

City of Seattle Imposes Restrictions on Commercial Rental Properties

The City of Seattle passed an ordinance limiting the ability of landlords to raise rent, requiring landlords to enter into payment plans for overdue rent, and prohibiting charging late fees and interest during the COVID-19 state of emergency. The restrictions apply to small business and nonprofit tenants impacted by COVID-19. The ordinance is available [here](#).

SUMMARY OF THE ORDINANCE

Restrictions Apply Only to Small Businesses and Nonprofits.

The ordinance is limited to small business and nonprofit tenants (referred to in this memo as “qualified tenants”). A “small business” means any type of business entity (e.g., corporation, partnership, sole proprietorship, etc.) that meets all of the following requirements:

1. Owned and operated independently from all other businesses (including a franchisee with five or fewer franchise units);
2. 50 or fewer employees per establishment or premises;
3. Either (a) has been forced to close due to an emergency order by Governor Inslee or Mayor Durkan; or (b) has gross receipts in the prior month of 2020 that are less 70 percent for the same month in 2019; and
4. Is neither (a) a general sales and service business with 10 or more establishments worldwide; nor (b) an entertainment use business with 5 or more establishments worldwide.¹

A “nonprofit” means any entity that is a nonprofit corporation or public benefit nonprofit corporation under Washington law and holds 501(c)(3) tax-exempt status.

Limitations on Raising Rent.

The Ordinance limits the ability of landlords to raise rent for small business and nonprofit tenants as long as Mayor Durkan’s emergency proclamation remains in effect. For month-to-month tenancies, landlords cannot raise rent charged to a qualified tenant. For all other types of tenancies, landlords cannot increase rent for a qualified tenant during the lease term, except as authorized in a written lease in effect before the April 17. Landlords also cannot renew a lease or enter a new lease with the qualified tenant for higher rent than the expired lease.

Payment Plans for Late Rent.

The Ordinance gives qualified tenants the option to pay late rent in installments on a deferred payment plan. This option applies to rent due on or after March 3, 2020, going forward until 6 months after

¹ “General sales and service” and “entertainment use” are defined in the City’s [Land Use Code](#).

Mayor Durkan lifts the emergency proclamation. The landlord must negotiate a written schedule for payment of late rent with the tenant. For any month/period, the schedule cannot require the tenant to pay more than 1/3 of late rent plus the rent due for that month/period (unless agreed by the tenant). Late rent must be paid in full no later than 1 year after the end of the emergency.

Prohibition of Late Fees and Interest.

Landlords are prohibited from imposing late fees, interest, or other charges due to late payment of rent from March 3, 2020 until 1 year after the Mayor lifts the emergency proclamation. This provision applies to any late rent payment even beyond the six month period in which rent can be deferred. Although this provision is not by its terms limited to small businesses and nonprofits, that appears to be the intent of the ordinance.

FREQUENTLY ASKED QUESTIONS

If a landlord has an unrented space, can the landlord enter into a new lease with a new tenant at a rental rate above that of the prior tenant?

Yes. The Ordinance does not impose restrictions on rental rates for new tenants. However, if the new tenant is a small business or nonprofit, the restrictions would apply to that new tenant going forward.

If a tenant is on a month-to-month lease, can a landlord raise the rent after the emergency ends?

Yes. The limitations on raising rent for qualified tenants will end when the Mayor lifts her emergency proclamation.

If qualified tenant's lease expires and a landlord wants to raise the rent, can the landlord let the tenant go month-to-month until the end of the emergency and then negotiate a new lease with increased rent?

Yes. After a lease expires, the landlord can continue to lease the premises to the tenant at the same rental rate on a month-to-month basis. Once the Mayor lifts the emergency proclamation, the landlord and tenant can enter new lease at an increased rental rate.

If a tenant is on or goes to a month-to-month lease, can the landlord terminate the lease on 30-days' notice?

Not at least through May 16, 2020. Mayor Durkan put a [moratorium](#) on eviction of small businesses and nonprofits due to expiration of a lease term or nonpayment of rent through May 16, 2020 (or if earlier, when the emergency proclamation is lifted). The moratorium may be extended.

If a qualified tenant fails to pay rent that is due after the Mayor lifts the emergency proclamation, can the landlord evict the tenant?

Maybe. The deferred payment protections apply for rent that comes due up to 6 months after the end of the emergency and require payment to be made in full no later than 1 year after the emergency. The ordinance does not provide protection for non-payment of rent due after the initial six-month period. However, the ordinance does not address how payments under the negotiated payment plan should be applied to current rent versus late rent. This is an issue that should be negotiated by the landlord and tenant in the written deferred payment plan schedule. Note that Mayor Durkin has issued a moratorium on commercial evictions through May 16, 2020 that may be extended. Assuming there is no moratorium on evictions in effect, the landlord would arguably be able to evict a qualified tenant where the landlord offers a deferred payment schedule consistent with the requirements in the ordinance and the tenant fails to make payments on rent required by the schedule. At a minimum, the landlord would have the right to evict if there is any overdue rent more than 1 year after the end of the emergency.

What is the most aggressive payment schedule the landlord can demand?

At a minimum, a landlord can demand that the tenant to pay 1/3 of all late rent as of each month/period. New rent will continue to come due each month/period but until 6 months after the emergency, the landlord likely cannot require that the tenant also pay the amount of new rent during month/period it comes due. This is because the tenant has the option to pay that rent on a deferred schedule. After this 6-month period, the landlord likely can require the tenant to pay 1/3 of all late rent plus the new rent due each month/period until the tenant has paid all late rent within 1 year after the emergency.

What is the consequence of refusing to negotiate a deferred payment schedule for overdue rent?

The Ordinance does not include specific penalties if a landlord fails to negotiate a deferred payment schedule. As a practical matter, the landlord will not be able to evict a qualified tenant for nonpayment of rent or obtain a judgment from a court that would provide greater relief than available under a payment schedule. The landlord can insist on the most aggressive payment schedule allowed by the ordinance, as explained above.

Can a landlord charge penalties or interest if included in a lease or payment schedule?

No. The ordinance prohibits any late fees, interest, or other charges due to late payment of rent, without any exceptions.

Can a landlord require a tenant to provide documentation demonstrating that it qualifies as a “small business”?

Most likely. Although the ordinance does not address this issue, the tenant would need to demonstrate that it meets the requirements before it would be entitled to any relief in court.

When does the emergency end?

The Mayor has discretion to decide when to terminate the emergency proclamation in Seattle.

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