



CITY OF KIRKLAND

City Attorney's Office

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www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Kevin Raymond, City Attorney

Date: March 30, 2020

Subject: RESOLUTION RATIFYING CITY MANAGER EMERGENCY DIRECTIVE RELATED TO MORATORIUM ON SMALL BUSINESS TENANT EVICTIONS AND THE COVID-19 VIRUS

RECOMMENDATION:

City Council pass the attached Resolution ratifying the City Manager's emergency directive dated March 31, 2020 creating a moratorium on small business and nonprofit organization evictions in Kirkland due to nonpayment of rent or the expiration of leases during the pendency of the COVID-19 proclamation of emergency.

BACKGROUND DISCUSSION:

Through a series of actions taken by the Washington Governor to help slow the spread of the COVID-19 virus throughout the state, most notably including the order to close all non-essential businesses and projects, numerous businesses and residents of the state and Kirkland have suffered and will continue to suffer significant financial damages, including loss of business income, layoffs and reduced hours for a significant percentage of the workforce.

Jurisdictions across the nation, including recently the City of Seattle, are considering or have implemented eviction prevention measures to provide small business and nonprofit organization stabilization support during this unprecedented public health emergency. A temporary moratorium on small business and nonprofit tenant evictions during the COVID-19 outbreak will protect the public health, safety, and welfare by providing small businesses with stable locations from which to operate during and immediately after the public health emergency, thus reducing the number of small businesses declaring bankruptcy and closing during the economic downturn caused by the public health emergency.

Article XI, Section 11 of the Washington State Constitution grants the City 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," including during public health emergencies and disasters. The Resolution ratifying the City Manager's emergency directive will confirm City Council's agreement that such directive represents an appropriate, interim exercise of the City's police power authority.

Attachments: Resolution
Emergency Directive

EMERGENCY DIRECTIVE RE MORATORIUM ON SMALL BUSINESS TENANT EVICTIONS

An Emergency Directive from Kurt Triplett, City Manager of the City of Kirkland, directing that a moratorium on small business and nonprofit tenant evictions for non-payment of rent or due to the expiration of a lease's term is hereby imposed within the city of Kirkland until the earlier of the termination of the City's proclamation of emergency dated February 29, 2020 or 60 days from the effective date of this emergency directive.

WHEREAS,

- a. In my capacity as City Manager, I proclaimed an emergency exists in the City of Kirkland on February 29, 2020. That proclamation of emergency was ratified by the Kirkland City Council through Resolution R-5411 on March 3, 2020.
- b. The facts stated in the proclamation of emergency continue to exist necessitating utilization of emergency powers granted to the City pursuant to Kirkland Municipal Code 3.20 and Chapter 38.52 RCW.
- c. 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.
- d. As of March 29, 2020, Public Health – Seattle and King County announced a total of 2,159 cases of COVID-19 in King County residents, including 141 deaths.
- e. On March 16, 2020, the Washington Governor and the Local Health Officer for Public Health - Seattle & King County issued parallel orders temporarily shutting down restaurants, bars, and other entertainment and food establishments, as well as prohibiting public gatherings of 50 or more people.
- f. National public health experts believe the lack of testing has masked the true spread of COVID-19 virus, even though the state had 4,896 confirmed cases including 195 deaths as of March 28, 2020, with numbers that could double every six days.
- g. 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.
- h. On March 11, 2020, the Washington Governor and the Local Health Officer for Public Health - Seattle and King County issued parallel orders prohibiting gatherings of 250 people or more for social, spiritual and recreational activities in King County.
- i. On March 29, The President of the United States extended federal social distancing guidance through the month of April, 2020.

- j. The COVID-19 crisis has had a significant impact on the local economy impacting the retail, restaurant and other industries resulting in economic hardship for small business owners due to loss of business income, layoffs and reduced work hours for a significant percentage of this workforce.
- k. Jurisdictions across the nation, including the City of Seattle, are considering or have implemented eviction prevention measures to provide small business stabilization support during this unprecedented public health emergency.
- l. Art. XI, Sec. 11 of the Washington State Constitution grants cities like the City 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."
- m. A temporary moratorium on small business tenant evictions during the COVID-19 outbreak will protect the public health, safety, and welfare by providing small businesses with stable locations from which to operate during and after the public health emergency, thus reducing the number of small businesses declaring bankruptcy and closing during the economic downturn caused by the public health emergency.
- n. KMC 3.20.070 gives the City the broadest authority and greatest discretion consistent with state law with respect to emergency response and operation.
- o. KMC 3.20.090 gives the City Manager the authority to take such actions subject to ratification by the City Council as soon as practicable.
- p. The COVID-19 emergency requires the issuance of a directive that is specifically aimed at a moratorium on small business tenant evictions during the civil emergency in order to keep small businesses from economic collapse and protect the public safety, health and welfare as set forth in this directive.
- q. It is in the public interest that the exercise of certain rights be temporarily limited in the least restrictive means reasonably possible as set forth in this directive.

NOW, THEREFORE, BE IT PROCLAIMED BY THE CITY MANAGER OF THE CITY OF KIRKLAND THAT:

I, KURT TRIPLET, CITY MANAGER OF THE CITY OF KIRKLAND, ACTING UNDER THE AUTHORITY OF KMC 3.20, THE CITY MANAGER PROCLAMATION OF EMERGENCY DATED FEBRUARY 29, 2020 AND CITY COUNCIL RATIFICATION RESOLUTION R-5411, HEREBY DIRECT:

SECTION 1:

- A. Effective immediately, a moratorium on small business and nonprofit tenant evictions for non-payment of rent or due to the expiration of a lease's term is hereby ordered until the earlier of the termination of the emergency declared in the proclamation of

emergency dated February 29, 2020 or 60 days from the effective date of this directive. Any decision to extend the moratorium shall be evaluated and determined by the City Manager based on public health necessity;

- B. For purposes of this moratorium, "small business" shall have the same meaning as in RCW 19.85.020(3): "'Small business' means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees" per establishment or premises;
- C. For purposes of this moratorium, a "nonprofit" shall mean an entity that: (1) is a "not for profit corporation" or "nonprofit corporation" under RCW 24.03.005(16) or is designated a "public benefit not for profit corporation" or "public benefit nonprofit corporation" under RCW 24.03.490 or (2) holds tax-exempt status under 26 U.S.C. § 501(c)(3);
- D. During this moratorium, an owner of property also shall endeavor to enter into a payment plan, or other workout agreement to assist a distressed small business or nonprofit in rent relief, including but not limited to the deferred payment of rent, discount to rent, or other strategies to address the economic disruption caused by the COVID-19 emergency. Further, no small business or nonprofit tenant shall incur late fees, interest, or other charges due to late payment of rent during the moratorium; and
- E. For any pending eviction action for the non-payment of rent, it shall be a defense to any eviction action that the eviction of the small business 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 end of the moratorium.

SECTION 2:

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

SECTION 3:

This directive shall be subject to ratification by the City Council as soon as practicable, and if rejected this directive shall be void; however, any such rejection or modification shall not affect any actions previously taken.

Dated this _____ day of March, 2020.

CITY OF KIRKLAND

Kurt Triplett, City Manager

RESOLUTION R-5414

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RATIFYING CITY MANAGER EMERGENCY DIRECTIVE RELATED TO MORATORIUM ON SMALL BUSINESS TENANT EVICTIONS AND THE COVID-19 VIRUS.

WHEREAS, Kirkland Municipal Code ("KMC") Section 3.20.090 grants the City Manager the authority to take action on behalf of the City of Kirkland ("City") in the event of an emergency or disaster subject to ratification by the City Council as soon as practicable; and

WHEREAS, in the exercise of such authority the City Manager did execute a Proclamation of Emergency related to the COVID-19 virus dated February 29, 2020; and

WHEREAS, such Proclamation of Emergency was ratified by the City Council through Resolution R-5411 on March 3, 2020; and

WHEREAS, in the exercise of his authority under KMC 3.20.090 the City Manager did issue an Emergency Directive Re Moratorium on Small Business Tenant Evictions on March 31, 2020; and

WHEREAS, the City Council wishes to ratify the above-referenced Emergency Directive and the acts of City departments and staff that have been and will be taken in connection with such emergency directive; and

WHEREAS, in light of the COVID-19 emergency it is necessary to take such action at a special meeting of the City Council.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. Any and all acts undertaken by City departments and staff consistent with the Emergency Directive Re Moratorium on Small Business Tenant Evictions issued by the City Manager dated March 31, 2020 and prior to the effective date hereof are hereby ratified and confirmed.

Section 2. Any and all acts undertaken by City departments and staff consistent with the Emergency Directive Re Moratorium on Small Business Tenant Evictions issued by the City Manager dated March 31, 2020 and following the effective date hereof are hereby authorized until such time as such directive has been amended, rescinded or otherwise terminated by the City Manager or City Council.

Passed by majority vote of the Kirkland City Council in a special meeting this 31st day of March, 2020.

Signed in authentication thereof this ___ day of March, 2020.

Penny Sweet, Mayor

Attest:

Kathi Anderson, City Clerk