IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

RENTAL HOUSING ASSOCIATION, *et al.*, Plaintiffs, v. CITY OF SEATTLE, Defendant.	No. 20-2-13969-6 SEA ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT **[Clerk's Action Required]**

THIS MATTER came before the undersigned judge on cross-motions for summary judgment filed by Plaintiffs Rental Housing Association of Washington, *et al*. ("Plaintiffs") and Defendant City of Seattle ("Defendant"). The Court considered the oral arguments of counsel and:

1. Plaintiffs' Motion for Summary Judgment;
2. Declaration of RHAWA in Support of Plaintiffs' Motion for Summary Judgment;
3. Declaration of Elena Bruk in Support of Plaintiffs' Motion for Summary Judgment;
4. Declaration of Scott Dolfay in Support of Plaintiffs' Motion for Summary Judgment;
5. Declaration of CJD Investments, LLC and Zella Apartments LLC in Support of Plaintiffs' Motion for Summary Judgment;
6. Declaration of John A. Tondini in Support of Plaintiffs' Motion for Summary Judgment;
7. City's Response and Cross-Motion for Summary Judgment;
8. Declaration of Roger Wynne in Support of City's Response and Cross-Motion for Summary Judgment;

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9. Plaintiffs' Response To Defendants' Cross-Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment;

10. Supplemental Declaration of CJD Investments, LLC and Zella Apartments LLC in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to the City's Motion;

11. Supplemental Declaration of RHAWA in Support of Plaintiffs' Motion for Summary Judgment;

12. Supplemental Declaration of John A. Tondini in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to the City's Motion;

13. City's Reply Regarding Its Cross-Motion for Summary Judgment;

14. Second Declaration of Roger Wynne in Support of City of Seattle's Reply Regarding Its Cross-Motion For Summary Judgment;

15. Pages 15 (beginning at Section C) through 27 of the Amicus Brief of Northwest Justice Project; ACLU of Washington; Building Changes; Columbia Legal Services; Fred T. Korematsu Center for Law and Equality; King County Bar Association; Pro Bono Council; Tenant Law Center; Tenants Union; Washington Low Income Housing Alliance;

16. Plaintiffs' Response to Amicus Brief;

17. Notice of Subsequent History; and

18. The other pleadings and papers related to this matter on file with the Court.

The parties have agreed that there are no disputed issues of material fact, and that Plaintiffs' claims are properly adjudicated on cross-motions for summary judgment.

The Court hereby enters its Findings of Fact, Conclusions of Law, and Order.

I. INTRODUCTION AND SUMMARY OF ISSUES BEFORE THE COURT

Plaintiffs are comprised of a landlord trade association, as well as individual and corporate landlords who rent units in the City of Seattle. Collectively, they have brought constitutional challenges to three City of Seattle Ordinances.

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Ordinance 126041 creates an affirmative defense to eviction proceedings for moderate-income tenants, if the eviction would result in termination of the tenancy between December 1 and March 1 (hereinafter, the "Winter Eviction Ban"). The Winter Eviction ban has no sunset clause.

Ordinance 126075 creates an affirmative defense to eviction proceedings for tenants who self-certify a financial hardship. (hereinafter, the "Six-Month Eviction Ban"). This affirmative defense is available to the tenant only if the eviction proceeding would result in termination of the tenancy within six months after expiration of the City of Seattle's current Residential Eviction Moratorium. The relief is unavailable after the expiration of said six-month period.

Finally, Ordinance 126081 (hereinafter, the "Payment Plan Ordinance") entitles tenants to pay overdue rent in installments, when such rent becomes due within six months after the termination of Seattle's COVID-10 Proclamation of Civil Emergency. The Ordinance sets forth certain presumptively valid payment schedules. No evidence of financial hardship is required. The tenant may raise, as a defense to an eviction proceeding, the landlord's failure to accept a payment plan as set forth in the Ordinance. The Ordinance also bans the accrual of late fees, interest, and other late charges for a period of one year following the termination of the Emergency Proclamation.

Plaintiffs' Complaint raises multiple challenges to the Ordinances, all brought pursuant to the Washington State Constitution. Plaintiffs do not challenge the Proclamation of Civil Emergency or the Residential Eviction Moratorium.

The Court is aware that there is significant public interest in the outcome of this case. Housing policy, under normal circumstances, requires a balancing of multiple competing and complex interests. These include the economic, health, and safety interests of both landlords and tenants. It is undisputed by the parties, and recognized by the Court, that this challenge arises

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during what are far from normal circumstances. Seattle, already in the throes of a massive homelessness crisis, is now also a year into a global pandemic which has wrecked devastating havoc on housing security, economic security (for both landlords and tenants), and public health and safety. The Court recognizes why this case, and its underlying policy concerns, has generated public interest. That said, the questions actually before this Court are narrow: Do the Ordinances survive Constitutional scrutiny? The important and difficult tasks of developing housing law and policy are left to the executive and legislative branches of government.

II. FINDINGS OF FACT

A. The Ordinances

i. The Winter Eviction Ban

1. To reduce the number of individuals and families becoming homeless during the harshest weather of the year, the City Council passed the Winter Eviction Ban on February 10, 2020. Decl. of John A. Tondini in Support of Pls.' Mot. for Summary Judgment; Ex. 1 (Ord. 126041). Under the Winter Eviction Ban, a tenant in an unlawful detainer action may assert a defense to any eviction that would occur between December 1 and March 1 if: (1) the tenant household is a "moderate-income household"; and (2) the landlord owns over four rental housing units in Seattle. "Moderate-income household" means "a household whose income does not exceed median income," as defined by the U.S. Department of Housing and Urban Development. SMC 23.84A.016; SMC 23.84A.025.

2. The Winter Eviction Ban has no sunset provision.

ii. The COVID Relief Ordinances

3. The City's Mayor issued a Proclamation of Civil Emergency on March 3, 2020, which the City Council amended by Resolution 31937 two days later. The amended

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Proclamation remains the operative one and will remain in effect until the Mayor or Council terminates it.

4. On March 14, 2020, the Mayor issued an emergency order temporarily establishing a Residential Eviction Moratorium, which the Council amended by Resolution 31938 two days later. The Council's version remains the operative one, the effective date of which the Mayor has extended through March 31, 2021.

a. The Six-Month Eviction Ban

5. Recognizing that the City has an interest in avoiding the spread of COVID-19 and "that economic impacts from the COVID-19 emergency are likely to last much longer than the civil emergency itself," the City Council adopted the Six-Month Eviction Ban on May 4, 2020. Ord. 126075.

6. Pursuant to Ordinance 126075, a tenant in an unlawful detainer action may assert a defense to any eviction that would occur within six months after the termination of the Eviction Moratorium if: (1) the landlord seeks eviction because the tenant (a) violated a 14-day notice to pay rent or vacate for rent due during, or within six months after, the eviction moratorium, or (b) habitually failed to pay rent resulting in four or more pay-or-vacate notices in a 12-month period; and (2) the tenant declares they suffered a financial hardship and cannot pay rent.

7. The Six-Month Eviction Ban applies without any requirement that a tenant provide any objective proof of financial inability or even difficulty to pay rent. The tenant need only submit a "declaration or self-certification" asserting a "financial hardship." "Financial hardship" is not defined.

b. The Payment Plan Ordinance

8. Recognizing that the pandemic would have long-lasting housing and economic impacts, "that the timing of when such impacts will cause tenants to be unable to pay rent will

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vary," and that mitigating those impacts is in City residents' interests, the Council adopted the Payment Plan Ordinance on May 11, 2020. Ord. 126081.

9. Under this Ordinance, a tenant who fails to pay rent when due, during or within six months after the termination of the Proclamation of Civil Emergency, may elect to pay the overdue rent in installments over three to six months, depending on the number of months the tenant is in arrears. The landlord's failure to accept payment under the repayment plan constitutes a defense to an eviction action.

10. The ordinance also prohibits late fees, interest, and other charges arising from late payment of rent from accruing during the Proclamation of Civil Emergency or within one year after its termination.

III. CONCLUSIONS OF LAW

A. Standing

11. Defendant challenges Plaintiffs' standing with respect to the Winter Eviction Ban. In response, Plaintiffs have submitted the Supplemental Declaration of RHAWA, the Supplemental Declaration of CJD Investments, LLC and Zella Aparments LLC, and the Declaration of Ginnie Hance. These declarations establish Plaintiffs' standing. Defendant does not address the issue of standing in its reply brief, and appears to have abandoned the issue.

B. Standard of Review

12. The Court must presume a law is constitutional unless the challenger proves it unconstitutional beyond a reasonable doubt. Island County v. State, 135 Wn.2d 141, 146–47 (1998). Because Plaintiffs bring facial challenges to the Ordinances, the Court must reject Plaintiffs' claims "if there are any circumstances where the [challenged law] can constitutionally be applied." Washington State Republican Party v. Wash. State Pub. Disclosure Comm'n, 141 Wn.2d 245, 282 n.14 (2000).

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C. Preemption (all Ordinances).

1. Substantive Defenses

13. Plaintiffs mount a facial conflict preemption challenge against the Ordinances, Pursuant to Article XI, Section 11 of the Washington State Constitution. Plaintiffs must prove the Ordinances conflict directly and irreconcilably with state law, permitting what state law forbids or forbidding what state law permits. Watson v. City of Seattle, 189 Wn.2d 149, 171 (2017). "However, if the statute and ordinance may be read in harmony, no conflict will be found." Id.

14. With respect to the stay on interest set forth in the Payment Plan Ordinance, the Court is persuaded by Plaintiffs' argument.

15. Plaintiffs cannot sustain their burden, however, with respect to the remainder of their claims. Under controlling Washington case law and the persuasive California case law on which it is based, the Ordinances establish substantive defenses that this Court can harmonize with Washington's procedural eviction statutes.

16. The Margola and Kennedy cases are dispositive. Margola Associates v. City of Seattle, 121 Wn.2d 625 (1993) abrogated on other grounds, Yim v. City of Seattle, 194 Wn.2d 651 (2019), cert. denied 140 S. Ct. 2675 (2020) (Yim I); Yim v. City of Seattle, 194 Wn.2d 682 (2019) (Yim II); Kennedy v. City of Seattle, 94 Wn.2d 376, 617 P.2d 713 (1980). Both rejected preemption challenges to City ordinances providing tenants with substantive defenses to eviction, reasoning that Washington's eviction statutes, the Forcible Entry and Forcible and Unlawful Detainer Act ("UDA," RCW ch. 59.12) and Residential Landlord Tenant Act ("RLTA," RCW ch. 59.18), are procedural. Margola, 121 Wn.2d at 631–32, 651–52; Kennedy, 94 Wn.2d at 379–80, 383–84. Kennedy and Margola continue to stand for the principle that the UDA and RLTA provide no substantive rights; they provide only a procedural vehicle through

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which parties assert claims and substantive defenses as a landlord pursues a writ of restitution, back rent, and other relief. Under that principle, the UDA and RLTA can be harmonized with the Ordinances, which provide substantive defenses for tenants in the eviction process.

17. Persuasive California case law suggests the same result. When introducing the procedural/substantive distinction to Washington law, Kennedy cited Birkenfeld, a then-recent California Supreme Court decision that recognized California's similar unlawful detainer provisions provide no substantive rights. Kennedy, 94 Wn.2d at 384 (citing Birkenfeld v. City of Berkeley, 550 P.2d 1001, 1015–16, 130 Cal. Rptr. 465 (1976)). Applying the Birkenfeld procedural/substantive distinction that Washington adopted, the California Court of Appeals has rejected preemption claims leveled at ordinances providing temporary substantive defenses to evictions. E.g., San Francisco Apartment Ass'n v. City and County of San Francisco, 229 Cal. Rptr. 3d 124, 126–30 (2018), rev. denied April 25, 2018, S247750; Roble Vista Associates v. Bacon, 118 Cal. Rptr. 2d 295, 296–97, 299–300 (2002). Consistent with that persuasive authority, the Ordinances' temporary defenses cannot be deemed to conflict with Washington's procedural eviction statutes.

18. Plaintiffs' arguments that the UDA and RLTA are substantive, and conflict with the Ordinances' substantive defenses, cannot be squared with Kennedy and Margola or the language of the UDA and RLTA.

19. Even if an Ordinance's substantive defense might yield a remedy more favorable to a tenant than would the RLTA provision, that will not always be the result, which is fatal to Plaintiffs' facial challenge. For example, under the winter eviction ban, a landlord could secure a writ of restitution in February ordering an eviction in March, but under the RLTA the judge could forestall the eviction until May.

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20. Plaintiffs object to provisions in the Payment Plan and Six-Month Eviction Ban Ordinances that prohibit an award of attorney fees and statutory court costs to a landlord "unless otherwise allowed by law." Plaintiffs claim that provision is preempted by various statutes allowing the recovery of attorney fees and costs. Plaintiffs cannot sustain their claim because the laws can be harmonized. If a landlord is entitled to statutory attorney fees or costs, the proviso ("unless otherwise allowed by law") ensures that no Ordinance prevents it.

21. For the first time in their response-reply brief, Plaintiffs raise a claim they omit from their Complaint: that Washington's rent control ban, RCW 35.21.830, preempts the Ordinances. Even if that claim was fairly before this Court, Plaintiffs fail to sustain their burden of proof. Because RCW 35.21.830 bans local regulation of "the amount of rent," not its timing, the statute does not control the Ordinances, which do not alter the amount of rent a tenant owes.

2. Bar on the accrual of interest

22. The Court's analysis differs with respect to the interest pan incorporated into the Payment Plan Ordinance (Ord. 126081). That ordinance reads in part: "No late fee, *interest*, or other charge due to late-payment of rent shall accrue during, or within one year after the termination of, the civil emergency proclaimed by Mayor Durkan on March 3, 2020." Ord. 126081 (emphasis added). The legislature has clearly created a right for landlords to collect interest on unpaid rent. See RCW 19.52.010. This is not a procedural scheme; it is a substantive right. The legislature has pre-empted the field with respect to the payment of pre and post-judgment interest. In this regard only, the Payment Plan Ordinance is unconstitutional and is STRICKEN. The Court finds that this provision can be SEVERED from the remainder of the Payment Plan Ordinance, thus saving the constitutional provisions of the Ordinance.

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D. Separation of powers (all Ordinances).

23. To sustain their separation of powers claim, Plaintiffs must prove that the Ordinances threaten the Court's independence or integrity or invade judicial prerogatives. State v. Moreno, 147 Wn.2d 500, 505–06 (2002) (internal citations omitted). In assessing that claim, the Court recognizes that the various branches of government "are not hermetically sealed and some overlap must exist." City of Fircrest v. Jensen, 158 Wn.2d 384, 394–94 (2006).

24. Plaintiffs rely on Waples v. Yi, 169 Wn.2d 152 (2010) and Putnam v. Wenatchee Valley Medical Center, P.S., 166 Wn.2d 974 (2009). Those cases each involved legislative enactments that interfered with processes set forth by court rule. By contrast, the Ordinances do not conflict with any judicially-created process.

25. The Court additionally finds that the Ordinances, creating substantive defenses to eviction proceedings, do not burden access to the courts and the right to a jury trial.[1]

E. Procedural due process (all Ordinances).

26. The City relies on Federal cases that have examined whether government action in response to the COVID pandemic are violative of procedural due process. "[T]he due process protection in our state constitution is generally the same as the federal guaranty." Matter of Dependency of E.H., 191 Wn.2d 872, 891 (2018). Although Plaintiffs' claims are brought pursuant to the State Constitution, the Court relies on both State and Federal authority. See City of Spokane v. Douglass, 115 Wn.2d 171, 176 (1990) (applying federal law to a constitutional challenge where the moving party fails to offer authority establishing that the State Constitution affords heightened protection, and fails to engage in a Gunwall analysis).

[1] Although not a defense, the ban on accrual of interest does not impact the right of landlords to access the Court.

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27. To prove their procedural due process claim, Plaintiffs must "first identify a property right, second show that the state has deprived him [or her] of that right, and third show that the deprivation was effected without due process." Elmsford Apartment Associates, LLC v. Cuomo, 469 F.Supp.3d 148, 172 (S.D. New York 2020) appeal docketed, No. 20-2565 (2nd Cir. July 28, 2020) (internal citations omitted). Plaintiffs fail to sustain their burden on these elements.

28. Plaintiffs assert a right to timely rent payments or eviction. They have not identified how these property interests exist "independent of the interests asserted in their other constitutional claims." Auracle Homes, LLC v. Lamont, __ F. Supp. 3d. __, 2020 WL 4558682, *19 (D. Conn. Aug. 7, 2020). Accord, Elmsford, 469 F. Supp. 3d at 173. The due process clause does not provide relief where another constitutional right serves to protect the interest at stake. Elmsford, 469 F.Supp.3d at 173.

29. Moreover, with the exception of the interest abeyance requirement under the Payment Plan Ordinance[2], the Ordinances do not act to deprive Plaintiffs of property. Plaintiffs cite inapposite case law addressing laws that change the status quo by allowing a plaintiff to seize a defendant's assets before a hearing. By contrast, the Ordinances leave Plaintiffs' assets untouched and do not change the status quo; the Ordinances merely temporarily delay landlords' ability to evict tenants and collect rent. The tenants, however, remain liable for all rent they owe.

30. Finally, the Ordinances do not deny landlords the fundamental requirement of due process: "the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 334 (1976). Plaintiffs are not barred from the Courthouse,

[2] Because the Court has separately found that Plaintiffs are entitled to relief under the Preemption Clause, the Court does not address whether Plaintiffs are denied access to interest payments without due process of law. See Elmsford, 469 F.Supp.3d at 173.

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and their rights and remedies under the UDA and RLTA remain inviolate. See Elmsford, 469 F.Supp.3d at 173 (finding no procedural due process violation when "Plaintiffs will be able to initiate new proceedings in the same forum and manner that they always shave, after [expiration of the eviction ban]"). Due process does not require a meaningful hearing "as soon as a cause of action accrues." Id. And given the compelling governmental interests underlying the delays occasioned by the Ordinances, Plaintiffs have failed to establish that the defenses guaranteed by the Ordinances violate due process. See Federal Deposit Ins. Corp. v. Mallen, 486 U.S. 230, 242 (1988) (Court engages in a balancing test in assessing the constitutional burden posed by a delay in process, weighing the underlying governmental interest served by the delay against the harm caused by the delay).

E. Substantive due process (all Ordinances).

31. "The substantive component of due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures." Yim II, 194 Wn.2d at 688-89 (internal citations omitted). Washington applies federal substantive due process law to claims under the Washington Constitution. Id. at 692–93.

1. The "rational basis" analysis.

32. A law regulating the landlord-tenant relationship, even by preventing the landlord from evicting a tenant, regulates only property for substantive due process purposes. In Yim II, landlords challenged a City ordinance preventing them from taking "adverse action," including eviction, against a tenant for certain reasons. Id. at 686–87. See Seattle Municipal Code § 14.09.010 (defining "adverse action"). Yim II ruled that the ordinance was subject only to "rational basis" review because it regulated property, not a fundamental right. Yim II, 194 Wn.2d at 698–701.

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33. Plaintiffs' substantive due process claims are subject to "rational basis" review.

34. "[A] law regulating the use of property violates substantive due process only if it fails to serve any legitimate governmental objective, making it arbitrary or irrational." Id. at 693-94 (internal citations omitted).

35. In an apparent attempt to avoid the holding of Yim II, Plaintiffs frame their substantive due process claim not as a deprivation of property, but as a deprivation of meaningful access to courts for timely relief. Plaintiffs cite no substantive due process case law identifying such a right.

2. Application of the deferential "rational basis" analysis.

36. "[A] law that regulates the use of property violates substantive due process only if it fails to serve any legitimate governmental objective, making it arbitrary or irrational." Id. at 698 (quoting Lingle v. Chevron U.S. A. Inc., 544 U.S. 528, 542 (2005)). "Even where a law restricts the use of private property, ordinances are presumed valid, and this presumption is overcome only by a clear showing or arbitrariness and irrationality." Id. (internal citations omitted).

37. The Ordinances pass the deferential "rational basis" test. Pausing evictions during the winter months rationally advances the goal of minimizing homelessness when the danger of developing exposure-related conditions is elevated. And the six-month defense and repayment plan requirement (including a temporary ban on the accrual of interest) rationally address the economic and public health impacts that will predictably outlast the declared pandemic emergency. Even the temporary ban on the accrual of interest serves the legitimate governmental objective of preventing homelessness and the further spread of COVID-19 during and immediately following the City's state of civil emergency.

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F. Privileges and immunities (all Ordinances).

38. Article I, § 12 of the Washington Constitution, Washington's privileges and immunities clause, provides: "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." This is Washington's analogue of the federal equal protection clause of the U.S. Constitution's 14th Amendment. The rights it confers are broader than those under the Federal Equal Protection Clause. American Legion Post #149 v. Washington State Dept. of Health, 164 Wn.2d 570, 606 (2008). Both the State and Federal provisions serve to prevent discrimination; only the State Privileges and Immunities Clause also addresses favoritism in legislative enactments. Id.

39. The Privileges and Immunities clause protects only fundamental rights, which are defined as follows:

> [T]he right to remove to and carry on business […] the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from.

Id. at 607, quoting Grant County Fire Protection Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, (2004) (Grant County II) (further internal citations omitted).

40. A statute that grants a privilege or immunity burdening a fundamental right passes constitutional muster only if there is a "reasonable ground for granting that privilege or immunity." Schroeder v. Weighall, 179 Wn.2d 566, 572–73 (2014) (internal citations omitted). The reasonable ground analysis "is more exacting than rational basis review." Id. at 574.

41. The State Privileges and Immunities Clause is "intended to prevent favoritism and special treatment for a few to the disadvantage of others." Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 196 Wn.2d 506, 518 (2020) (internal citations omitted). The Ordinances

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benefit no minority, but the significant portion of Seattle's renters who are financially insecure. See, e.g., Ordinance 126081, Finding T (citing data showing the large percentage of Americans who cannot meet their monthly expenses); Ordinance 126075, Finding U (citing data showing the significant number of evicted tenants who become homeless following eviction).

42. Plaintiffs have not addressed the question posed by the "reasonable grounds" test: whether the Ordinances actually serve the City's stated goals. There is no suggestion that the Ordinances' ends and means constitute a pretext for favoring an influential minority. Cf. Schroeder, 179 Wn.2d at 575–76 (an exception to a tort tolling statute benefitted only doctors with no basis for advancing the claimed purposes of reducing insurance premiums or meaningfully limiting stale malpractice claims).

G. Contract Clause (all Ordinances).

43. "No . . .law impairing the obligations of contracts shall ever be passed." Const., art. I, § 23. Washington courts give this provision the same effect as the analogous provision of the U.S. Constitution. Lenander v. Washington State Dept. of Retirement Systems, 186 Wn.2d 393, 414 (2016).

44. The Court owes deference to the legislative branch when evaluating the degree to which legislation impairs a private contract. Id. (internal citations omitted).

45. "[T]he protections of the Contract Clause are not absolute; its prohibition must be accommodated to the inherent police power of the Sate to safeguard the vital interests of its people". In re Estate of Hambleton, 181 Wn.2d 802, 830 (2014) (internal quotations omitted).

46. The threshold issue in the Contract Clause inquiry is "whether the . . . law has 'operated as a substantial impairment of a contractual relationship.'" Sveen v. Melin, 138 S. Ct. 1815, 1821–22 (2018) (citations omitted). If a plaintiff proves a substantial impairment, a court asks "whether the state law is drawn in an 'appropriate' and 'reasonable' way to advance 'a

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significant and legitimate public purpose.'" Id. at 1822 (citations omitted). Plaintiffs fail to meet their burden to establish either element.

1. Substantial impairment.

47. In assessing whether a law has operated as a substantial impairment of a contractual relationship, "the Court [] consider[s] the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." Id. "The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected." Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983). The Ordinances do not pose a substantial impairment to Plainitffs' contractual relationships.

48. "In determining the extent of the impairment, [the Court considers] whether the industry the complaining party has entered has been regulated in the past." Id. The residential rental business is highly regulated in Washington and Seattle. The RLTA regulates many aspects of the landlord-tenant relationship by, for example: establishing a duty to keep the premises fit for human habitation (RCW 59.18.060); requiring notice of rent increases (RCW 59.18.140); and regulating late fees (RCW 59.18.170), notices of termination (RCW 59.18.200), tenant screening (RCW 59.18.257), and security deposits (RCW 59.18.260–.280). The Unlawful Detainer Act and Residential Landlord Tenant Act regulate evictions. See RCW ch. 59.12; RCW 59.18.365 – .410. Prior to the enactment of the Ordinances, the City had already adopted a just cause standard for eviction, bolstering the protections to tenants afforded under State law. SMC 22.206.160.

49. The Washington State Supreme Court has held that "parties entering into residential leases do so subject to further legislation limiting the right to evict." Margola Associates v. City of Seattle, 121 Wn.2d 625, 653 (1993), abrogated on other grounds, Yim I, 194 Wn.2d 651 and Yim II, 194 Wn.2d 682 (Declining to find a Contracts Clause violation

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arising from City ordinances requiring registration of rental units and payment of registration fees).

50. Finally, in considering whether a law operates as a "substantial impairment," the Court considers "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." Sveen, 138 S.Ct. at 1822. As noted elsewhere herein, the Ordinances impose temporary delays on the collection of rent and the ability to engage in the eviction process. The Ordinances do not, however, abrogate those rights. The Payment Plan Ordinance does ban the accrual of interest outright. However, this right to collect interest is not contractual, it is statutory. The Court's analysis with respect to that issue is set forth in Section III.C, *supra.*

2. Whether the Ordinances are drawn appropriately and reasonably to advance significant and legitimate public purposes.

51. Even if the Ordinances facially and substantially impair Plaintiffs' contractual relationships, Plaintiffs cannot sustain their burden as to the second element of their Contract Clause claim.

52. "If a [Governmental] regulation constitutes a substantial impairment, the [Government], in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem." Energy Reserves, 459 U.S at 411-12 (internal citations omitted). "The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests." Id. at 412. The Court "properly defer[s] to legislative judgment as to the necessity and reasonableness of a particular measure." Id. at 412-13. Accord, Carlstrom v. State, 103 Wn.2d 391, 394 (1985). The challenged Ordinances are replete with legislative findings regarding the serious and emergent nature of the health, safety, and economic

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consequences of the COVID-19 pandemic, as well as the health and safety implications of eviction during Seattle's winter months.

H. Takings (all Ordinances).

53. In Yim I, Washington adopted the federal regulatory takings analysis set forth in Lingle v. Chevron U.S.A, Inc., 544 U.S. 528 (2005). 194 Wn.2d at 681 This holding invalidates Washington's pre-Yim I regulatory takings jurisprudence. Id., at 662, 668–72.

54. Plaintiffs invoke only one of Lingle's three tests for regulatory taking: a *per se* regulatory taking through a regulation forcing them to suffer a physical invasion. See Lingle, 544 U.S. at 538 (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)).

55. Contrary to Plaintiffs' claim, the City is not directly appropriating Plaintiffs' property or ousting landlords from their domain. Examples of such "classic" or "paradigmatic" takings include the government seizing and operating a coal mine or occupying a private warehouse. Lingle, 544 U.S. at 537. The Ordinances, which regulate the relationships between third parties, do not fit within that category.

56. Plaintiffs cannot sustain their burden to establish a taking by physical invasion. Courts reject claims that regulating the landlord-tenant relationship can amount to a taking. Loretto, 458 U.S. at 440 ("This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."). Accord, Yee v. City of Escondido, 503 U.S. 519, 528–29 (1992); FCC v. Florida Power Corp., 480 U.S. 245, 252 (1987).

57. This is especially true of a claimed *per se* taking from a regulation allegedly denying a landlord the discretion to exclude individuals who pay on terms the landlord disfavors. See, e.g., Yee, 503 U.S. at 528 (No Taking Clause violation where landlords may evict tenants,

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516 3rd Ave., W-739
Seattle, WA 98104

"albeit with 6 or 12 months notice."). Like the law challenged in Yee, the Ordinances at issue in this matter do not force a landlord to refrain in perpetuity from terminating a tenancy. Like the Yee landlords, no Plaintiff alleges they want to abandon the landlord business; they consented to "invasion" by tenants and wish to continue to serve as landlords. And as with the landlords in Yee, Plaintiffs in this matter retain the right to evict non-paying tenants, albeit within the City's regulatory framework.

58. Other jurisdictions have considered constitutional challenges to similar emergency ordinances, and have relied on Yee to reject "physical invasion" takings claims. E.g., Baptiste v. Kennealy, 2020 WL 5751572, at *20 (D. Mass. Sept. 25, 2020); Auracle, 476 F.Supp.3d at 221; Elmsford, 469 F.Supp.3d at 162-163. This authority is persuasive.

59. This Court need not entertain Plaintiffs' claim that the Ordinances effect a prohibited taking for a private use. The Ordinances effect no taking, obviating inquiry into its public or private nature. See Yim I, 194 Wn.2d at 673.

I. Takings; interest (Payment Plan Ordinance)

60. Plaintiffs rely on two seminal IOLTA cases for their claim that the repayment plan requirement's temporary ban on interest accruing on overdue rent effects a taking. *See* Brown v. Legal Foundation of Washington, 538 U.S. 216 (2003); Phillips v. Washington Legal Foundation, 524 U.S. 156 (1998)). But both decisions, which involved the government confiscating interest accruing on client trust accounts, ruled only that government may not constitutionally confiscate interest that accrues on an account. Brown, 538 U.S. at 220–35; Phillips, 524 U.S. at 159–68, 172. Neither involved interest accruing on a debt; only on deposited principal. See, e.g., Phillips, 524 U.S. at 165 (articulating the "interest follows principal" rule). Phillips declined to address "whether the owner of the principal has a constitutionally cognizable interest in the *anticipated* generation of interest by his funds."

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Phillips, 524 U.S. at 168 (emphasis added). Accord, Texas State Bank v. United States, 423 F.3d 1370, 1378–79 (Fed. Cir. 2005) (recognizing the limited scope of the Phillips and Brown decisions). Plaintiffs have submitted no authority for the proposition that the City has taken interest which has not accrued.

IV. ORDER

For the reasons set forth herein, this Court orders:

1. With respect to the preemption challenge to the ban on the accrual of interest pursuant to Ordinance 126081, Plaintiffs' Cross-Motion for Summary Judgment is GRANTED and Defendant's Cross-Motion for Summary Judgment is DENIED.
2. In all other respects, Plaintiffs' Cross-Motion for Summary Judgment is DENIED, and Defendant's Cross-Motion for Summary Judgment is GRANTED.
3. Each party shall sustain its own fees and costs.

DATED this 24th day of February, 2021.

Electronically signed and filed

_____

Hon. Johanna Bender

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Case Title:	RENTAL HOUSING ASSOCIATION ET AL VS CITY OF SEATTLE
Document Title:	ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT

Signed By:	Johanna Bender
Date:	February 24, 2021

Judge: Johanna Bender

This document is signed in accordance with the provisions in GR 30.

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