



## **CITY OF KIRKLAND**

**City Attorney's Office**

**123 Fifth Avenue, Kirkland, WA 98033 425.587.3030**

**[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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### **MEMORANDUM**

**To:** City Councilmembers

**From:** Kurt Triplett, City Manager  
Kevin Raymond, City Attorney

**Date:** December 29, 2020

**Subject:** RENTAL ASSISTANCE POLICY OPTIONS

#### **RECOMMENDATION:**

In response to the City Council's request, it is recommended that the Council receive a general briefing from the City Manager related to rental assistance policy options available to the City of Kirkland ("City") during the pendency of the COVID-19 pandemic. This briefing will summarize existing efforts, policy options and potential one-time funding sources.

#### **BACKGROUND DISCUSSION:**

Residential tenants, small businesses and nonprofit organizations continue to suffer severe economic disruption resulting from the COVID-19 pandemic. Many residential and commercial landlords, property owners and property managers also are suffering economically due to the widespread impacts of the virus. While the recent introductions of vaccines have given great hope to many, it is clear the pandemic is far from over and that its devastating impacts on public health and the economy will continue well into 2021.

Given these continuing impacts and the severe limitations on available federal and state assistance to residential tenants, small businesses and nonprofit organizations in Kirkland, the Council has asked City staff to identify policy and funding options that could offer provisional assistance to such individuals and entities in need, recognizing that interim programs that offer financial support could also directly or indirectly support landlords, property owners and property managers in Kirkland who are also suffering economically, including as a result of reduced rent payment receipts.

This discussion begins with existing efforts at the federal and state levels, before turning to local policy and funding options.

#### **Federal and State Financial Support**

Federal, State of Washington, and King County financial support for residential tenants, small business and nonprofit organizations provided through cities is not currently available. However, those higher levels of government are providing some rental assistance and Kirkland

will continue to support efforts that connect Kirkland residents and businesses to these programs.

### **State Law Protections for Residential Tenants: Statutory**

As background information, the general rights and responsibilities of residential tenants and landlords are set forth in the Washington landlord-tenant statute, chapter 59.18 RCW. Under the statute, failure to pay rent is a basis for tenant evictions, but tenants may be removed only through unlawful detainer actions brought and sustained in court. The statute provides basic life and safety protections for tenants but does not include "just cause" eviction rights that would extend such protections beyond by applicable lease terms and conditions. The statute states expressly that it does not preempt additional, lawful protections that might be offered tenants locally.

The Washington Legislature adopted several statutory changes in 2019 that benefit residential tenants in the state. The minimum number of days of notice to vacate residential premises for nonpayment of rent was extended to 14 days (SB 5600). At least 60 days of written notice must be given before rent may be increased (HB 1440). Finally, a minimum of 120 days of written notice must now be given to tenants before a landlord may change a structure's use or demolish or substantially rehabilitate the structure (HB 1462).

### **State Law Protections for Residential and Commercial Tenants: Gubernatorial Emergency Proclamation**

Among other efforts related to the COVID-19 pandemic, Governor Inslee has, through emergency proclamation, provided for various statewide protections related to evictions and related housing practices. These protections have been in place since the beginning of the pandemic in Washington and were recently extended through March 31, 2021. (20-19.5, Evictions and Related Housing Practice, Proclamation by the Governor Extending and Amending 20-05, 20-19 et seq.)

Under this proclamation, and with certain narrow exceptions related to either (i) a "significant and immediate risk to the health, safety, or property of others created by the resident" or (ii) a major change of use to a structure and with at least 60 days of written notice, residential tenants may not be threatened or evicted due to an expiring lease or the nonpayment of rent. Landlords also may not impose late fees on rent or impose rent increases beyond those expressly provided for in a lease, and in the latter case, even lawful rent increases may not be collected during the pendency of the proclamation.

It is worth noting that the Governor's proclamation also generally prohibits rent increases on commercial properties if the commercial tenant can show it has been "materially impacted by COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential...or otherwise lost or customers due to the COVID-19 outbreak."

Given these statewide protections but recognizing the remaining vulnerability of Kirkland's small businesses and nonprofit organizations, the City Manager acted by emergency directive to protect such businesses and organizations from eviction due to nonpayment of rent or lapse of lease. This directive went into initial effect on March 31, 2020. It was extended once on June 10 and eventually expired by its terms on August 9, 2020. Both the original directive and its

extension were ratified by the Council. The directives provided affected businesses and organizations with affirmative defenses in the event of attempted eviction actions contrary to the terms of the directives. However, more direct City involvement was not contemplated by the directives.

The Council was previously provided detailed briefings of the additional initiatives undertaken by the City to support Kirkland businesses and nonprofit organizations, utilizing federal CARES Act funding, and so that information is not repeated in this update.

## **Policy Options**

As noted in the City Manager's report at the December 8, 2020 special meeting of the Council, City staff has been canvassing policy options to further protect residential and commercial tenants without inordinately and adversely impacting landlords, who often are also significantly impacted by COVID-19. At that meeting, the City Manager informed the Council that staff would present policy and funding options for Council review and discussion at the January 5 Council meeting.

This section of the memorandum summarizes, in bullet format, various potential policy and funding options reviewed by City staff and undertaken in other jurisdictions, before addressing three primary policy options and one immediate funding option (in **bold**) in more detail. These are high level summaries only of complex legal and logistical issues and staff will be prepared to answer more detailed questions at the Council meeting.

General policy options:

- **Reinstate eviction moratorium for small businesses and nonprofit organizations**
- **Develop a rent relief grant program**
- **Enact a "just cause" ordinance**
- Create a rental housing inspection program backed by code enforcement (e.g. health and safety threats) and assessment of civil penalties (requires new dedicated staffing)
- Create additional business license requirements for owners of rental units in Kirkland (require new dedicated staffing)
- Create position of Housing Ombudsperson to review landlord-tenant complaints in Kirkland (requires new staffing)

General funding options:

- **Portion of \$1.38 million sales tax audit back payment from Human Services Reserve**
- General fund
- Dedicated revenue streams (e.g. new business license or civil penalty assessments)
- Local sales and use tax for affordable and supportive housing (HB 1406; if eligible)
- Kirkland's portion of King County Councilmanic sales and use tax (0.01%) (HB 1590; if eligible)
- A Regional Coalition for Housing (ARCH) operating funds (in concert with other ARCH member cities.)

Turning now to specific proposals and a funding option:

**1. Reinstate eviction moratorium for small businesses and nonprofit organizations.**

This moratorium would be limited in duration to emergency circumstances and during pendency of pandemic. This would be accomplished by a new City Manager emergency directive subject to Council ratification. A commercial eviction moratorium does not legally prohibit commercial tenant evictions, but it does provide an affirmative defense for tenants who contest the eviction in court. The City Manager's office has surveyed surrounding jurisdictions, and except for Seattle, has not identified any other city that currently has a commercial eviction moratorium in place.

**2. Develop a rent relief grant program.**

This approach has been pursued in some other cities across the country. Grant proceeds could be used to pay rent owed or used as a security deposit and first month's rent for renters who have lost housing. Both approaches would also benefit landlords. This "one-off" grant program would be based on eligibility criteria developed by the City (e.g. percentage of annual household income, loss of employment or income and not receiving other public financial benefits such as unemployment insurance). This grant program would also require development of distribution criteria (e.g. first come, first served, one-time lottery or prioritization based on applicant characteristics such as level of economic need). Finally, but not insubstantially, this grant program would require strong administrative support in order to market the program, review applications, make awards and distributions, and monitor results and ensure compliance. This program would require a significant, albeit limited-in-duration City staffing effort. As a comparison, multiple staff in Finance and the City Manager's office (approximately the equivalent of two full time employees) dedicated significant time throughout October and November to review and process less than two hundred CARES Small Business Relief Grants.

As noted in the sales tax report included as part of the Council's January 5, 2021 meeting packet, the City has been advised by the Department of Revenue that the City has received (as part of the November 2020 reporting) additional and unanticipated sales tax revenues totaling approximately \$1,384,689 based on a 2016 audit of a rental and leasing services company in Kirkland. City staff is recommending that this amount, once fully confirmed, be placed into the Human Services Reserve established by the Council. City staff recommends this reserve could be used to support a potential rent relief grant program.

**3. Adopt a "just cause" eviction ordinance.**

City human services staff have identified this as a policy priority for many low-income renter advocacy groups, especially during COVID-19. "Just cause" eviction ordinances have been adopted by other cities in Washington, including Burien, Federal Way, Kent, Olympia and Seattle. As noted, the Washington landlord-tenant statute does not require "just cause" before a court-ordered eviction. The failure to pay rent alone can support eviction. These ordinances generally require eviction notices to be specific as to the reasons for an eviction, and they usually allow additional facts and circumstances beyond just written lease terms to be considered taken by a court. In situations where a proposed eviction may be unfair, these ordinances generally provide renters with either an affirmative defense in court and/or a cause of action against a landlord acting unfairly. There are generally exceptions for things such as

material lease breaches, waste of the premises or criminal activities. Some cities have included other provisions such as limitations on the amount of late rent payments that can be required, and sometimes also in conjunction with other policy initiatives, e.g. rental housing inspection, business licensing and ombudsperson provisions (though these all have additional, potentially significant ongoing staff requirements). Unlike the first two policy initiatives outlined above, this ordinance would be ongoing beyond the COVID-19 emergency.

It should be noted in conclusion that each of these options relies, to varying extents, on the City's authority to exercise its general police powers in support of the public health, safety and welfare and/or to act in the public interest in the event of an emergency. These policy models are largely untested legally and there is always the potential for legal challenge, however. In addition to the staffing and cost implications of these policy options, therefore, there is a legal risk analysis that should be considered with respect to the options. With that said, and even to the extent some private parties might receive something of value in connection with one or more of these policy options (e.g. receive public grant dollars), City staff is satisfied that such private benefits would be incidental in light of the overall public benefits associated with options and the interests they would serve. In that regard, the Washington Attorney General has opined that cities like Kirkland have additional flexibility and latitude to consider such options during the COVID-19 pandemic from a "gift of public funds" analysis perspective.

### **Next Steps**

Staff will be seeking Council direction on next steps related to rental eviction policies for Kirkland. As of the writing of this memo, Congress has passed, and the President has signed, an additional COVID-19 stimulus package that includes direct payments, extended unemployment benefits, funds for rent relief, federal eviction moratorium language and other economic provisions that will help somewhat to mitigate potential new evictions. Kirkland staff will be reviewing the stimulus package carefully along with the AWC and other partners to have a better understanding of federal support at the January 5 Council meeting.

Staff are recommending that the City create some temporary dedicated resources to help prevent residential evictions for at least the first half of 2021. Staff proposes to use some of the \$1.38 million unanticipated sales tax payment previously mentioned to fund the concept of a rental eviction prevention ombudsperson. The City could hire temporary staff similar to what was done for implementing R-5434, or contract for focused Kirkland support through groups such as the Eastside Legal Assistance Program (ELAP) who have experience negotiating with landlords. Or both. Such dedicated resources could also help Kirkland develop an emergency rental relief grant program.