



Legislation Text

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File #: CB 120077, Version: 1

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**CITY OF SEATTLE**

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

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

AN ORDINANCE relating to the termination of residential rental tenancies; providing a defense to eviction for rent due during the City's COVID-19 civil emergency; and amending Section 22.206.160 of the Seattle Municipal Code.

WHEREAS, on February 29, 2020, the Washington Governor issued Proclamation 20-05, proclaiming a state of emergency for all counties throughout the state of Washington in response to new cases of the Coronavirus Disease 2019 (COVID-19); and

WHEREAS, on March 3, 2020, Mayor Jenny A. Durkan proclaimed a civil emergency in Seattle; and

WHEREAS, on March 5, 2020, the City Council adopted Resolution 31937 affirming the civil emergency, modifying orders transmitted by the Mayor related to the emergency, and establishing Council's expectations related to future orders and reporting by the Mayor during the civil emergency; and

WHEREAS, on March 11, 2020, the World Health Organization announced that COVID-19 is officially a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency in response to the COVID-19 pandemic; and

WHEREAS, as of May 7, 2021, the State of Washington has confirmed 382,578 COVID-19 infections and 5,564 residents of Washington have died of COVID-19; and

WHEREAS, cancellations of large events and a decrease in the number of people patronizing places of business, has resulted 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, more than half of Seattle's residents are renters, and even before COVID-19, a substantial share of renters paid more than 30 percent of their income to remain stably housed; and

WHEREAS, before the pandemic, 78 percent of American workers were living paycheck-to-paycheck, and nearly 75 percent reported being in debt, and as a result of COVID and the economic recession, more than 30 million Americans-including at least 650,000 Washingtonians-are at risk of eviction when emergency measures expire; and

WHEREAS, Seattle renters are facing job loss, struggling with childcare, and dealing with other unprecedented financial burdens stemming from the global COVID-19 crisis, leaving many unable to pay rent; and

WHEREAS, at the end of August 2020, over 3,000 businesses in the Seattle metropolitan area were closed, with an estimated 59 percent of those closures being permanent, and over 32,700 people in Seattle were unemployed; and

WHEREAS, based on the January 20 to February 1, 2021 data from the U.S. Census Bureau's Household Pulse Survey, it is estimated that approximately 31,000 Seattle renter households were behind in paying rent over the last month; and

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

WHEREAS, 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; and

WHEREAS, the City, King County, and Washington State have invested tens of millions of dollars in rental

assistance programs in 2020 and 2021, including through King County’s Eviction Prevention and Rental Assistance Program, the state landlord mitigation fund, and United Way’s Home Base program; and

WHEREAS, while existing City protections allow tenants to stay housed for as long as six months after the end of the Mayor’s eviction moratorium, grounds for eviction may still exist and result in landlords evicting tenants once those protections expire; and

WHEREAS, this legislation will allow tenants to stay housed if the only reason for their eviction is unpaid rent that came due during the COVID-19 emergency and that protection will not expire; and

WHEREAS, allowing tenants to stay housed while addressing any unpaid rent due during the civil emergency proclaimed by Mayor Durkan on March 3, 2020 will create stability and potentially a better likelihood of rent repayment if tenants are not simultaneously trying to find and maintain new housing; NOW, THEREFORE,

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

Section 1. Subsection 22.206.160.C of the Seattle Municipal Code, which section was last amended by Ordinance 126278, is amended as follows:

**22.206.160 Duties of owners**

\* \* \*

C. Just cause eviction

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

22.214.040; or if subsections 22.206.160.C.8 or 22.206.160.C.9 provide the tenant a defense to the eviction.

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

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

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

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

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

e. The owner seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building, and the owner has given the tenant at least 90 days' advance written notice of the date the tenant's possession is to end. The Director may reduce the time required to give notice to no less than 20 days if the Director determines that delaying occupancy will result in a personal hardship to the owner or to the owner's immediate family. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. For the purposes of this Section 22.206.160, "Immediate family" includes the owner's domestic partner registered pursuant to Section 1 of Ordinance 117244 or the

owner's spouse, parents, grandparents, children, brothers and sisters of the owner, of the owner's spouse, or of the owner's domestic partner. There is a rebuttable presumption of a violation of this subsection

22.206.160.C.1.e if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction using this subparagraph as the cause for eviction;

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

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

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

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

h. The owner seeks to do substantial rehabilitation in the building; provided that, the owner must obtain a tenant relocation license if required by Chapter 22.210 and at least one permit necessary for the rehabilitation, other than a Master Use Permit, before terminating the tenancy;

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

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

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

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

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

1)

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

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

c) The owner is either unwilling or unable to obtain a permit to allow the

unit with that number of residents.

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

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

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

1.

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

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

b) After expiration of the 30 day notice required by subsection 22.206.160.1.1.a, or at any time after receipt of the notice of violation if no 30 day notice is required pursuant to subsection 22.206.160.1.1.a, the owner has served the tenants with and the tenants have failed to comply with a ten day notice to comply with the maximum legal limit on the number of occupants or vacate; and

c) If there is more than one rental agreement for the unit, the owner may

choose which agreements to terminate; provided that the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the option of the owner, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit.

2) For any violation of the maximum legal limit on the number of individuals allowed to reside in a unit that occurred with the knowledge or consent of the owner, the owner is required to pay relocation assistance to the tenant(s) of each such unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

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

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

m. The owner seeks to discontinue use of an accessory dwelling unit for which a permit has been obtained pursuant to Sections 23.44.041 and 23.45.545 after receipt of a notice of violation of the development standards provided in those sections. The owner is required to pay relocation assistance to the tenant household residing in such a unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

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

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

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



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

p. A tenant, or with the consent of the tenant, the tenant's subtenant, sublessee, resident, or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises, and the owner has specified in the notice of termination the crime alleged to have been committed and the general facts supporting the allegation, and has assured that the Seattle Department of Construction and Inspections has recorded receipt of a copy of the notice of termination. For purposes of this subsection 22.206.160.C.1.p, a person has "engaged in criminal activity" if the person:

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

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

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

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

4. If a tenant who has received a notice of termination of tenancy claiming subsection 22.206.160.C.1.e, 22.206.160.C.1.f, or 22.206.160.C.1.m as the ground for termination believes that the owner

does not intend to carry out the stated reason for eviction and makes a complaint to the Director, then the owner must, within ten days of being notified by the Director of the complaint, complete and file with the Director a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground.

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

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

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

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

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

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

c. The housing unit that the tenant would have to vacate is owned by a person who owns

more than four rental housing units in The City of Seattle. For purposes of this subsection 22.206.160.C.8.c, "owns" includes having an ownership interest in the housing units.

d. If the reason for termination of the tenancy is due to conditions described in subsections 22.206.160.C.1.e, 22.206.160.C.1.f provided that the tenant was provided at least 90 days' written notice prior to the date set for vacating the unit, 22.206.160.C.1.j, 22.206.160.C.1.k, 22.206.160.C.1.l, 22.206.160.C.1.m, 22.206.160.C.1.n, 22.206.160.C.1.o, or 22.206.160.C.1.p, or if the reason for termination is due to the tenant's failure to comply with a three day or ten day notice to vacate for a drug-related activity nuisance pursuant to chapter 7.43 RCW or maintenance of an unlawful business or conduct pursuant to RCW 59.12.030(5) or because the tenant's conduct has a substantial detrimental impact on, or constitutes an imminent threat to, the health or safety of other tenants in the rental building or the owner, the eviction may occur as otherwise allowed by law.

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

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

2) Housing provider eligibility. To be eligible to receive funds the housing provider shall (1) demonstrate that an eviction was delayed during this period because the tenant raised the

defense described in subsection 22.206.160.C.8; and (2) demonstrate that the tenant does not have financial resources available to pay rent during the period described in subsection 22.206.160.C.8; and (3) demonstrate that the tenant resides in a unit that is subject to restrictions on tenant incomes or rent; and (4) sign an agreement stating that the housing provider will not report the tenant's delinquency on rent payment to credit reporting agencies.

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

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

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

9.

a. Subject to the requirements of subsection 22.206.160.C.9.b, it is a defense to eviction if the eviction would result in the tenant having to vacate the housing unit within six months after the termination of the Mayor's eviction moratorium, and if the reason for terminating the tenancy is:

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

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

For purposes of this subsection 22.206.160.C.9, "termination of the Mayor's residential eviction moratorium" means termination of subsection 1.C (creating a defense to a pending eviction action) of the moratorium on residential evictions ordered by the Mayor's civil emergency order, as amended by the Council in Resolution 31938 on March 16, 2020.

b. The tenant may invoke the defense provided in subsection 22.206.160.C.9.a only if the tenant has submitted a declaration or self-certification asserting the tenant has suffered a financial hardship and is therefore unable to pay rent.

c. If a landlord issues a notice to terminate a tenancy due to a reason listed in subsections 22.206.160.C.9.a.1-2, and if the landlord issues that notice within six months after the termination of the Mayor's residential eviction moratorium, the notice must contain the following statement: "If you cannot pay rent, during or within 6 months after the end of the Mayor's moratorium on evictions, your inability to pay is a defense to eviction that you may raise in court." It is a defense to eviction if the notice does not contain that statement.

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

10.

a. Subject to the requirements of subsection 22.206.160.C.10.b, it is a defense to eviction if the tenant fails to pay rent due during the civil emergency proclaimed by Mayor Durkan on March 3, 2020,

the tenant has suffered a financial hardship during the civil emergency proclaimed by Mayor Durkan on March 3, 2020, and the reason for terminating the tenancy is:

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

or

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

b. The tenant may invoke the defense provided in subsection 22.206.160.C.10.a only if the tenant submits a declaration or self-certification asserting the tenant has suffered a financial hardship and was therefore unable to pay rent during the civil emergency proclaimed by Mayor Durkan on March 3, 2020.

c. If a landlord issues a notice to terminate a tenancy due to a reason listed in subsection 22.206.160.C.10.a.1 or subsection 22.206.160.C.10.a.2, and if the notice is based on a failure to pay rent due during the civil emergency proclaimed by Mayor Durkan on March 3, 2020, the notice must contain the following statement: "If you cannot pay rent due during the civil emergency proclaimed by Mayor Durkan on March 3, 2020, your inability to pay is a defense to eviction that you may raise in court." It is a defense to eviction if the notice does not contain that statement.

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

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

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2021, and signed by  
me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved / returned unsigned / vetoed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

(Seal)