



CITY OF SALEM

585 Liberty St SE
Salem, OR 97301

Staff Report

File #: 20-131

Version: 1

Date: 3/23/2020

Item #: 5.g.

TO: Mayor and City Council
THROUGH: Steve Powers, City Manager
FROM: Dan Atchison, City Attorney

SUBJECT:

Protections against eviction for residential tenants.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Welcoming and Livable Community.

ISSUE:

Information regarding the City's ability to impose restrictions on private evictions of residential tenants

RECOMMENDATION:

Information only.

SUMMARY:

Council directed the City Attorney to provide information on the City's authority to regulate residential evictions as a means of protecting vulnerable residents during the COVID-19 Pandemic.

Sunday, March 22, 2020, Governor Brown issued Executive Order No. 20-11 (attached) instituting a temporary moratorium on residential evictions for nonpayment, in response to the Coronavirus (COVID-19). The Governor's action largely moots any City eviction access, and a separate action, even to the extent it is within the City's power, is not recommended, in order to avoid potential ambiguity and confusion.

The City has limited authority, even under an emergency declaration, because state law substantially

regulates landlord-tenant relations, and particularly evictions. Although the City's options are limited in this regard, the state circuit courts are not considering residential evictions through at least March 27, 2020, in recognition of the State's declaration of emergency.

FACTS AND FINDINGS:

The Governor's Executive Order No. 20-11 provides:

- Law enforcement officers are prohibited from executing any order or writ of termination of tenancy that relates to residential evictions for nonpayment.
- Law enforcement officers may continue to execute orders or writs of termination of tenancy for reasons other than nonpayment.
- The Order will remain in effect until, at least, June 20, 2020.

City Authority to Regulate Evictions:

Cities, including the City of Salem, that operate under a home rule charter have substantial lawmaking authority independent of the state. However, the City's authority is not unlimited. City laws that conflict with state law or the Oregon Constitution are prohibited.

Although the City may be limited in its ability to regulate residential evictions, Council has other avenues available to assist tenants and others affected by the COVID-19 Pandemic.

Express preemption occurs when the state enacts a law that specifically prohibits or limits local policy choices on a subject. Implied preemption occurs when the state has not expressly preempted local policy authority, but local policy would cause a conflict with state law. A City can enact substantive policies in an area also regulated by the state unless the local regulation is "incompatible" with state law and both cannot operate concurrently.

Although the state does not expressly preempt local authority on the issue of residential evictions, any substantive policies involving residential evictions adopted by the City must not conflict with existing state law. The state has enacted laws related to landlord tenant issues including regulating rent, applicable late charges or fees, damages for noncompliance with rental agreements, tenant's duty to pay rent, termination of rental agreement for failure to pay rents and landlord's claim for possession.

The City of Portland and Multnomah County have adopted a "COVID-19 Eviction Moratorium" (Moratorium) (Attachments 1 and 2) that limits certain residential evictions related to the COVID-19 Pandemic. The Moratorium provides that landlords are prohibited from evicting

tenants for the nonpayment of rent, fees or charges due to the landlord if the qualifying event was caused by COVID-19.

In order to be eligible for eviction protection, tenants affected by the COVID-19 Pandemic must provide written notice to their landlord that a certain eligible event occurred. This Moratorium is a novel action taken by the City of Portland and Multnomah County and it is not clear if their actions are compatible with existing Oregon law.

While Salem could adopt similar measures, it is not clear if the measures would be void under Oregon law and the Oregon Constitution. It is likely that such actions would be challenged in state court and would create uncertainty for both landlords and tenants.

Federal and state governmental entities have also taken actions that have a direct or indirect impact on residential evictions in the City. The Chief Justice of the Oregon Supreme Court, on March 16, 2020, issued an Order suspending most jury trials, limiting in-person court services and **postponing the initiation of residential evictions** in all circuit courts. As a result, Oregon circuit courts have effectively prohibited the initiation of residential evictions through March 27, 2020, and likely beyond. Further, the Multnomah County Sheriff, who is charged with executing residential evictions, will delay the enforcement of residential evictions due to nonpayment of rent during the COVID-19 Pandemic. As of March 19, 2020, the Marion County Sheriff has not announced any similar action.

The U.S. Department of Housing and Urban Development (HUD) announced on March 18, 2020 that it would halt all evictions and foreclosures on all Fair Housing Administration-insured mortgages (such as Fannie Mae and Freddie Mac) until May 1, 2020. HUD is currently developing guidance related to its action (Attachment 3).

The Oregon Rental Housing Association (a landlord-based trade association) is actively encouraging landlords who can defer rent and waive late fees for hardships related to COVID-19. The Association has provided a model deferral agreement for landlords and tenants to use:

<https://oregonrentalhousing.com/>

Multifamily NW has provided the attached letter advocating for a statewide emergency rental assistance program and forbearance for mortgage-holders. Multifamily NW also cautions against local eviction prevention measures given the complex state regulations for evictions (Attachment 4).

BACKGROUND:

The State of Oregon on March 8, 2020 and City Council on March 17, 2020 declared a state of emergency related to the COVID-19 Pandemic.

Attachments:

1. Multnomah County Emergency Ordinance related to COVID-19 eviction protections.

2. Multnomah County Executive Rule relating to eviction protections.
3. HUD Foreclosure and Eviction Moratorium Announcement
4. Multifamily NW letter