

Archived: Friday, March 20, 2020 4:02:28 PM

From: [Xochitl Maykovich](#)

Sent: Tuesday, March 17, 2020 8:31:00 PM

Subject: [EXTERNAL] need an eviction moratorium - sheriff's letter isn't enough

Sensitivity: Normal

Attachments:

[Memo re Eviction Moratorium \(1\).docx](#) [City of Seattle Amended Order.pdf](#)

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Hello Mayors and Councilmembers,

My name is Xochitl (So-chi) Maykovich, and I work on landlord-tenant issues. I've cc'd Edmund Witter, the managing attorney of the Housing Justice Project onto this email. I am emailing city council / mayors throughout King County regarding an eviction moratorium in your respective cities.

I know that the Sheriff has said that her office won't execute evictions, which is great, but isn't nearly enough. Without a moratorium on evictions, MANY people will face homelessness. I've attached a memo Edmund wrote regarding the Mayor of Seattle's ability to do this - it applies for other local jurisdictions.

1. Landlords can still file evictions

As things stand right now, without a moratorium, landlords can still give termination notices, such as a 14 day notice for nonpayment of rent. They can still serve the tenant and schedule a hearing in Court. This is really dangerous for folks who are high-risk - they will have to go to the Superior Court, surrounded by others in the public. I was in the Courthouse on Friday (i'm now not going out in public), and there was a 75 year old tenant facing eviction. He could catch the virus just by going to court! Over 2000 people go through the Kent Superior Court every day. So, without a moratorium, you are forcing people to choose between their health or their housing. We can't socially distance when people are being forced to go to court.

2. Tenants can still get default judgments

Without a moratorium, if a tenant does not appear in Court to contest an eviction, they will get a default judgment. They won't be able to undo this - they will get evicted once the Sheriff starts carrying out evictions. **You will see an increase in homelessness.**

3. Tenants won't have legal aid in person

Because of the danger of the virus, several legal aid providers have shut-down - many of their staff and volunteers face high-risk with this virus. While they are going to provide support over the phone, they won't be able to be there in person in a hearing. So, when the tenant is dragged into Court, they will not have legal representation until things with this virus subside. In addition, many financial aid providers are also closing due to the virus. Tenants will likely to lose their cases....and will get evicted once the Sheriff starts enforcing this. **You will see an increase in homelessness.**

4. Landlords can still charge late fees

Given that there will likely be a huge increase in the need for rental relief once things calm down, we really need to do everything possible to keep costs low so we can help as many people as possible. Late fees will be so difficult for many folks who have suddenly been forced out of work.

The best thing to do is to do what the [Seattle City Council](#) passed on Monday. It places a moratorium on all eviction actions, ranging from giving an eviction notice to filing a case, except for situations that are "an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members" It is important to not just limit this to nonpayment cases, because most jurisdictions in King County do not have just-cause eviction protection, so landlords could just get around any moratorium on nonpayment cases by using a no-cause eviction notice. Please pass a moratorium.

Please let us know if you have any questions!

Sincerely,

Xochitl (pronounced So-chi) Maykovich

She/Her

Political Director

Washington Community Action Network

www.washingtoncan.org

(C) 206-557-9456

Date: March 13, 2020

To: Mayor Jenny Durkan, City of Seattle

From: Edmund Witter, Senior Managing Attorney, King County Bar Association

Re: Authority of City of Seattle and Mayor to Institute Eviction Moratorium

This memo outlines the general authority of the City of Seattle and the Mayor to suspend evictions by emergency order and the policy underlining such an order. The City of Seattle likely has the authority to institute a moratorium based on the police powers provided by the State Constitution. Similarly, the lack of a reasonable alternative for eviction hearings, the emerging health crisis and the disproportionate impact of evictions on the population most at-risk for complications arising out of COVID-19 justifies the use of the Mayor's civil emergency powers.

The City of Seattle has authority within its police powers as provided by Art. 11, Sec. 11 of the State Constitution to regulate evictions.¹ Specifically, the Washington Supreme Court has twice articulated that the City of Seattle may provide defenses to eviction; however, the Supreme Court did not indicate clearly from where this power originated.² Since cities derive all their authority from either the State Constitution or state law, the absence of any statutory authority means that the State Constitution, specifically the police powers, provides for this authority.

The City can institute a temporary moratorium on evictions as an exercise of its police powers in order to protect the general welfare and for public health. Both holdings above provide that the Residential Landlord-Tenant Act (RLTA)³ does not preempt local regulation of evictions and neither holds that the City is restricted in the exercise of its police powers within the context of eviction. Elsewhere in Washington appellate jurisprudence on preemption, cities have been permitted to regulate state-provided rights where necessary to the extent "necessary to protect the public safety, health, morals and general welfare"⁴ and the right provided by State law is not absolutely denied to the individual. For example, a city regulation limiting the right to carry firearms in bars was upheld despite a state law providing for a right to carry because the state law did not provide for an unqualified right to carry and the city could regulate it to the extent necessary for public health and safety.⁵ Since the Supreme Court has held that cities can regulate evictions by interposing defenses, indicating that the RLTA and state unlawful detainer laws do

¹ *State v. City of Seattle*, 94 Wash.2d 162 (1980) ("The scope of [a municipality's] police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people").

² *Margola Associates v. City of Seattle*, 121 Wash.2d 625 (1993); *Kennedy v. Seattle*, 94 Wash.2d 376 (1980).

³ RCW 59.18.

⁴ *Second Amendment Foundation v. City of Renton*, 35 Wash.App. 583 (1983).

⁵ *Id.*

not provide an unqualified right to possession by the landlord per *Margola Associates*, the City can still exercise its police powers to protect health and safety for a limited duration provided any restriction on evictions is not absolute or indefinite and does not extend longer than necessary to protect the general welfare.⁶

Additionally, the Mayor's emergency powers permit an immediate suspension of all evictions. The Mayor possesses emergency powers to issue orders necessary for the protection of life and liberty as well as the allocation of essential commodities such as housing.⁷ SMC 10.02.020. Washington Courts have followed other jurisdictions' jurisprudence with respect to executive authority during times of emergency and upheld incursion onto the property rights of owners when emergencies necessitate it.⁸ While distinct jurisdictions, other cities and states have instituted or are considering emergency moratoriums with respect to evictions through all branches of government.^{9,10,11}

In this case, there are several bases to limit evictions due to the public health risks posed by COVID-19: 1) vulnerable populations will have to choose between going to court or risking their health; 2) other resources normally available for households facing eviction are unavailable; and 3) an eviction puts vulnerable populations at risk of homelessness and exposure to COVID-19. Households facing eviction are at great risk of exposure. In *Losing Home: the Human Costs of Eviction in Seattle*, approximately one-third of Housing Justice Project clients facing eviction were 55 or older¹² and 43% of tenants represented by Housing Justice Project reported a disability within the household.¹³ Given the number of tenants facing eviction who are substantially at risk for complications arising from COVID-19, the risks of a critical exposure are high among tenants facing eviction.

There are also no reasonable alternatives to a suspension of eviction filings and actions. First, a tenant who receives an eviction summons still needs to respond, which will require the

⁶ *Id.* (“While an absolute and unqualified local prohibition against possession of a pistol by the holder of a state permit would conflict with state law, an ordinance which is a limited prohibition reasonably related to particular places and necessary to protect the public safety, health, morals and general welfare is not preempted by state statute.”)

⁷ SMC 10.02.020.

⁸ See, e.g., *Citoli v. City of Seattle*, 114 Wash. App. 1047 (2002)

⁹ Matt Sledge, “[Residential evictions in New Orleans suspended through April in light of coronavirus threat](#)”, NOLA.com & The Times-Picayune, March 13, 2020

¹⁰ Maggie Angst, “[Coronavirus: San Jose moves forward with moratorium on evictions, proposes financial aid for small businesses](#)”, The Mercury News, March 10, 2020

¹¹ Nelson Oliveira, “[Miami-Dade police suspend evictions during coronavirus emergency](#)”, New York Daily News, March 12, 2020

¹² Tara Cookson, PhD, et al., *Losing Home: the Human Cost of Eviction in Seattle*, King County Bar Association & Seattle Women's Commission, pg. 28 (Sept. 2018), available at <https://www.kcba.org/Portals/0/pbs/pdf/Losing%20Home%202018.pdf>.

¹³ *Id.* at 28-29.

tenant to go to the post office or other facility to respond. Secondly, a tenant will still have to go to the court date, which will mean the tenant being with other individuals in the courtroom or other area. Telephonic hearing will also not resolve this issue because resources such as financial and legal assistance are available to persons who arrive in-person and most tenants would not even know how to ensure a telephonic hearing and it is not clear how evidence would even be submitted in such a scenario since most tenants come to their hearings without an attorney. At the moment, most tenants are still defaulting due to failing to appear at their hearings. Between the last week of February and the current week of March 9, 2020, there has been a near 50 point reduction in the number of tenants appearing for their eviction hearings. Additionally, tenants who are defaulted will not be able to file emergency paperwork to stop the eviction and would likely not even have the knowledge of how to do so.¹⁴

A stay on all evictions is also insufficient insofar as it would permit eviction actions to continue but only prevent the execution by the sheriff. State law provides substantive rights to tenants to avoid eviction based on the issuance date of the judgment. For example, a tenant can reinstate a tenancy by paying all amounts owed within five court days from judgment.¹⁵ A stay of 30 days would effectively result in a waiver of those rights and still result in continued hearings putting tenants at risk of exposure. Tenants who also seek to assert defenses would be significantly compromised in their ability to do so and still be forced to file emergency motions *at the court*. It is more advisable to follow the approach of Kentucky, where the Supreme Court canceled all hearings except for emergency orders and protection orders for several weeks.¹⁶

The suspension of eviction actions for a brief moratorium is likely within the policy powers of the City of Seattle and within the Mayor's civil emergency authority. While outside of the scope of this memo, further provisions for rental assistance programs for the benefit of both tenants and landlords should be addressed to avoid potential evictions or rental shortages that could arise after any moratorium is lifted.

¹⁴ A large share of Housing Justice Project clients need assistance with stopping an eviction from being carried out, which requires an emergency motion. The process requires substantial paperwork and procedural steps that can be difficult for most tenants to navigate without help. Currently, the court system is not set up to enable pro se tenants to do this remotely and it is not clear if that would be possible for tenants lacking the technology to do so.

¹⁵ RCW 59.18.410(2).

¹⁶ Kentucky Court Of Justice Response To Covid-19 Emergency, Kentucky Supreme Court Order, 2020-8, available at

<https://www.nkybar.com/resources/KENTUCKY%20COURT%20OF%20JUSTICE%20RESPONSE%20TO%20COVID-19%20EMERGENCY.pdf>

CIVIL EMERGENCY ORDER

CITY OF SEATTLE

MORATORIUM ON RESIDENTIAL EVICTIONS

WHEREAS, in my capacity as Mayor, I proclaimed a civil emergency exists in the City of Seattle in the Mayoral Proclamation of Civil Emergency dated March 3, 2020; and

WHEREAS, the facts stated in that proclamation continue to exist, as well as the following additional facts:

WHEREAS, the World Health Organization (WHO) has declared that COVID-19 disease is a global pandemic, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level requiring dramatic interventions to disrupt the spread of this disease; and

WHEREAS, as of March 13, 2020, Public Health – Seattle & King County announced 58 new cases of COVID-19 in King County residents, for a total of 328 cases, including 32 deaths; and

WHEREAS, on March 13, 2020, the Governor of Washington state issued an emergency order announcing all K-12 schools in Washington to be closed from March 17, 2020 through April 24, 2020 to combat the spread of the disease; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency to allow the government to marshal additional resources to combat the virus; and

WHEREAS, on March 11, 2020, the Governor of Washington state and the Local Health Officer for Public Health – Seattle & King County issued parallel orders prohibiting gatherings of 250 people or more for social, spiritual and recreational activities in King County; and

WHEREAS, the COVID-19 crisis has had a significant impact on the local economy impacting the retail, restaurant and other industries resulting in layoffs and reduced work hours for a significant percentage of this workforce and loss of income for small businesses; and

WHEREAS, layoffs and substantially reduced work hours will lead to widespread economic hardship that will disproportionately impact low- and moderate- income workers resulting in lost wages and the inability to pay for basic household expenses, including rent; and

WHEREAS, in the last two weeks there has been a significant 50% drop in the number of tenants appearing in court for their eviction hearings in King County resulting in default judgments being entered and tenants losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, evictions result in a loss of housing and create housing instability, potentially increasing the number of people experiencing homelessness and creating a heightened risk of disease transmission; and

WHEREAS, the City invests in eviction prevention programs, but resources are not sufficient to address housing stability needs of dislocated workers during this unprecedented public health epidemic; and

WHEREAS, jurisdictions across the nation are considering or have implemented eviction prevention to provide housing stability to dislocated workers during this unprecedented public health emergency; and

WHEREAS, Art. XI, Sec. 11 of the Washington State Constitution grants cities like The City of Seattle broad police powers to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; and

WHEREAS, the Washington State Legislature has declared a state policy to help residents who are experiencing a temporary crisis in retaining stable housing to avoid eviction from their homes, as expressed in Laws of 2019 c 356 section 1; and

WHEREAS, a temporary moratorium on residential evictions during the COVID-19 outbreak will protect the public health, safety, and welfare by reducing the number of individuals and families entering into homelessness during this epidemic, which means lowering the number of people who may develop the disease or spread the disease; and

WHEREAS, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to: the Charter of the City of Seattle, Article V, Section 2; Seattle Municipal Code (SMC) Chapter 10.02; and chapter 38.52 RCW; and

WHEREAS, SMC 10.02.020.A.15 authorizes the Mayor to proclaim “such other orders as are imminently necessary for the protection of life and property” and take extraordinary measures to protect the public peace, safety and welfare; and

WHEREAS, the COVID-19 civil emergency requires the issuance of an order that is specifically aimed at a moratorium on residential evictions during the civil emergency in order to keep people housed and protect the public safety, health and welfare as set forth in this Civil Emergency Order; therefore,

WHEREAS, the conditions of this Civil Emergency Order are designed to provide the least necessary restriction on the rights of the public per SMC 10.02.025.C and

WHEREAS, pursuant to SMC 10.02.025.B, I believe it is in the best interest of the public safety, rescue and recovery efforts, and the protection of property that the exercise of certain rights be temporarily limited as set forth in this Civil Emergency Order; therefore,

BE IT PROCLAIMED BY THE MAYOR OF THE CITY OF SEATTLE, THAT:

I, **JENNY A. DURKAN**, MAYOR OF THE CITY OF SEATTLE, ACTING UNDER THE AUTHORITY OF SEATTLE MUNICIPAL CODE SECTIONS 10.02.020.A.15, AND MY

MAYORAL PROCLAMATION OF CIVIL EMERGENCY, DATED MARCH 3, 2020,
HEREBY ORDER:

SECTION 1:

A. Effective immediately, a moratorium on residential evictions ~~for non-payment~~ is hereby ordered until the earlier of the termination of the civil emergency declared in the Proclamation of Civil Emergency dated March 3, 2020 or ~~30~~ 60 days from the effective date of this Emergency Order. The decision to extend the moratorium shall be evaluated and determined by the Mayor based on public health necessity;

B. ~~An owner of a housing unit residential landlord shall not initiate an unlawful detainer action, issue a notice of termination, or otherwise act on any termination notice, including any action or notice related to a rental agreement that has expired or will expire during the effective date of this Emergency Order, unless the unlawful detainer action or action on a termination notice is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members issue a notice of termination or initiate an eviction action for non-payment of rent or otherwise act on a termination notice for non-payment of rent during this moratorium.~~ Further, no late fees or other charges due to late payment of rent shall accrue during the moratorium; and

C. ~~It shall be a defense to any eviction action that the eviction of the tenant will occur during the moratorium, unless the eviction action is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members. For any pending eviction action, regardless if the tenant has appeared, for the non-payment of rent, it shall be a defense to any eviction action that the eviction of the tenant would occur during the moratorium. Given the public health emergency and public safety issues, a court may grant a continuance for a future hearing date in order for the eviction action to be heard after the moratorium a court may grant a continuance for a future court date in order for the matter to heard at a time after the moratorium is terminated;~~ and

D. Effective immediately, the Sheriff of King County is requested to cease execution of eviction orders during the moratorium.

SECTION 2:

All mayoral proclamations and orders presently in effect shall remain in full force and effect except that, insofar as any provision of any such prior proclamation is inconsistent with any provision of this proclamation, then the provision of this proclamation shall control.

SECTION 3:

A copy of this Civil Emergency Order shall be delivered to the Governor of the State of Washington and to the County Executive of King County. To the extent practicable, a copy of this Civil Emergency Order shall be made available to all news media within the City and to the general public. In order to give the widest dissemination of this Civil Emergency Order to the public, as

many other available means as may be practical shall be used, including but not limited to posting on public facilities and public address systems. SMC 10.02.100.

SECTION 4:

This Civil Emergency Order shall immediately, or as soon as practical, be filed with the City Clerk for presentation to the City Council for ratification and confirmation, modification or rejection, and if rejected this Civil Emergency Order shall be void; however, any such rejection or modification shall not affect any actions previously taken. The Council may, by resolution, ratify, modify or reject the order. If the City Council modifies or rejects this Civil Emergency Order, said modification or rejection shall be prospective only, and shall not affect any actions taken prior to the modification or rejection of this Civil Emergency Order, including the City’s responsibility for the actual costs incurred by those who were ordered by or entered into contracts with the City, as set forth in Seattle Municipal Code subsection 10.02.020.B. The Council shall endeavor to act on any order within 48 hours of its being presented to the Council by the Mayor.

DATED this _____ day of _____, 2020, at _____ am/pm.

JENNY A. DURKAN
MAYOR OF THE CITY OF SEATTLE