

CITY OF YAKIMA

LEGAL

DEPARTMENT

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MEMORANDUM

September 4, 2020

TO: Honorable Mayor and Members of the City Council
Robert Harrison, City Manager

FROM: Jeff Cutter, City Attorney

SUBJECT: Effects of Terminating Mayor's Proclamation of Emergency

During the City Council meeting on September 1, 2020, the City Council requested a staff report regarding the "pros and cons" of future extensions of the Mayor's emergency proclamation. As I have indicated in the past with regard to this question, the action of issuing a declaration of emergency provides an avenue by which the Mayor, with the Council's ratification, can implement certain responses, take certain specific actions and amend certain standard procedures, requirements and obligations of the City and the City Council in order to respond to an emergent condition.

With respect to the City's present Mayoral Proclamation regarding the COVID pandemic that has now been extended numerous times, the declaration of emergency provides the Mayor the authority, with the Council's ratification, to take the following actions:

As a result of the occurrence of this outbreak and the emergency that exists I authorize the City of Yakima to exercise all actions necessary during the state of emergency to protect the safety, health and well-being of the Residents of the City, to include but not be limited to:

- a. ordering areas of quarantine as may be necessary and appropriate to preserve health and safety;
- b. postponing meetings of City committees, commissions and boards as may be determined appropriate;
- c. altering the schedule means, methods and occurrence of City Council meetings to accommodate health concerns and preservation of public safety;
- d. authorizing the City to enter into contracts and obligations necessary to respond to the declared emergency to protect the health, welfare and property of the City's residents and to provide emergency assistance as required, and to otherwise suspend requirements for bidding processes and formalities otherwise required by law unless mandated by Constitutional requirements in order to respond to the emergency that exists.

Under the current declaration of emergency issued by Governor Inslee, most of the specific limitations and alterations of standard function and protocol, such as the restrictions on the Council's meetings in public and associated amendments of the Open Public Meetings Act, the restriction on shutting off user utilities for lack of payment and the prohibition on residential evictions under certain circumstances, to name just a few, have been addressed at the state level. The action taken by the City in declaring its city wide state of emergency had no effect on the statewide orders, which will remain effective until amended or terminated by the Governor, regardless of any action the City may take.

The City has taken certain actions under the authority of the Mayoral state of emergency, such as the moratorium on enforcing certain parking ordinances that exist only so long as the City's declaration of emergency does. Similarly, any City actions that may be taken in response to the pandemic emergency that were authorized under paragraphs "a" through "d" in the Mayoral Proclamation, and that are included above, would cease to be effective upon the termination of the current declared emergency.

These outcomes are fairly self-evident and understood. The more difficult question associated with retaining or terminating the present state of emergency concerns how the state of emergency status may affect the City's amenability to benefit from emergency funding opportunities. I cannot state that the City's present state of emergency will guarantee the City receives emergency aid from any particular source. I have no idea what funding opportunities may become available to the City or what conditions may apply to the City's receipt of those funds. What I can say is that so long as the City remains under a state of emergency, in parallel with the State's declaration, the City would be amenable to receiving any assistance funding that was in some way reliant on the local declaration of emergency to receive it. So while I cannot say with certainty what the City may or may not receive in the way of future emergency assistance funding, or what the specific requirements may be to qualify to receive said assistance, it is certain that any funding assistance that did require that the City be under a state of emergency to qualify for it would not be available to the City were the City Council to terminate the current declaration.

On the other side of the coin, insofar as the City has taken very few specific actions under the declared emergency, the most noteworthy being the moratorium on issuance of certain parking citations, the continuation of the City's present status really has very little actual effect on the business or function of the City. Any actual controls over how business is conducted, where it is conducted and by whom, where and how large groups can gather, and so on, is presently dictated by the action of the State. From this perspective the "con" side of the continued extension of the declaration of emergency appears to be fairly diminutive.

JC/pm