

**CITY OF SEATTLE**  
**ORDINANCE** 126593  
**COUNCIL BILL** 120330

AN ORDINANCE relating to just cause eviction: changing the terms of certain eviction defenses; and amending Sections 22.205.090 and 22.205.100 of the Seattle Municipal Code.

WHEREAS, the Washington State Court of Appeals issued a decision in *RHA v. Seattle* on March 21, 2022 in response to a challenge to the City’s winter eviction regulation, COVID-19 related repayment plan requirements, and the COVID-19 related defense to eviction now codified at Seattle Municipal Code (SMC) Section 22.205.090 (“six-month defense”); and

WHEREAS, the Court of Appeals ruled that the six-month defense violates constitutional procedural due process guarantees because the defense does not afford landlords the opportunity to test the veracity of a tenant’s self-certification of financial hardship; and

WHEREAS, the City disagrees with the Court of Appeals’ ruling and has filed a motion for reconsideration that is pending in front of the Court of Appeals; and

WHEREAS, while the six-month defense remains in effect during the appellate process, to best ensure the effectiveness of the defense during its prescribed term (e.g., six months after the termination of the City’s eviction moratorium, which ended on February 28, 2022), the Council is adopting these amendments to eliminate the due process issue identified by the Court of Appeals, both as to the six-month defense and, in an abundance of caution, as to the defense codified at SMC 22.205.100 (“civil emergency defense”); and

1 WHEREAS, the six-month defense and the civil emergency defense remain necessary because  
2 the economic impacts of the COVID-19 pandemic continue to significantly affect renters  
3 and their ability to pay rent; and

4 WHEREAS, the ongoing economic impacts of the pandemic on tenants continue to be a  
5 particular concern given the decreasing availability of rental assistance; and

6 WHEREAS, the pandemic disproportionately impacts Black, Indigenous, and other communities  
7 of color, including in rental housing; and

8 WHEREAS, the Washington Center for Equitable Growth reports that many households,  
9 particularly those headed by Black, Latino, women, or low-income individuals, are still  
10 reeling from the pandemic's impacts on the economy; and

11 WHEREAS, even with the provision of benefits like COVID-related unemployment insurance,  
12 the Washington Center for Equitable Growth reports that Black and low-income  
13 applicants continue to be the least likely to receive these benefits; and

14 WHEREAS, the Washington Center for Equitable Growth reports also reports that more low-  
15 income workers are disproportionately not working because of caregiving  
16 responsibilities; NOW, THEREFORE,

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

18 Section 1. Section 22.205.090 of the Seattle Municipal Code, enacted by Ordinance  
19 126075, is amended as follows:

20 **22.205.090 Defense related to 2020 eviction moratorium**

21 A. Subject to the requirements of subsection 22.205.090.B, it is a defense to eviction if  
22 the eviction would result in the tenant having to vacate the housing unit within six months after

1 the termination of the Mayor's eviction moratorium, and if the reason for terminating the tenancy  
2 is:

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

6 2. The tenant habitually fails to pay rent resulting in four or more pay-or-vacate  
7 notices in a 12-month period.

8 For purposes of this Section 22.205.090, "termination of the Mayor's residential eviction  
9 moratorium" means termination of subsection 1.C (creating a defense to a pending eviction  
10 action) of the moratorium on residential evictions ordered by the Mayor's civil emergency order,  
11 as amended by the Council in Resolution 31938 on March 16, 2020.

12 B. The tenant may invoke the defense provided in subsection 22.205.090.A only if the  
13 tenant (~~has submitted~~) demonstrates that the tenant has suffered a financial hardship and is  
14 therefore unable to pay rent. The tenant's submission of a declaration or self-certification  
15 (~~asserting~~) that the tenant has suffered a financial hardship and is therefore unable to pay rent  
16 creates a presumption to that effect, which the landlord may rebut.

17 C. If a landlord issues a notice to terminate a tenancy due to a reason listed in subsections  
18 22.205.090.A.1-2, and if the landlord issues that notice within six months after the termination of  
19 the Mayor's residential eviction moratorium, the notice must contain the following statement: "If  
20 you cannot pay rent, during or within 6 months after the end of the Mayor's moratorium on  
21 evictions, your inability to pay is a defense to eviction that you may raise in court." It is a  
22 defense to eviction if the notice does not contain that statement.

1 D. An award of attorneys' fees and statutory court costs to a landlord arising from an  
2 eviction proceeding arising from a notice to terminate a tenancy due to a reason listed in  
3 subsections 22.205.090.A.1-2 is prohibited unless otherwise allowed by law.

4 Section 2. Section 22.205.100 of the Seattle Municipal Code, enacted by Ordinance  
5 126368, is amended as follows:

6 **22.205.100 Defense related to financial hardship in 2020 civil emergency**

7 A. Subject to the requirements of subsection 22.205.100.B, it is a defense to eviction if  
8 the tenant fails to pay rent due during the civil emergency proclaimed by Mayor Durkan on  
9 March 3, 2020, the tenant has suffered a financial hardship during the civil emergency  
10 proclaimed by Mayor Durkan on March 3, 2020, and the reason for terminating the tenancy is:

11 1. The tenant fails to comply with a 14-day notice to pay rent or vacate pursuant  
12 to RCW 59.12.030(3) for rent due during the civil emergency proclaimed by Mayor Durkan on  
13 March 3, 2020; or

14 2. The tenant habitually fails to pay rent resulting in four or more pay-or-vacate  
15 notices in a 12-month period.

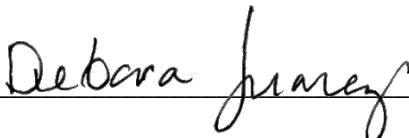
16 B. The tenant may invoke the defense provided in subsection 22.205.100.A only if the  
17 tenant ~~((submits))~~ demonstrates that the tenant has suffered a financial hardship and is therefore  
18 unable to pay rent. The tenant's submission of a declaration or self-certification ~~((asserting))~~ that  
19 the tenant has suffered a financial hardship and was therefore unable to pay rent during the civil  
20 emergency proclaimed by Mayor Durkan on March 3, 2020, creates a presumption to that effect,  
21 which the landlord may rebut.

22 C. If a landlord issues a notice to terminate a tenancy due to a reason listed in subsection  
23 22.205.100.A.1 or subsection 22.205.100.A.2, and if the notice is based on a failure to pay rent


1 due during the civil emergency proclaimed by Mayor Durkan on March 3, 2020, the notice must  
2 contain the following statement: "If you cannot pay rent due during the civil emergency  
3 proclaimed by Mayor Durkan on March 3, 2020, your inability to pay is a defense to eviction  
4 that you may raise in court." It is a defense to eviction if the notice does not contain that  
5 statement.

1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.


4 Passed by the City Council the 24th day of May, 2022,  
5 and signed by me in open session in authentication of its passage this 24th day of  
6 May, 2022.

7   
8 President \_\_\_\_\_ of the City Council

9  Approved /  returned unsigned /  vetoed this 26th day of May, 2022.

10   
11 Bruce A. Harrell, Mayor

12 Filed by me this 26th day of May, 2022.

13   
14 Monica Martinez Simmons, City Clerk

15 (Seal)

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Attachments: