



Legislation Text

File #: CB 119787, Version: 2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the use of eviction records; regulating the use of eviction history in residential housing; prohibiting landlords from considering evictions related to COVID-19 during and after the civil emergency; amending the title of Chapter 14.09 and Sections 14.09.005, 14.09.010, 14.09.020, and 14.09.030 of, and adding a new Section 14.09.026 to, the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

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 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, the Governor of Washington has further required the closure of all non-essential places of work; and

WHEREAS, such a ban and closure 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

WHEREAS, evictions can lead to long-term economic impact to individuals, families, and the City; and

WHEREAS, the Mayor issued an emergency order creating a moratorium on residential evictions that could last through the end of the civil emergency or until May 15, 2020, whichever is earlier; 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

WHEREAS, the Council is aware that the unprecedented nature of the COVID-19 pandemic is affecting renters in unprecedented ways, including an inability to pay rent and satisfy rental obligations that would not have happened if not for the COVID-19 emergency; and

WHEREAS, evictions occurring during and after the COVID-19 pandemic are likely the result of pandemic-related issues, are unlikely to be predictive of how renters behave under non-pandemic circumstances and should therefore not be used to prevent renters from moving or finding new housing; and

WHEREAS, the Council recognizes the impact of regulating the use of evictions related to the COVID-19 emergency on small landlords and intends to assess the continuing need for such protections on a weekly basis, in conjunction with consideration of the weekly reports requested from the Mayor in Section 5 of Resolution 31937, which modified the Mayor's Proclamation of Civil Emergency, beginning March 20, 2020; and

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

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council ("Council") finds and declares that:

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

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

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

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

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

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

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

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

I. On March 14, 2020, Mayor Durkan signed an emergency order creating a moratorium on residential evictions through the earlier of the end of the civil emergency or 60 days after the effective date of the emergency order, prohibiting a landlord from issuing a notice of termination or initiating an eviction action or otherwise acting on a termination notice and creating a defense to an eviction action that would occur during the moratorium, except if the eviction action or notice is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members.

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

K. On March 18, 2020 Washington Governor Jay Inslee announced a statewide moratorium on evictions, prohibiting landlords from serving a notice of unlawful detainer for default payment of rent and issuing a 20-day notice for unlawful detainer, unless the landlord provides an affidavit stating that the action is believed necessary to ensure the health and safety of the tenant or others.

L. On March 23, 2020, Governor Inslee announced a “Stay-Home” order that required that all non-essential businesses be closed and banned all gatherings for two weeks.

M. On April 2, 2020, Governor Inslee extended the “Stay Home Stay Healthy” order until May 4.

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

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

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

Q. Public Health - Seattle and King County has recommended that people at higher risk of severe illness

stay home and away from large groups of people as much as possible. People at higher risk include people: over 60 years of age; with underlying health conditions, including heart disease, lung disease, or diabetes; with weakened immune systems; and who are pregnant.

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

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

T. The September 2018 Seattle Women’s Commission and the King County Bar Association’s report *Losing Home: The Human Cost of Eviction in Seattle* (“Losing Home Report”) found that the most disadvantaged groups face the highest likelihood of eviction.

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

V. A 2018 investigation by the King County Medical Examiner’s Office (KCMEO) found that over half of 107 presumed homeless deaths investigated occurred outside and attributed approximately 121, or 62 percent, of presumed homeless deaths investigated to non-natural causes (drug overdose, accidents (including hypothermia), suicide, homicide, and undetermined), making it clear that people experiencing homelessness have a much higher risk than the general population of developing exposure-related conditions.

W. As of April 21, 2020, cases of COVID-19 in King County shelters and housing for people experiencing homelessness were rising and had reached 112 people, with one death in a quarantine facility, an increase from the 27 confirmed cases on April 7.

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

Y. Use of eviction history and eviction-related records occurring during and after the COVID-19 emergency to deny tenancy could contribute to more housing instability and increase individuals and families entering homelessness. This would increase the density in shelters or encampments, thus increasing the exposure of those residents to unsafe living conditions or living conditions that do not allow self-distancing or provide consistent access to locations for handwashing or other hygiene facilities.

Z. Prohibiting the use of any eviction records related to the COVID-19 pandemic to deny tenancy is necessary as an additional step to protect public health to support access to stable housing, decrease the likelihood that individuals and families will fall into homelessness, and decrease exposure while the COVID-19 emergency exists.

AA. Because the Mayor’s moratorium on evictions ends May 15, 2020 and Governor Inslee’s moratorium on eviction ends June 4, 2020, this legislation needs immediate effectiveness to ensure that tenants are protected from the use of this eviction history in finding future housing.

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

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

Section 2. The title of Chapter 14.09 of the Seattle Municipal Code, enacted by Ordinance 125393, is amended as follows:

Chapter 14.09 USE OF ((CRIMINAL)) SCREENING RECORDS IN HOUSING

Section 3. Section 14.09.005 of the Seattle Municipal Code, enacted by Ordinance 125393, is amended as follows:

14.09.005 Short title

This Chapter 14.09 shall constitute the "Fair Chance Housing and Eviction Records Ordinance" and may be cited as such.

Section 4. Section 14.09.010 of the Seattle Municipal Code, enacted by Ordinance 125393, is amended as follows:

14.09.010 Definitions

* * *

"Dwelling unit" has the meaning as defined in Section 22.204.050.D.

"Eviction history" means information disclosing 1) that an unlawful detainer action was filed pursuant to chapter 59.12 RCW or 2) that the landlord notified the tenant of the landlord's intent to evict the tenant, including notices issued pursuant to chapter 59.12 or 59.18 RCW.

* * *

Section 5. Section 14.09.020 of the Seattle Municipal Code, last amended by Ordinance 125515, is amended as follows:

14.09.020 Notice to prospective occupants and tenants

Notice of the requirements of this Chapter 14.09 shall be written on all applications for rental properties. The written notice shall state that the landlord is prohibited from requiring disclosure, asking about, rejecting an

applicant, or taking an adverse action based on any arrest record, conviction record, or criminal history, except for registry information as described in subsections 14.09.025.A.3, 14.09.025.A.4, and 14.09.025.A.5, and subject to the exclusions and legal requirements in Section 14.09.115. If a landlord screens prospective occupants for registry information, the written notice shall also include this screening criteria and must inform applicants that they may provide any supplemental information related to an individual's rehabilitation, good conduct, and facts or explanations regarding their registry information. The written notice shall also contain the following information: the landlord is prohibited from taking an adverse action against a tenant based on eviction history occurring during or within six months after the end of the civil emergency proclaimed by Mayor Durkan on March 3, 2020, and that the Seattle Office for Civil Rights is the department that will enforce any violations of this ordinance. ((The Department shall adopt a rule or rules to enforce this Section 14.09.020.))

Section 6. A new Section 14.09.026 is added to the Seattle Municipal Code as follows:

14.09.026 Prohibited use of COVID-19-related eviction history

A. No landlord may take an adverse action against a prospective or existing tenant or occupant or a member of the tenant or occupant's household based on any eviction history occurring during or within six months after the end of the civil emergency proclaimed by Mayor Durkan on March 3, 2020 unless that eviction history is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members, subject to the exclusions and legal requirements in subsections 14.09.115.A, 14.09.115.B, 14.09.115.E, and 14.09.115.F. For purposes of this subsection 14.09.026.A, if eviction history that the landlord is not permitted to consider appears in information given to a landlord and a landlord takes an adverse action against the person who is the subject of the eviction history, there is a rebuttable presumption that the adverse action was taken on the basis of eviction history that the landlord is not permitted to consider under this subsection 14.09.026.A.

B. The City intends that any eviction history occurring during or within six months after the end of the

civil emergency proclaimed by Mayor Durkan on March 3, 2020 should be considered good cause for an order of limited dissemination pursuant to RCW 59.18.367(1)(c), unless that eviction history is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members.

Section 7. Section 14.09.030 of the Seattle Municipal Code, enacted by Ordinance 125393, is amended as follows:

14.09.030 Retaliation prohibited

* * *

B. No person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 14.09. Such rights include but are not limited to the right to fair chance housing and regulation of the use of criminal history in housing by this Chapter 14.09; the right to limited use by others of eviction history occurring during or within six months after the end of the civil emergency proclaimed by Mayor Durkan on March 3, 2020; the right to make inquiries about the rights protected under this Chapter 14.09; the right to inform others about their rights under this Chapter 14.09; the right to inform the person's legal counsel or any other person about an alleged violation of this Chapter 14.09; the right to file an oral or written complaint with the Department for an alleged violation of this Chapter 14.09; the right to cooperate with the Department in its investigations of this Chapter 14.09; the right to testify in a proceeding under or related to this Chapter 14.09; the right to refuse to participate in an activity that would result in a violation of City, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.09.

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Section 8. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the immediate preservation of the public peace, health and safety.

Section 9. By reason of the findings set out in Section 1, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon its passage by a 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of the Charter of the City.

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

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)