  
2 any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or  
3 the application thereof to any landlord, prospective occupant, tenant, person, or circumstance, is  
4 held to be invalid, it shall not affect the validity of the remainder of this ordinance, or the validity  
5 of its application to other persons or circumstances.  
6

1 Section 75. By reason of the findings set out in Section 1, and the emergency that is  
2 hereby declared to exist, this ordinance shall become effective immediately upon its passage by a  
3 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of  
4 the Charter of the City.

5 Passed by a 3/4 vote of all the members of the City Council the \_\_\_\_\_ day of  
6 \_\_\_\_\_, 2020, and signed by me in open session in authentication of its  
7 passage this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

8 \_\_\_\_\_  
9 President \_\_\_\_\_ of the City Council

10 Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

11 \_\_\_\_\_  
12 Jenny A. Durkan, Mayor

13 Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

14 \_\_\_\_\_  
15 Monica Martinez Simmons, City Clerk

16 (Seal)