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Title: AN ORDINANCE relating to residential and commercial tenant protections during the COVID-19 pandemic; and declaring an emergency.

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6/23/2020	1	Metropolitan King County Council	Passed as Amended	Pass
6/9/2020	1	Metropolitan King County Council	Deferred	
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5/26/2020	1	Metropolitan King County Council	Introduced and Referred	

AN ORDINANCE relating to residential and commercial tenant protections during the COVID-19 pandemic; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. Public health - Seattle & King County activated the Public Health Departmental Emergency Operations Center on January 21, 2020, for a significant health emergency caused by the COVID-19 virus. Governor Jay Inslee declared a state of emergency in response to the cases of COVID-19 in Washington state on February 29, 2020, and on March 1, 2020, the King County executive issued a proclamation of emergency.

B. The COVID-19 virus was declared a pandemic by the World Health Organization on March 11, 2020.

C. As of April 18, 2020, 11,802 people in Washington state have been diagnosed with and 624 people

have died from COVID-19.

D. On March 23, 2020, Governor Inslee issued a proclamation entitled "Stay Home - Stay Healthy," prohibiting all people in the state from leaving their homes or place of residences except either to conduct or participate in essential activities or for employment in essential business services, or both, until April 6, 2020. On April 2, 2020, Governor Inslee extended the "Stay Home - Stay Healthy" proclamation to May 4, 2020. On April 27, 2020, Governor Inslee adjusted and extended the "Stay Home - Stay Healthy" proclamation to May 31, 2020.

E. On May 31, 2020, following the expiration of the "Stay Home - Stay Healthy" proclamation, Governor Inslee issued a proclamation entitled "Safe Start", which details a phased county-by-county approach to reopening the state.

F. Public health - Seattle & 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 sixty years old; with underlying health conditions, including heart disease, lung disease or diabetes; with weakened immune systems; and who are pregnant.

G. Public health - Seattle & 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.

H. Persons with underlying health conditions are at greater risk of fatality if they contract COVID-19, and preventing individuals from becoming higher-risk patients will protect the public health, safety and welfare of the region.

I. The impacts of the emerging public health crisis on the economy, employment, job retention, child care and businesses have resulted in and might continue to 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.

J. The impacts of the forced closure of businesses will be felt most by small businesses and nonprofits, which typically have smaller profit margins, smaller cash reserves, and less access to capital than larger for-profit businesses.

K. Those 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.

L. Pursuant to provisions of the Washington state Residential Landlord-Tenant Act, chapter 59.18 RCW, an owner may not evict residential tenants without a court order, which under RCW 59.18.380 may be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction. Providing an additional defense to eviction and requiring repayment plans for overdue rent for certain causes resulting from the COVID-19 pandemic is necessary to protect public health to support stable housing, decrease the likelihood that individuals and families will fall into homelessness and decrease exposure while the COVID-19 emergency exists.

M. On March 18, 2020, Governor Inslee issued Proclamation 20-19 prohibiting eviction actions based on nonpayment of rent until April 17, 2020, which was extended until June 4, 2020, and extended again until August 1, 2020, with additional tenant protections. Under the emergency proclamation, renters are still obligated to pay landlords, resulting in potentially significant accumulated debt for those who defer payments.

N. The King County regional affordable housing task force report included census data showing that more than 124,000 low-income households in King County are severely cost burdened. Of these, 88 percent, or 109,700 households, earn 50 percent or less of area median income, meaning the county's poorest residents struggle most with housing costs. The report found that communities of color and renters are

disproportionately likely to be severely cost burdened, paying more than half of their income toward housing costs. The report also included a recommended strategy of adopting ordinances to expand tenant protection and provide implementation support. The King County council declared through Motion 15372 that recommendations contained therein represent the policy of the council.

SECTION 2. The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise.

A. "Housing unit" means a structure or that part of a structure that is used as a home, residence or sleeping place by one or more persons maintaining a common household, including, but not limited to, single-family residences and units of multiplexes, apartment buildings and mobile homes and for which occupancy is authorized by a rental agreement, excluding short-term rentals as defined by RCW 64.37.010.

B. "Mobile or manufactured home park" means any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes or park models, for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

C. "Occupancy" means the formal designation of the primary purpose of the building structure or portion thereof.

D. "Owner" means one or more persons, jointly or severally, in whom is vested:

1. All or any part of the legal title to property; or
2. All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

E. "Rental agreement" means all agreements that establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a housing or commercial unit.

F. "Small commercial tenant" means a business entity, including a sole proprietorship, corporation, partnership or other legal entity, that:

1. Is owned and operated independently from all other businesses. A franchisee with five or fewer

franchise units shall be considered owned and operated independently from its franchisor;

2. Has fifty or fewer employees per establishment or premises;

3. Has either been forced to close due to an emergency order issued by the Governor or has gross receipts from the previous calendar month of 2020 that are less than seventy percent of its gross receipts for the same month in 2019; and

4. Is neither a general sales and service business with ten or more establishments in operation located anywhere in the world nor an entertainment use business with five or more establishments in operation located anywhere in the world.

SECTION 3. A. Where an unlawful detainer action against a residential tenant is based on any reason enumerated in this section, it is a defense to eviction if the eviction was initiated because of a failure to pay rent when due between March 1, 2020, and March 1, 2021. The defense is available only where the reason for termination of the tenancy is based on:

1. The tenant's failure to comply with a fourteen-day notice to pay rent or vacate under RCW 59.12.030(3); or

2. The tenant's habitual failure to comply with the material terms of the rental agreement to pay rent that causes the owner to serve a notice to comply or vacate or a notice to pay rent or vacate three or more times in a twelve-month period.

B. To assert the defense under subsection A. of this section, the residential tenant must prove that the failure to pay rent was due to the following circumstances occurring as a result of the COVID-19 pandemic:

1. The tenant's illness;

2. Loss or reduction of income;

3. Loss of employment;

4. Reduction in compensated hours of work;

5. Business or office closure;

6. A need to miss work to care for a family member or child, where that care is uncompensated; or
7. Other similar loss of income due to the COVID-19 pandemic.

C. When considering whether to apply the defense to eviction afforded a tenant in subsection A. of this section and fashioning any remedy, the court should balance the equities of the parties and consider material impacts to the owner as well as to the tenant.

D. A residential tenant who fails to pay rent when due between March 1, 2020, and March 1, 2021, may elect to pay the overdue rent through a repayment plan if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic. In an unlawful detainer action based on nonpayment of rent that was due between March 1, 2020, and March 1, 2021, if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic, the landlord shall demonstrate by a preponderance of the evidence to a court that the tenant was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of the tenant. A failure to provide a reasonable repayment plan shall be a defense to eviction.

E. Late fees, interest or other charges do not apply to late payment of rent by tenants between March 1, 2020, to March 1, 2021, if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic, and do not apply to repayment of those amounts made in accordance with a repayment plan, so long as the payments are timely made under the plan.

F. A residential rental agreement may not be terminated by the landlord under RCW 59.12.030(2), RCW 59.18.200 or RCW 59.18.220, where the tenant has entered into a repayment plan under sections 3.D. and 4 of this ordinance until after the tenant has completed the repayment plan, or the tenant refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health and other circumstances of the tenant. This section shall not prohibit a landlord from otherwise terminating a tenancy subject to this ordinance due to behavior resulting in an imminent threat to health and safety of other persons on the premises.

SECTION 4. A small commercial tenant who fails to pay rent when due between March 1, 2020, and March 1, 2021, may elect to pay the overdue rent through a repayment plan if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic. In an unlawful detainer action against a small commercial tenant for nonpayment of rent that was due between March 1, 2020, and March 1, 2021, if the failure to pay was due to a circumstances occurring as a result of the COVID-19 pandemic, the landlord shall demonstrate by a preponderance of the evidence that the tenant was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health and other circumstances of the tenant. A failure to provide a reasonable repayment plan shall be a defense to eviction. Late fees, interest or other charges arising from the late payment of rent do not apply to late payment of rent by small commercial tenants between March 1, 2020, to March 1, 2021, if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic, and do not apply to repayment of those amounts made in accordance with a repayment plan, so long as the payments are timely made under the plan.

SECTION 5. A. Where an unlawful detainer action against a tenant of a mobile or manufactured home park is based on any reason enumerated in this section, it is a defense to eviction if the eviction was initiated because of a failure to pay rent due between March 1, 2020, and March 1, 2021. The defense is available only where the reason for termination of the tenancy or occupancy or failure to renew a tenancy or occupancy is based on:

1. The tenant's failure to comply with a fourteen-day notice to pay rent or charges or vacate due to nonpayment of rent or charges under RCW 59.20.080(1)(b);

2. The tenant's failure to comply with a fourteen-day notice to comply or vacate due to a failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation under RCW 59.20.080(1)(m);

B. To assert the defense under subsection A. of this section, the tenant of the mobile or manufactured home park must prove that the failure to pay rent was due to one or more of the following

circumstances occurring as a result of the COVID-19 pandemic:

1. The tenant's illness;
2. Loss or reduction of income;
3. Loss of employment;
4. Reduction in compensated hours of work;
5. Business or office closure;
6. A need to miss work to care for a family member or child, where that care is

uncompensated; and

7. Other similar loss of income due to the COVID-19 pandemic.

C. A tenant of a mobile or manufactured home park who fails to pay rent due between March 1, 2020, and March 1, 2021, may elect to pay the overdue rent through a repayment plan if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic. In an unlawful detainer action based on nonpayment of rent that was due between March 1, 2020, and March 1, 2021, the landlord shall demonstrate by a preponderance of the evidence to a court that the tenant was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health and other circumstances of the tenant. A failure to provide a reasonable repayment plan shall be a defense to eviction.

D. Late fees, interest or other charges do not apply to late payment of rent by tenants between March 1, 2020, to March 1, 2021, if the failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic, and do not apply to repayment of those amounts made in accordance with a repayment plan, so long as the payments are timely made under the plan.

SECTION 6. It is not the intent of the King County council to limit a court in weighing all legal and equitable defenses presented in unlawful detainer cases that include the defenses to eviction provided in sections 3.A. and D. and 4 of this ordinance. The King County council understands a court will consider the

totality of circumstances in determining liability in an unlawful detainer action.

SECTION 7. A landlord may not take any reprisal or retaliatory action against a tenant who exercises rights under this ordinance. There is a presumption that the action of the landlord violates this section if the action occurs during a repayment plan period or sixty days after completing the repayment plan.

SECTION 8. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

SECTION 9. The county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions and shall take effect immediately.