

McD moved S2. S2 as amended carried.

S2

6/22/20
Striking Amd 2

AS Sponsor: Balducci, Zahilay, Kohl-Welles
Proposed No.: 2020-0191

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2020-0191, VERSION**

2 **2**

3 On page 1, beginning on line 4, strike everything through page 9, line 178, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. Public health - Seattle & King County activated the Public Health
7 Departmental Emergency Operations Center on January 21, 2020, for a significant health
8 emergency caused by the COVID-19 virus. Governor Jay Inslee declared a state of
9 emergency in response to the cases of COVID-19 in Washington state on February 29,
10 2020, and on March 1, 2020, the King County executive issued a proclamation of
11 emergency.

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

14 C. As of April 18, 2020, 11,802 people in Washington state have been diagnosed
15 with and 624 people have died from COVID-19.

16 D. On March 23, 2020, Governor Inslee issued a proclamation entitled "Stay
17 Home - Stay Healthy," prohibiting all people in the state from leaving their homes or
18 place of residences except either to conduct or participate in essential activities or for

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17 Home - Stay Healthy," prohibiting all people in the state from leaving their homes or
18 place of residences except either to conduct or participate in essential activities or for

19 employment in essential business services, or both, until April 6, 2020. On April 2, 2020,
20 Governor Inslee extended the "Stay Home - Stay Healthy" proclamation to May 4, 2020.
21 On April 27, 2020, Governor Inslee adjusted and extended the "Stay Home – Stay
22 Healthy" proclamation to May 31, 2020.

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

26 F. Public health - Seattle & King County has recommended that people at higher
27 risk of severe illness stay home and away from large groups of people as much as
28 possible. People at higher risk include people: over sixty years old; with underlying
29 health conditions, including heart disease, lung disease or diabetes; with weakened
30 immune systems; and who are pregnant.

31 G. Public health - Seattle & King County has recommended that employers take
32 steps to make it more feasible for their employees to work in ways that minimize close
33 contact with large numbers of people, including maximizing telecommuting options and
34 maximizing flexibility in sick leave benefits for those who are ill or at high risk.

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

38 I. The impacts of the emerging public health crisis on the economy, employment,
39 job retention, child care and businesses have resulted in and might continue to result in:
40 workers being unable to go to work because of illness; the need to care for children home
41 from day care or school or for other family members without paid sick or safe time; and

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38 I. The impacts of the emerging public health crisis on the economy, employment,
39 job retention, child care and businesses have resulted in and might continue to result in:
40 workers being unable to go to work because of illness; the need to care for children home
41 from day care or school or for other family members without paid sick or safe time; and

42 reduced hours due to reduced demand, furlough or unemployment as businesses struggle
43 during the state of emergency.

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

47 K. Those risks are compounded especially for workers without paid sick or safe
48 time, those in the "gig economy" and others without protections that help stabilize
49 income. Historically disadvantaged populations are already at greater risk of eviction.
50 Compounding existing risk with the impacts from the COVID-19 emergency may
51 increase the likelihood of exposure, spread and contraction of the virus.

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

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

65 payments.

66 N. The King County regional affordable housing task force report included
67 census data showing that more than 124,000 low-income households in King County are
68 severely cost burdened. Of these, 88 percent, or 109,700 households, earn 50 percent or
69 less of area median income, meaning the county's poorest residents struggle most with
70 housing costs. The report found that communities of color and renters are
71 disproportionately likely to be severely cost burdened, paying more than half of their
72 income toward housing costs. The report also included a recommended strategy of
73 adopting ordinances to expand tenant protection and provide implementation support.
74 The King County council declared through Motion 15372 that recommendations
75 contained therein represent the policy of the council.

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

78 A. "Housing unit" means a structure or that part of a structure that is used as a
79 home, residence or sleeping place by one or more persons maintaining a common
80 household, including, but not limited to, single-family residences and units of
81 multiplexes, apartment buildings and mobile homes and for which occupancy is
82 authorized by a rental agreement, excluding short-term rentals as defined by RCW
83 64.37.010.

84 B. "Occupancy" means the formal designation of the primary purpose of the
85 building structure or portion thereof.

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

87 1. All or any part of the legal title to property; or

88 2. All or part of the beneficial ownership, and a right to present use and
89 enjoyment of the property.

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

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

95 1. Is owned and operated independently from all other businesses. A franchisee
96 with five or fewer franchise units shall be considered owned and operated independently
97 from its franchisor;

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

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

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

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

110 1. The tenant's failure to comply with a fourteen-day notice to pay rent or vacate

111 under RCW 59.12.030(3); or

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

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

118 1. The tenant's illness;

119 2. Loss or reduction of income;

120 3. Loss of employment;

121 4. Reduction in compensated hours of work;

122 5. Business or office closure;

123 6. A need to miss work to care for a family member or child, where that care is
124 uncompensated; or

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

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

129 D. A residential tenant who fails to pay rent when due between March 1, 2020,
130 and March 1, 2021, may elect to pay the overdue rent through a repayment plan if the
131 failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic.
132 In an unlawful detainer action based on nonpayment of rent that was due between March
133 1, 2020, and March 1, 2021, if the failure to pay was due to circumstances occurring as a

134 result of the COVID-19 pandemic, the landlord shall demonstrate by a preponderance of
135 the evidence to a court that the tenant was offered, and refused or failed to comply with, a
136 repayment plan that was reasonable based on the individual financial, health, and other
137 circumstances of the tenant. A failure to provide a reasonable repayment plan shall be a
138 defense to eviction.

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

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

152 SECTION 4. A small commercial tenant who fails to pay rent when due between
153 March 1, 2020, and March 1, 2021, may elect to pay the overdue rent through a
154 repayment plan if the failure to pay was due to circumstances occurring as a result of the
155 COVID-19 pandemic. In an unlawful detainer action against a small commercial tenant
156 for nonpayment of rent that was due between March 1, 2020, and March 1, 2021, if the

157 failure to pay was due to a circumstances occurring as a result of the COVID-19
158 pandemic, the landlord shall demonstrate by a preponderance of the evidence that the
159 tenant was offered, and refused or failed to comply with, a repayment plan that was
160 reasonable based on the individual financial, health and other circumstances of the tenant.
161 A failure to provide a reasonable repayment plan shall be a defense to eviction. Late fees,
162 interest or other charges do not apply to late payment of rent by small commercial tenants
163 between March 1, 2020, to March 1, 2021, if the failure to pay was due to circumstances
164 occurring as a result of the COVID-19 pandemic, and do not apply to repayment of those
165 amounts made in accordance with a repayment plan, so long as the payments are timely
166 made under the plan.

167 SECTION 5. It is not the intent of the King County council to limit a court in
168 weighing all legal and equitable defenses presented in unlawful detainer cases that
169 include the defenses to eviction provided in sections 3.A. and D. and 4 of this ordinance.
170 The King County council understands a court will consider the totality of circumstances
171 in determining liability in an unlawful detainer action.

172 SECTION 6. A landlord may not take any reprisal or retaliatory action against a
173 tenant who exercises rights under this ordinance. There is a presumption that the action
174 of the landlord violates this section if the action occurs during a repayment plan period or
175 sixty days after completing the repayment plan.

176 SECTION 7. Severability. If any provision of this ordinance or its application to
177 any person or circumstance is held invalid, the remainder of the ordinance or the
178 application of the provision to other persons or circumstances is not affected.

179 SECTION 8. The county council finds as a fact and declares that an emergency
180 exists and that this ordinance is necessary for the immediate preservation of public peace,
181 health or safety or for the support of county government and its existing public
182 institutions and shall take effect immediately."

183

184 **EFFECT:**

- 185 • **Changes the sunset date of the provisions from September 1, 2020 to March**
186 **1, 2021.**
- 187 • **Notes that when considering whether to apply the defense afforded to**
188 **tenants, the Court should balance the equities of the parties and consider**
189 **material impacts to the owner as well as to the tenant.**
- 190 • **Prohibits no cause evictions for residential tenants who have entered into a**
191 **repayment plan.**
- 192 • **Adds an anti-retaliation provision.**
- 193 • **Amends the repayment plan language to more closely model Governor**
194 **Inslee's proclamation and making the provisions broader.**
- 195 • **Adds a section specifying that the intent of the Council is that the courts**
196 **would weigh the totality of circumstances in determining liability in an**
197 **unlawful detainer case.**
- 198 • **Makes technical corrections recommended by the PAO and the code reviser.**