

**To the Mayor and Members of the City Council****April 10, 2020**

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SUBJECT: RESIDENTIAL AND COMMERCIAL RENTAL EVICTIONS

As the City continues to take steps to protect residents from the negative impacts of the COVID-19 health crisis, we have been asked whether we have authority to protect commercial business tenants who have suffered financial loss from evictions by their landlords for failure to pay rent.

The Texas Supreme Court has adopted an emergency order that generally suspends any eviction actions involving residential property in state courts until after April 30, 2020 and prohibits execution of any writ of possession until after May 7, 2020. This particular order extends an initial moratorium on such actions (previously April 19, 2020). However, neither of these orders applies to commercial properties.

The City Attorney's Office has researched whether other jurisdictions in Texas have sought additional remedies to protect renters from eviction.

At the municipal level, the City of Austin has adopted an ordinance that states that any landlord serving an eviction notice on a tenant for failure to pay rent must give the tenant at least 60 days to respond, including an opportunity to pay any outstanding sums due, before the landlord can take further steps to force the tenant to vacate the premises. This ordinance currently is in effect until May 8, 2020.

While there may be policy arguments as to why additional eviction protection is necessary during this crisis, notably that possible displacement of tenants would be inconsistent with stay-at-home and shelter-in-place orders, there is not a clear connection as to how commercial evictions would lead to such a result. Moreover, eviction processes are governed by state law, and it is questionable as to how a municipality could impose additional steps that landlords must follow before they are permitted to exercise legal rights that have been granted to them under state law. In addition, issues concerning late payment of rent and the landlord-tenant relationship are typically covered by leases that confer private contractual rights to both parties, and landlords likely would have a solid claim that this type of ordinance constitutes an unlawful interference in a contract.

The City of Dallas is considering an ordinance almost identical to Austin's, but has not taken the question beyond its Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance, which received a presentation on the matter on Thursday, April 9, 2020. That presentation outlined the same legal concerns set forth above. City staff is attempting to determine whether Dallas intends to pursue further action on this issue.

It should be noted that the emergency orders of the Texas Supreme Court have, in effect, already led to a temporary moratorium on eviction proceedings in Texas. While the Supreme Court's order specifically addressing eviction proceedings only addresses residential properties, an earlier emergency order of the Court also directed the courts to take steps to hear only essential matters. Under state law, eviction proceedings are commenced in Justice of the Peace (JP) courts. Our research indicates that most, if not all, JP Courts are not currently hearing eviction matters.

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For example, Tarrant County Justice Courts Temporary Standing Order #1, issued March 17, 2020, establishes that all court proceedings involving evictions, among other matters, are suspended until further notice. This applies to all Tarrant County JP Courts. JP Courts in Johnson County with jurisdiction in parts of Fort Worth that lie in that county have taken similar action. While JP Courts in Denton County state that they will handle eviction cases in accordance with the schedule outlined in the latest emergency order of the Supreme Court, language posted on individual JP Court websites in Denton County appears to indicate that the schedule will be applied to all eviction proceedings.

In summary, while there are a number of legal issues that raise significant concerns as to whether a municipal ordinance imposing additional steps that landlords must follow in order to exercise their eviction rights would be enforceable, a moratorium on eviction proceedings largely has occurred anyway because of the emergency actions of the Supreme Court and a resulting significant decrease in docket activity by lower courts.

If you have any questions or concerns regarding this issue please contact Deputy City Attorney Peter Vaky or Deputy City Manager Jay Chapa.

David Cooke
City Manager