SEATTLE CITY COUNCIL
CENTRAL STAFF

May 5, 2020

M E M O R A N D U M

To: Seattle City Councilmembers
From: Asha Venkataraman, Analyst
Subject: Council Bill 119787: Limited Use of Eviction History

On Monday, May 11, 2020, the Council is expected to vote on Council Bill (CB) 119787, which would amend Seattle Municipal Code (SMC) Section 14.09 to regulate use of eviction history when evaluating rental applications. CB 119787 would prohibit landlords from using eviction history occurring during and six months after Mayor Durkan's March 3, 2020 Proclamation of Civil Emergency as the basis to deny tenancy. CB 119787 would be effective immediately if passed by a three-quarters vote of the Council and signed by the Mayor. This memorandum provides background on this legislation and describes the bill and its impacts.

Background

In response to developments regarding the spread, transmission, and contraction of COVID-19 in Washington State and the Seattle region, Mayor Durkan proclaimed a civil emergency on March 3, 2020. Governor Inslee has issued a series of emergency orders intended to slow COVID-19, including restricting the size of public gatherings and limiting operations of bars and restaurants. These restrictions, among others, reduce work and cause loss of income for workers in multiple industries, including the service and entertainment industries, and are causing widespread economic impacts.

The economic and other disruptions from COVID-19 increase the likelihood that tenants will become more vulnerable to evictions. To address the specific difficulties faced by tenants, Governor Inslee issued, then extended and expanded a statewide eviction moratorium through June 4. Mayor Durkan issued an Emergency Order that places a moratorium on residential evictions and provides a defense to evictions if an eviction action occurs during this moratorium period, currently extended to be effective through June 4. However, neither these orders, nor any other federal, state, or local actions currently account for how to address the consequences of evictions that will move forward after these protections expire.

Landlords normally use eviction history (also described as unlawful detainer actions) as an indicator of whether a prospective occupant will be a good tenant. State law allows consumer reporting agencies to report a person's evictions seven years prior to the report, and this information can be transmitted to the landlord or used in the agency's scoring to recommend whether a landlord should accept a prospective occupant as a tenant. The use of eviction history as an indicator of good tenancy is premised on a belief about how tenants behave under normal, or at least, non-pandemic conditions. However, in the current COVID-19 emergency, tenants are facing unprecedented circumstances which affect how they balance the obligations

of a tenancy with other considerations. Evictions occurring during and within the six months after the pandemic may not be the most accurate indicator of how a tenant will behave in future tenancies that do not occur in the midst of a public emergency.

CB 119787

This legislation would prohibit landlords from taking an adverse action against a tenant based on prior notices or evictions that occur during or within the six months following the end of the civil emergency, unless the eviction is due to actions by the tenant that constitute an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members. CB 119787 amends SMC 14.09 to make the following changes:

1. Amends the chapter name and short title of the chapter to reference eviction records.
2. Amends the definitions section (SMC 14.09.010) to define "eviction history" as 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.
3. Amends SMC 14.09.020 and 14.09.030 related to noticing requirements and retaliation. Landlords would be required to update the written notice they must already provide on rental applications to contain information about this protection (SMC 14.09.020). Landlords would also be prohibited from retaliating against tenants who exercise their rights pursuant to CB 119787 (SMC 14.09.030).
4. Adds a new subsection (SMC 14.09.026.A) describing the new prohibition, subject to most of the exclusions and legal requirements currently in Chapter 14.09, including that:
    - State and federal law supersede City law in the event of a conflict (14.09.115.A);
    - The Chapter does not apply to federally assisted housing providers who are required to deny tenancy subject to federal regulations (14.09.115.B);
    - Nothing in Chapter 14.09 discourages or prohibits landlords from using more generous screening policies than required by the law (14.09.115.E); and
    - No private right of action arises from these protections (14.09.115.F).

    However, unlike fair chance housing, the provisions of this bill would apply when owners or subleasing or subrenting tenants occupy part of a single-family dwelling unit (14.09.115.C) and where an owner or person entitled to possession maintains a permanent residence, home, or abode on the same lot as an accessory dwelling unit (ADU) or detached accessory dwelling unit (DADU) that is being rented, subrented, or subleased (14.09.115.C).
5. Adds a new subsection (SMC 14.09.026.B), signaling to a court that eviction history occurring during and six months after the end of the Mayor's civil emergency (except for when the eviction is due to actions by the tenant that constitute an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household

members) should be considered good cause for an order of limited dissemination under state law. An eviction subject to an order of limited dissemination means that a tenant screening service provider cannot disclose the existence of the unlawful detainer action in a tenant screening report or use the unlawful detainer action as a factor in determining any score or recommendation in a tenant screening report.

Next Steps

Central Staff will address questions and prepare amendments, if requested from Councilmembers, for consideration at the Council meeting on May 11.

cc: Kirstan Arestad, Executive Director
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