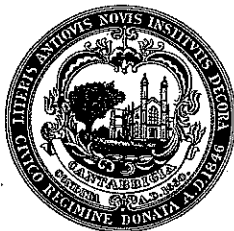


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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

October 5, 2020

Louis A. DePasquale
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: ***Eviction Moratoria Applicability***

Dear Mr. DePasquale:

I am providing this response to the City Council's request at the Special Meeting of the City Council relative to a COVID-19 Update on September 29, 2020, to provide opinions on the following three questions: (1) an analysis of what will happen to Cambridge tenants when the state eviction moratorium ("State Eviction Moratorium") expires on October 17, 2020; (2) whether the September 2, 2020 order issued by the Centers for Disease Control entitled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" ("CDC Order") will provide protections for Cambridge tenants; and (3) whether the City of Cambridge's temporary order establishing a moratorium on eviction enforcement ("Cambridge Moratorium") will continue to protect Cambridge tenants from forcible evictions.

We have analyzed these questions and conclude that: (1) The CDC Order will protect residential tenants in certain categories set forth below once the State Eviction Moratorium has expired. The State Eviction Moratorium is currently due to expire on October 17, 2020. However, while the State Eviction Moratorium is in effect, it is likely that the CDC Order will not apply to Massachusetts residents because the State Eviction Moratorium would likely be viewed by a Court as offering equal or greater tenant protections than the CDC Order; and (2) The Cambridge Moratorium will likely continue to provide protection to tenants from forcible evictions for as long as it remains in effect. The Cambridge Moratorium, which does not specify an expiration date, prevents landlords from acting on an execution for possession obtained in a summary process eviction action. The Cambridge Moratorium does not prevent property owners from filing eviction actions in Court and therefore is not likely to be viewed as offering equal or greater tenant protections than the CDC Order. However, a Court has not compared either the

State Eviction Moratorium or the Cambridge Moratorium to the CDC Order to determine which offers equal or greater tenant protections. This analysis is therefore based on what we anticipate a Court would find when comparing the CDC Order to the state and local moratoria.

I. The CDC Order

The CDC Order took effect upon publication of the Federal Register on September 4, 2020. It was issued pursuant to 42 C.F.R. section 70.2 authorizing the CDC Director to take reasonable measures to prevent the spread of communicable diseases. The CDC Order expires on December 31, 2020. The CDC Order applies in every state, territory and tribal area with reported cases of Covid-19 except for states, local territories or tribal areas that have "[a] moratorium on residential evictions that provides the same or greater level of public health protection than the requirements listed in this Order." *See*, 85 Fed. Reg. at 55293.

The CDC Order declares a national moratorium on certain residential evictions for nonpayment of rent. It prohibits evictions of "Covered Persons" as defined in the Order. To be a covered person, one must be a tenant, lessee or resident of a residential property. To avoid eviction, the CDC Order requires that tenants present their landlords with a signed declaration indicating that they are a "Covered Person" within the meaning of the CDC Order. Specifically, the tenant must be able to demonstrate that: 1) their expected income is under \$99,000 (in 2020) or that they have received a stimulus check or were not required to report income to the IRS in 2019; 2) they are unable to pay their full rent due to a loss of income or extraordinary medical bills; 3) they have used best efforts to obtain governmental rental assistance; 4) they are likely to become homeless if evicted or forced to live "in close quarters" with other residents; and 5) they promise to make timely partial payments as circumstances permit. A "Covered Person" is more fully defined in 85 Fed. Reg. at 55293. The CDC Order applies only to "Covered Persons" residing in residential property but does not include hotels, motels, temporary or seasonal accommodations as defined under state law. *See* 85 Fed. Reg. 55293.

The CDC Order excludes certain types of evictions, specifically: evictions based on criminal activity on the premises or threatening the health or safety of other residents; damage or risk of significant damage to the premises; violations of applicable building health and safety codes; and violating other contractual obligations other than non-payment of rent.

II. State Eviction Moratorium

The State Eviction Moratorium, Chapter 65 of the Acts of 2020, is currently due to expire on October 17, 2020. At this time, we do not know whether the Governor intends to extend it or if extended, whether it will provide the same or different tenant protections. The State Eviction Moratorium suspends most residential and certain small business evictions, as well as residential foreclosures. It does not relieve tenants or homeowners of their obligation to pay rent or make mortgage payments. The State Eviction Moratorium also does the following: 1) prevents landlords from sending notifications to residential tenants that threaten eviction or terminating of a lease; 2) limits court actions on non-essential evictions; 3) relieves tenants, both residents and small businesses, from late fees and negative credit reporting if they demonstrate that nonpayment was due to financial impacts of Covid-19; 4) allows landlords to use "last month's

rent” to pay for certain expenses with proper notification to the tenant; 5) requires lenders to grant a forbearance for up to 180 days if a homeowner experiencing financial hardship due to Covid-19 submits such a request; and 6) allows for alternative payment agreements between lenders and borrowers regarding forbearance payments. Tenants are encouraged to continue to pay rent and seek financial assistance if available. *See*, Chapter 65 of the Acts of 2020.

Some of the differences between the CDC Order and the State Eviction Moratorium that make the State Moratorium generally more favorable to residential tenants include that the CDC Order only applies to tenants under a certain income, whereas the State Eviction Moratorium does not contain income restrictions; and the CDC Order applies only to tenants who would be rendered homeless or forced to move into close quarters with others, whereas the State Eviction Moratorium has no similar requirement. The CDC Order permits evictions for reasons other than non-payment of rent, such as breach of a contractual requirement, whereas in addition to non-payment, the State Eviction Moratorium only permits evictions for criminal conduct or a lease violation that may impact the health or safety of other residents, health care workers and others. The CDC Order requires tenants to make best efforts make timely partial payments, the State Eviction Moratorium does not have a similar requirement although it encourages tenants to continue to make rent payments. Both the CDC Order and the State Eviction Moratorium are temporary and do not ultimately relieve a tenant from the obligation to pay rent.

We believe based on this comparison that if asked to rule on this issue, a Court would find that the State Eviction Moratorium offers equal or greater tenant protections than the CDC Order and therefore the CDC Order would not apply in Massachusetts, while the State Moratorium is in effect.

III. Cambridge Moratorium

The City of Cambridge enacted an emergency order on April 3, 2020 entitled “Temporary Emergency Order by the Commissioner of Public Health and the City Manager Establishing a Moratorium, on Eviction Enforcement and Non-Essential Entry by Property Owners and Their Agents into Occupied Dwelling Units”. The second part of the emergency order regarding non-essential entry was subsequently amended and is not relevant to the issue of the moratoria on evictions or eviction enforcement. The Cambridge Moratorium prohibits landlords from enforcing eviction actions, either residential or commercial. It does not specify an end date and is currently in effect. It is not in conflict with the State Eviction Moratorium and we believe that a Court would likely find that both the State Eviction Moratorium and the Cambridge Moratorium can be in effect at the same time. One does not preclude the other.

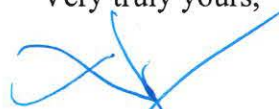
More specifically, the State Eviction Moratorium prevents a notice to quit being served and a summary process action from being filed. The Cambridge Moratorium does not address that but requires that if a landlord has gone through the process of serving a notice to quit and a summary process action and has obtained an execution for possession from the Court, the landlord cannot cause a Constable or Sherriff to levy on that execution. This means that a landlord cannot cause a tenant to vacate the premises while the Cambridge Moratorium is in effect. If the State Eviction Moratorium expires on 10/17/20 as anticipated, it is possible that some landlords will serve tenants with notices to quit, initiate summary process eviction cases, and obtain executions

for possession. If the Cambridge Moratorium remains in effect, landlords will be prevented from levying on executions for possession.

The Cambridge Moratorium would likely be viewed as less protective of tenants than the CDC Order because the Cambridge Moratorium does not allow or prohibit whether courts may accept filings of eviction actions; only the state can do that. The Cambridge Moratorium applies only to levying on executions for possession. It is therefore likely that a Court would find that both the CDC Order and the Cambridge Moratorium can be in effect at the same time. The Cambridge Moratorium will prevent a landlord from levying on an execution for possession even if the tenant is not a Covered Person within the meaning of the CDC Order.

I am available to discuss this with the City Council.

Very truly yours,



Nancy E. Glowa
City Solicitor