## STAFF REPORT

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| **Proposed No**.: | 2020-0191 | **Name:** | April Sanders |

**SUBJECT**

Proposed Ordinance 2020-0191 provides for residential and commercial tenant protections during the COVID-19 pandemic.

**SUMMARY**

On March 18, 2020, Governor Inslee signed Emergency Proclamation 20-19 prohibiting residential landlords from pursuing unlawful detainer actions due to nonpayment of rent. Governor Inslee subsequently extended that Proclamation, adding additional residential protections and extending certain protections to commercial tenants. The extended proclamation expires on June 4, 2020.

Proposed Ordinance 2020-0191 would create tenant protections for both residential and small commercial tenancies in unincorporated King County during the COVID-19 pandemic, modeled partially off of City of Seattle Ordinances CB 119761, 119762 and 119766.

The proposed protections would be available through September 1, 2020, which marks six months from Executive Constantine's Proclamation of Emergency on March 1, 2020.

The residential tenant protections proposed include providing residential tenants with a defense to eviction if an unlawful detainer action is based on the tenant's failure to pay rent due, if the nonpayment was because of circumstances occurring as a result of the COVID-19 pandemic. The defense to eviction would be available to residential tenants if the eviction were initiated because of unpaid rent that was due before or by September 1, 2020. The second residential protection proposed would allow a tenant who fails to pay rent due before or by September 1, 2020 to pay the overdue rent in installments. If a tenant requests a written installment repayment plan, it would be negotiated between the landlord and tenant. It would be an additional defense to eviction if a landlord refused a request to enter into a repayment plan.

The commercial tenant protection proposed would provide for a repayment plan comparable to that proposed for residential tenants.

**BACKGROUND**

***Governor Inslee's Proclamation 20-19 and 20-19.1***

On March 18, 2020, Governor Inslee signed Emergency Proclamation 20-19 prohibiting residential landlords from serving unlawful detainer actions, issuing a 20-day notice for unlawful detainer, or initiating judicial action seeking a writ of restitution for nonpayment of rent resulting from the COVID-19 pandemic. Additionally, the Proclamation prohibited local law enforcement from serving or acting on evictions for nonpayment of rent resulting from the COVID-19 pandemic.

This Emergency Proclamation was set to expire on April 17, 2020. However, Governor Inslee signed an extension of the moratorium on evictions, on April 16, 2020. In addition to extending the previous moratorium, Emergency Proclamation 20-19.1 added additional protections for both residential and commercial tenancies, including:

· Prohibits the enforcement of agreements to vacate;

· Prohibits a landlord from requiring a nonpaying tenant to move to a lesser unit and/or threatening to take action against tenants;

· Prohibits landlords from assessing or threatening to assess late fees for nonpayment;

· Prohibits landlords from increasing rents or deposits for residential and commercial units;

· Prohibits landlords from treating unpaid rent and charges as an enforceable debt;

· All rent payments delayed through this moratorium will still be owed, but a landlord must offer a tenant a reasonable repayment plan to enforce any collection of that debt.

For commercial tenancies, the protections apply only if the commercial tenant has been materially impacted by the COVID-19 pandemic. Emergency Proclamation 20-19.1 expires on June 4, 2020.

***City of Seattle Ordinances***

Since Mayor Durkan's Proclamation of Emergency on March 3, 2020, the Seattle City Council has deliberated on and passed a number of ordinances responding to the COVID-19 pandemic. Related to Proposed Ordinance 2020-0191 are CB 119761, 119762 and 119766.

Ordinance CB 119761 provides protections for residential tenants and states that it is a defense to eviction of the eviction of a residential tenant would result in the tenant having to vacate the rental unit during or within six months after the termination of the Mayor's Proclamation of Emergency. The provision is available only if the eviction was due to circumstances occurring as a result of the pandemic.

Ordinance CB 11972 provides protections for residential tenants and requires that landlords allow tenants to pay overdue rent incurred during or within six months after the termination of the Mayor's Proclamation of Emergency in installments on a payment schedule. This protection is for rent incurred only if the failure to pay rent is related to the COVID-19 emergency. The repayment plan must not require the tenant to pay more than 1/3rd of the overdue rent each month unless agreed by the tenant. Additionally, all rental debt accrued shall be paid within one year after the termination of the Mayor's Proclamation of Emergency.

Lastly, Ordinance CB 119766 provides protections for small businesses and nonprofits. For the purpose of that ordinance, small businesses are defined as having 50 or fewer employees. The first provision of this ordinance places a moratorium on rent increases for small businesses and nonprofits under a month-to-month agreement or are subject to an existing lease that is being renewed. The second provision establishes a payment plan for overdue rent for small businesses and nonprofits with comparable provisions to the residential repayment plan in Ordinance CB 11972.

**ANALYSIS**

Proposed Ordinance 2020-0191 would create tenant protections for both residential and small commercial tenancies in unincorporated King County during the COVID-19 pandemic, modeled partially off of City of Seattle Ordinances CB 119761, 119762 and 119766. The protections in the Proposed Ordinance would be available through September 1, 2020, which marks six months from Executive Constantine's Proclamation of Emergency on March 1, 2020.

***Residential Tenant Protections***

Defense to Eviction

The Proposed Ordinance would provide residential tenants with a defense to eviction if an unlawful detainer action is based on the tenant's failure to pay rent due was a result of circumstances occurring as a result of the COVID-19 pandemic. These circumstances include: the tenant's illness; loss or reduction of income; loss of employment; reduction in compensated hours of work; business or office closure; a need to miss work to care for a family member or child, where that care is uncompensated; or other similar loss of income due to the COVID-19 pandemic.

The defense to eviction would be available to residential tenants if the eviction were initiated because of unpaid rent that was due before or by September 1, 2020.

Repayment Plan

Additionally, the Proposed Ordinance would allow a tenant who fails to pay rent due before or by September 1, 2020 to pay the overdue rent in installments. If a tenant requests a written installment repayment plan, it would be negotiated between the landlord and tenant. However, the repayment plan could not require the tenant to pay more than 1/3rd of the overdue rent each month unless agreed to by the tenant and all rental debt accumulated must be paid by September 1, 2021. The landlord would not be allowed to charge late fees, interest or other charges. It would be an additional defense to eviction if a landlord refused a request to enter into a repayment plan.

***Small Commercial Tenant Protections***

Repayment Plan

The provisions for small commercial tenants in the Proposed Ordinance model the repayment plan outlined for residential tenants above. In summary, small commercial tenants would have the ability to request a written installment repayment plan, to be negotiated between the landlord and tenant. the repayment plan could not require the tenant to pay more than 1/3rd of the overdue rent each month unless agreed to by the tenant and all rental debt accumulated must be paid by September 1, 2021. The landlord would not be allowed to charge late fees, interest or other charges. It would be an additional defense to eviction if a landlord refused a request to enter into a repayment plan.

For the purpose of the Proposed Ordinance, small commercial tenant is defined as a business entity that is owned an operated independently from all other businesses[[1]](#footnote-1) and: has fifty or fewer employees per establishment or premises; has either been forced to close due to an emergency order issues by Governor Inslee or has gross receipts from the previous calendar month that are less than 70 percent of its gross receipts for the same month in 2019; and is neither a general sales and service business with 10 or more establishments in operation anywhere in the world nor an entertainment business with 5 or more establishments anywhere in the world.

**INVITED**

* Jina Kim, Prosecuting Attorney's Office
* Darren Carnell, Prosecuting Attorney's Office

1. Note that the Proposed Ordinance specifies that a franchisee with five or fewer franchise units shall be considered to comply with this provision. [↑](#footnote-ref-1)