



City of Seattle

Date: February 4, 2020

To: Honorable Members of the Seattle City Council

From: Nathan Torgelson, Director, Seattle Department of Construction and Inspections
Emily Alvarado, Director, Office of Housing
Jason Johnson, Director, Human Services Department
Andrew Lofton, Executive Director, Seattle Housing Authority

Re: Protecting Renters from Evictions

Like you, we believe that strong tenant protections are needed as we build more affordable housing in neighborhoods throughout the City of Seattle. To that end, the City is committed to working with stakeholders to develop new and innovative tools to help renters remain in their homes.

Unfortunately, we write to express deep concerns with Council Bill 119726. While we understand consideration of CB 119726 has been delayed until February 10, we request that City Council postpone any action on the legislation until alternative strategies to reduce evictions – strategies that would have a lesser likelihood of being tied up in court action – can be further explored and developed.

As you know, over the past year, Mayor Durkan, City Council, and departments worked together to successfully implement a range of tenant protections including lobbying the legislature to strengthen protections statewide. By working together, we were able to take steps to reduce burdens for renters and improve access to information and resources for tenants and landlords. We strongly support the goal of preventing homelessness, especially unsheltered homelessness and want to work together to develop new approaches to prevent evictions.

We understand the intent of this legislation is to prevent physical evictions in winter months, because eviction can lead to homelessness and sleeping outdoors during these months can increase the likelihood of developing exposure-related medical conditions. However, based on the numerous and significant issues listed below, CB 119726 will not achieve these goals and is an unworkable starting point.

There is significant legal risk associated with passing CB 119726. It will likely be challenged in court, require significant time and resources to defend, and a negative outcome is very possible. In the case of a lawsuit, the ordinance likely would not go into effect, and renters will still be evicted from their homes. A recent legal challenge of a recent ordinance cost the City

more than \$1.43 million. These resources are better spent developing and investing in solutions that will help tenants find or maintain stable housing.

A more detailed explanation of our concerns is outlined below.

1. CB 119726 has numerous adverse impacts on the tenants it is trying to help.

Tenants will still end up evicted. Once a tenant has an eviction on their record, their ability to be rehoused becomes increasingly challenging. Vulnerable tenants need interventions, such as those provided by City-funded homelessness prevention programs and carefully considered tenant protections, which could be far more impactful for the tenant than a delayed eviction.

Tenants could exit the envisioned process with significant debt. Rent responsibility continues throughout the eviction and writ timelines, until the household vacates the unit. Tenants may be incentivized to stop paying, knowing that they will need money to move when the moratorium expires while not realizing that they will ultimately be responsible for all unpaid charges. Charges could include rent, interest charges on assessed judgements, utilities, storage, parking, pet rent, and late fees, which could easily accrue to thousands of dollars over the five-month period. Once accrued, they could be very difficult for a low-income tenant to recover from. If the tenant seeks assistance, this debt may be more than rent-assistance and debt-relief programs can accommodate.

Tenants will be less likely to benefit from longer-term agreements that serve as alternatives to eviction. If a property owner is unable to vacate the property between November and March, they will be reluctant to enter into any agreement, such as a longer-term payment plan, that extends into the winter months. Property owners may also be less willing to enter into agreements that address behavior issues or provide for a longer move-out date. If the tenant were to breach the agreement between November and March, the owner would have no recourse. These agreements are especially vital for seniors and tenants with disabilities. If pre-filing settlements are reduced, that means filed evictions are increased, and more tenants end up with a filed eviction on their record.

Evictions will be likely to increase during non-winter months. Tenants may be more likely to be evicted for smaller sums of money or less serious lease violations between April and October when property owners are able to move forward with the process as designed today.

The legislation creates an incentive for informal evictions. By prohibiting evictions for five months of the year, this legislation creates an incentive for property owners to find informal ways to remove tenants when they are unable to rely on the sanctioned process.

2. CB 119726 could have adverse impacts on the health and safety of rental communities.

There are some cases where eviction as quickly as possible is critical to the health and safety of other residents of a rental community. CB 119726 narrowly exempts “criminal” or “illegal” activity, but there are occasional situations where a tenant’s behavior and actions may not meet a definition of “criminal” or “illegal” but nevertheless pose an imminent threat to the health and safety of residents, staff and others.

A recent example to illustrate: A man living in a Seattle Housing Authority community demonstrated extreme anger management issues and threatened other residents with physical harm. He repeatedly shouted offensive racial slurs, made physical threatening gestures toward other residents in hallways, laundry areas, the community room and other common spaces and approached people’s individual apartment doors in the same manner, terrifying other residents. Staff attempts to mediate put them in danger and were ineffective. Law enforcement was not able to make an arrest because a crime had not been committed. SHA was forced to evict to protect other residents; it was essential this happened in a timely manner to protect the other residents. In any case similar to this, SHA attempts to help mitigate the behavior through the use of professional resources and services, before turning to eviction as the only recourse when other efforts did not resolve the situation. These circumstances occur rarely, but they do happen, and they have to be addressed.

3. CB 119726 could have adverse impacts on the rental market.

An increased risk to property owners may result in increased rent or higher screening criteria. Small landlords make up a sizeable portion of Seattle’s rental housing stock. Over 20,000 of the 32,000 registered rental properties are single-unit properties such as houses and condos, many of which are owned by a small landlord. CB 119726 could result in to up to five months of unpaid rent and utilities, leaving the property owner to cover debt service, maintenance costs, utilities, and other expenses. This could cause higher rents to cover the risk, higher screening criteria to minimize risk, and property owners leaving the rental market voluntarily or involuntarily if they cannot cover their expenses.

The legislation will impact operations of publicly subsidized affordable housing. In rent- and income-restricted housing where operating costs are not currently subsidized, owners may seek additional public subsidy in order to cover expenses—such as replacement reserves, debt service, and staffing costs—that would otherwise be paid using rental income.

4. *CB 119726 poses significant legal and procedural questions about how it would be operationalized and enforced and creates conflict with state laws.*

The language is unclear. CB 119726 is unclear about whether an eviction may be filed between November and March. Section C.1 states that the moratorium is a defense to an eviction while Section C.8 states that the property owner may not evict a tenant if the tenant would have to vacate within the prohibited timeframe. Either option has consequences.

Enforcement and the City's jurisdiction is in question. If the owner is able to file the case, it is unclear whether the court would be able to enforce the moratorium if the tenant did not answer or appear. The legislation leaves the matter of defaults, which account for more than half of all evictions, unaddressed.

Further, SDCI also does not appear to have the ability or the jurisdiction to enforce this ordinance. It is not clear that serving an eviction notice or filing the case alone would violate the ordinance. Once filed, SDCI does not have enforcement power over the King County Sheriff's Office or the King County Superior Court. It would ultimately be up to the courts and the King County Sheriff – not the City – to enforce the moratorium.

Notices are likely to expire. If notices can be served, but no eviction can be filed, the notices would likely expire because the landlord is unable to take action during the five months. RCW 59.18.130 states that a notice expires after 60 days unless the property owner moves forward.

Writs are likely to expire. If the owner prevails in an eviction case and obtains an order between November and March, the legislation requires the court to stay the writ of restitution until April 1. The writ would likely expire during the delay as RCW 59.12.090 requires that the writ be returned within 20 days of issuance. Generally, this is extended an additional 10 days in King County before the court needs to re-issue. However, any longer period would result in an increase in attorney's fees for the owners that would likely be added to the tenants' debt or passed on to new tenants in the form of higher rent.

Rent, or partial payments of rent, are unlikely to be accepted, increasing tenant's debt. If notices can be served, but no eviction can be filed, the owner is unlikely to accept rent (except for full payment during the cure period of a non-payment notice) because acceptance of rent can be construed as a waiver of the property owner's right to proceed to an eviction. As stated above, this increases the likelihood that a tenant would exit the situation with significant debt.

Interest will likely accrue and increase tenant debt. If the owner may file the case and obtains an order/judgment between November and March, the judgment is subject to 12 percent interest that accrues until the sum is paid, digging the tenant deeper into debt even if they were able to pay the rent for the moratorium months.

Tenants' legal status is in question. It is unclear what the tenants' legal status would be during the moratorium if the court made findings that the tenancy was terminated and issued the writ

with a delayed execution date. The termination of the tenancy and subsequent acceptance of rent by the owner could create a new month to month tenancy subject to JCEO protections; further incentive for an owner to avoid accepting rent during this process.

5. *We believe we can develop more effective ways to reduce evictions, in ways that are not limited to just the winter months and in ways that do not adversely impact tenants.*

Over the last two years we have seen important advances in eviction protections and other safeguards for tenants. Several Mayor-led and Council-led tenant protections have been enacted. We have increased funding to community organizations to provide eviction defense and other tenant services and continue to invest in homeless prevention programs that have proven successful at keeping vulnerable tenants housed. We have built the *Renting in Seattle* portal and outreach program to help renters learn their rights and connect with services. At the state level, tenant safeguards have been added to the eviction process to allow more time to head off an eviction and more judicial discretion to work out alternatives to eviction.

We look forward to working with you in partnership toward the goal of preventing evictions and preventing homelessness. We are excited about new ideas we are developing that intervene early in the process to help tenants find a path that avoids eviction.