

May 6, 2020

## MEMORANDUM

**To:** Seattle City Councilmembers  
**From:** Asha Venkataraman, Analyst  
**Subject:** Council Bill 119788: Emergency Legislation for Rental Payment Plans

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On Monday, May 11, 2020, the Council is expected to vote on [Council Bill \(CB\) 119788](#), a “substitute” for [Council Bill 119762](#) (“original” bill). The original bill would have allowed a tenant who is unable to pay timely rent because of the COVID-19 emergency during and six months after the end of the [March 3, 2020 Proclamation of Civil Emergency](#) to pay late rent on an installment schedule. To address the effects of an amendment that modifies the reason for which a tenant can use the payment plan, a title change was necessary, requiring the introduction of the substitute bill. The substitute bill would not require the tenant to show that their inability to pay rent is connected to the COVID-19 emergency.

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, highlights the differences between that proposal and the substitute bill, and explains the impact of the Governor’s [expanded and extended order](#) relating to tenancies. Mayor Durkan’s [residential eviction moratorium](#) does not reference payment plans and does not impact this bill.

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

### **CB 119762 (Original Bill)**

The original bill would allow tenants to pay overdue rent in installments on a payment schedule. It would allow installment plans for overdue rent:

- If the overdue rent is incurred during or within six months after the end of the civil emergency proclaimed by the Mayor on March 3; and
- If 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 proposal would allow the landlord and tenant to negotiate a written payment schedule subject to the following parameters:

- The schedule may not require the tenant to pay more than one-third of the monthly or periodic rent when it is due unless the tenant agrees; and
- Any overdue rent is made current to the landlord within one year after the end of the civil emergency proclaimed by the Mayor on March 3.

Lastly, no late fees, interest, or other charges due to late payment of rent can accrue during or within six months after the end of the civil emergency proclaimed by the Mayor on March 3.

### **Changes from CB 119762**

The substitute bill would provide a tenant the ability to use an installment plan to pay back late rent, but changes the provisions of the original bill in the following ways:

1. The original bill would allow use of the payment plan 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 the use of a payment plan for any reason rent is late; 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 that their rent was late 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. This change also necessitated the change in title from the original bill, as it described the use of the payment plan as directly related to inability to pay timely rent because of the COVID-19 emergency.
2. The provisions regarding the installment schedule in the original bill set a floor upon which a landlord and tenant could build a payment plan, stating that the schedule could not require the tenant to pay more than one-third of the monthly or periodic rent when it is due unless the tenant agrees and that any overdue rent had to be fully paid within one year after the end of the civil emergency proclaimed by the Mayor on March 3. The substitute bill removes these provision and instead creates a default plan for tenants and landlord to follow, with the option that a tenant can propose an alternative plan, and upon the landlord's acceptance, the signed, written agreement would be deemed as an amendment to the rental agreement. The default plan requires that if the tenant is overdue on a specific amount of rent, they must pay it back in set, consecutive, equal monthly installments as follows:
  - Up to one month or less of rent must be paid back in three installments;
  - Over one month and up to two months of rent must be paid back in five installments; and
  - Over two months of rent must be paid back in six installments.

3. The original bill states that no late fees, interest, or other charges due to late payment of rent can accrue during or within six months after the end of the civil emergency proclaimed by the Mayor on March 3. Councilmember Herbold proposed the prohibition of fees and interest for a year to provide tenants a longer period of time to recover from the COVID-19 emergency without having to account for additional interest or other fees associated with non-payment of rent.

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:

#### Defense to eviction

The substitute bill includes a provision that makes a landlord's failure to accept payment under the installment schedule in the bill or otherwise proposed by the tenant and agreed upon a defense to eviction.

#### 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.

#### Attorneys' Fees

Unless allowed by state law, awards of attorneys' fees to landlords are prohibited if arising from an eviction proceeding where the tenant uses one of the defenses described in the bill. 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, include new developments occurring since the original bill was introduced, and clearly state compliance with Governor's Order 20-28 regarding the Open Public Meetings Act.

#### 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.

## **Relationship to the Governor’s Extended and Expanded Evictions Order**

On March 16, Governor Inslee extended his existing eviction moratorium and expanded the order to include a variety of other protections. Two provisions in the order are similar to the protections in this bill. First, the order contains a prohibition against treating unpaid rent or other charges as enforceable debt unless “a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.” Second, the order states that

*Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.*

Though these provisions describe rental payment plans and late fees, neither protection prohibits the City from creating a default payment plan nor from prohibiting late fees for one year after the end of the Mayor’s civil emergency.

## **Next Steps**

The substitute bill is anticipated for a vote at the Council meeting on May 11, 2020. If passed by a 3/4 vote of the Council, it would go into effect immediately upon signature by the Mayor.

## **Attachments:**

- A. Redline Comparison of CB 119762 and CB 119788

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

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

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

..title

AN ORDINANCE relating to residential rental agreements; allowing residential tenants to pay rent in installments when the tenant is unable to timely pay rent ~~because of the COVID-19 state of emergency~~; 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 (keeping at least ~~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 that tenants will have difficulty paying rent; and

WHEREAS, the Council recognizes that economic impacts from the COVID-19 emergency are likely to last much longer than the civil emergency itself and that the timing of when such impacts will cause tenants to be unable to pay rent will vary; and

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1 WHEREAS, mitigating the housing and economic impacts of the COVID-19 outbreak is in the  
2 interest of the City and its residents; and

3 WHEREAS, the Mayor signed an emergency order, amended by the Council in Resolution  
4 31938 on March 16, 2020, creating a moratorium on residential evictions that could last  
5 through the end of the civil emergency or until May 15, 2020, whichever is earlier; and

6 WHEREAS, the Governor has issued an eviction moratorium extending to June 4, 2020  
7 including a prohibition on treating unpaid rent as enforceable debt unless a landlord  
8 offered and a tenant refused a payment plan; and

9 WHEREAS, allowing tenants to pay rent in installments without penalty or interest will help  
10 people to stay housed, provide housing stability, and help prevent homelessness resulting  
11 from eventual eviction for non-payment of rent; and

12 WHEREAS, the Council intends that upon a tenant's successful assertion of a defense to  
13 eviction, a court will prohibit the award of attorneys' fees to a landlord, regardless of  
14 whether the court finds that the landlord or tenant is the prevailing party.

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

19 WHEREAS, the Council recognizes the impact of allowing installment rent payments on small  
20 landlords and intends to assess the continuing need for such protections on a weekly  
21 basis, in conjunction with consideration of the weekly reports requested from the Mayor  
22 in Section 5 of Resolution 31937, which modified the Mayor's Proclamation of Civil  
23 Emergency, beginning March 20, 2020; and

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

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

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

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

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

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

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

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

21 F. On March 11, 2020, Washington Governor Jay Inslee amended his emergency order to  
22 prohibit gatherings of 250 people or more for social, spiritual and recreational activities

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1 including, but not limited to, community, civic, public, leisure, faith-based, or sporting events;  
2 parades; concerts; festivals; conventions; fundraisers; and similar activities.

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

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

8 I. ~~On March 14, 2020,~~ Mayor Durkan signed an emergency order amended by the  
9 Council in Resolution 31938 on March 16, 2020, creating a moratorium on residential evictions  
10 ~~for non-payment of rent~~ through the earlier of the end of the civil emergency or 60 days after the  
11 effective date of the emergency order, prohibiting a landlord from issuing a notice of termination  
12 or initiating an eviction action ~~for non-payment of rent~~ or otherwise acting on a termination  
13 notice, and creating a defense to ~~a pending~~ an eviction action ~~for non-payment of rent~~ that ~~the~~  
14 ~~eviction~~ would occur during the moratorium, except if the eviction action or notice is due to  
15 actions by the tenant constituting an imminent threat to the health or safety of neighbors, the  
16 landlord, or the tenant's or landlord's household members.

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

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

22 L. On March 18, 2020, Washington Governor Jay Inslee announced a statewide  
23 moratorium on evictions, prohibiting landlords from serving a notice of unlawful detainer for



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1 default payment of rent and issuing a 20-day notice for unlawful detainer, unless the landlord  
2 provides an affidavit stating that the action is believed necessary to ensure the health and safety  
3 of the tenant or others.

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

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

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

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

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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 Federal Reserve’s 2018 Survey of Household Economics and Decision Making  
13 found that 40 percent of adults, if faced with an unexpected expense of \$400 would not be able  
14 to cover that expense and that over 20 percent of adults are not able to pay all of their current  
15 month’s bills in full.

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

19 ~~SY~~. The Losing Home report found that most evicted respondents became homeless, with  
20 37.5 percent completely unsheltered, 25.0 percent living in a shelter or transitional housing, and  
21 25.0 percent staying with family or friends. Only 12.5 percent of evicted respondents found  
22 another apartment or home to move into.

Attachment A - Redline Comparison of CB 119762 and CB 119788

1 ~~FW~~. The impacts of the emerging public health crisis on the economy, employment, job  
2 retention, child care, and businesses may result in: workers being unable to go to work because  
3 of illness; the need to care for children home from day care or school or for other family  
4 members without paid sick or safe time; and reduced hours due to reduced demand, furlough, or  
5 unemployment as businesses struggle during the state of emergency. These risks are  
6 compounded especially for workers without paid sick or safe time, those in the “gig economy,”  
7 and others without protections that help stabilize income. Historically disadvantaged populations  
8 are already at greater risk of eviction.

9 ~~UX~~. Requiring that tenants be allowed to pay rent in installments because of difficulties  
10 arising ~~for~~during and from the COVID-19 pandemic is immediately necessary to protect public  
11 health, support stable housing, and decrease the likelihood that individuals and families will fall  
12 into homelessness.

13 Y. Governor’s Proclamation 20-28 allows certain actions under the Open Public  
14 Meetings Act for actions that are 1) necessary and routine; or 2) necessary in response to the  
15 COVID-19 public health emergency.

16 Z. By reason of the findings set out above, this legislation is necessary in response to the  
17 COVID-19 public health emergency.

18 Section 2. ~~Effective immediately, the following provisions are in effect while the~~  
19 ~~protections in the ordinance introduced as Council Bill 119761 are in effect.~~

20 A. A tenant who fails to pay rent when due during ~~and, or~~ within six months after the  
21 ~~end~~termination of, the civil emergency proclaimed by Mayor Durkan on March 3, 2020 ~~because~~  
22 ~~of illness; loss or reduction of income; loss of employment; reduction in compensated hours of~~  
23 ~~work; business or office closure; a need to miss work to care for a family member or child,~~

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1 ~~where that care is uncompensated; or other similar loss of income due to the civil emergency~~  
2 ~~proclaimed by the Mayor on March 3, 2020~~, may elect to pay such overdue rent in installments  
3 ~~during that period on a payment schedule. A written installment payment schedule shall be~~  
4 ~~negotiated between the landlord and tenant, provided that 1) the schedule may not require the~~  
5 ~~tenant to pay more than 1/3 of the monthly or periodic rent when otherwise due unless agreed by~~  
6 ~~the tenant, and 2) rent in arrears shall be paid in full to the landlord no later than one year after~~  
7 ~~the end of the civil emergency. The tenant shall pay one month or less of overdue rent in three~~  
8 ~~consecutive, equal monthly installments. The tenant shall pay over one month and up to two~~  
9 ~~months of overdue rent in five consecutive, equal monthly payments. The tenant shall pay over~~  
10 ~~two months of overdue rent in six consecutive, equal monthly payments. Any remainder from an~~  
11 ~~uneven division of payments will be part of the last payment. The tenant may propose an~~  
12 ~~alternative payment schedule, which, if the landlord agrees to it, described in writing and signed~~  
13 ~~by the tenant and landlord and deemed an amendment to any existing rental agreement.~~

14 B. No late fees, interest, or other charges due to late payment of rent shall accrue during,  
15 or within ~~six months one year~~ after the ~~end termination~~ of, the civil emergency ~~proclaimed by~~  
16 ~~Mayor Durkan on March 3, 2020.~~

17 C. ~~If a landlord issues a notice to terminate tenancy for nonpayment of rent that was due~~  
18 ~~during, or within six months after the termination of, the civil emergency proclaimed by Mayor~~  
19 ~~Durkan on March 3, 2020, the notice must contain the following statement: "City law entitles~~  
20 ~~you to pay overdue rent in installments. If your landlord does not accept payment according to~~  
21 ~~the installment schedule, you may raise this as a defense to eviction in court." It is a defense to~~  
22 ~~eviction if the notice does not contain the required information.~~

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

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