Supreme Court No. 94058-4
Court of Appeals No. 74360-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MICHELLE J. KINNUCAN,

Petitioner,

v.

CITY OF SEATTLE,

Respondent.

PETITION FOR DISCRETIONARY REVIEW

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Petitioner Michelle J. Kinnucan asks this Court to accept review of the Court of Appeals decision designated in Part B of this petition.

COURT OF APPEALS' DECISION

Ms. Kinnucan seeks review of the Court of Appeals decision entered on December 19, 2016, affirming the trial court's order dismissing Ms. Kinnucan's action for a writ of mandamus. A copy of the Court of Appeals' decision is included in the Appendix at pages A 1 through 33.

ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err by failing to give full effect to the liberal and remedial statutory construction required when it determined that RCW 59.18.440(5), which requires the City of Seattle ("City") to provide administrative hearings to tenants "during relocation," was satisfied even though the City denied Ms. Kinnucan (and all similarly situated tenants) a hearing when she actually faced relocation?

2. Did the Court of Appeals err in concluding that Ms. Kinnucan had a "plain, speedy, and adequate remedy" by: (a) improperly applying an abuse of discretion standard instead of *de novo* review where the appeal arose from the trial court's grant of a CR 12(b)(6) motion and statutory interpretation; and (b) improperly construing the trial court's

"tenable reason" as sufficient findings of fact to support its conclusion where the central issue was whether a writ of mandate should issue?

3. Do the Court of Appeals' errors involve issues that make review appropriate under RAP 13.4(b)(1) and (4)?

STATEMENT OF THE CASE

A. Statement of Facts.

The Court of Appeals correctly summarized the background to this dispute as follows:

> RCW 59.18.440 authorizes any city, town, county, or municipal corporation to adopt local ordinances that require property owners to pay relocation assistance funds to low-income tenants upon the demolition, substantial rehabilitation, or change of use of the dwelling in which such tenants reside, ***so long as the ordinances provide for administrative hearings to resolve disputes between landlord and tenant relating to relocation assistance or unlawful detainer actions during relocation.*** [Opinion, page 1, emphasis added.]

See A 19-20. Ms. Kinnucan argues that Seattle's ordinance (SMC Chapter 22.210, the Tenant Relocation Assistance Ordinance or "TRAO") fails to provide mandated administrative hearings. *See* A 21-33. The relevant portions of RCW 59.18.440 ("Relocation assistance for low-income tenants") can be summarized as follows (by subsection number):

(1) Any tenant relocation assistance ordinance must be consistent with what is "expressly authorized herein."

(2) Defines "low-income tenants."

(3) The municipality determines the amount of relocation assistance to be provided based on stated factors.

(4) Relocation assistance shall not exceed $2,000 (adjusted for inflation) and the portion paid by the landlord shall not exceed 50%.

(5) Any ordinance implementing the statute "shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation." Limited judicial review is available.

Following enactment of this statute, the City adopted the TRAO.

The TRAO provides that if a landlord wishes to demolish or substantially rehabilitate a rental property – so that tenants must move out – the following steps must be followed:

1. The landlord applies to the City for a tenant relocation license and gives.

2. The City imposes a prohibition against eviction of any tenant except for causes unrelated to relocation under the TRAO.

3. The landlord gives the tenants an "information packet" about relocation assistance.

4. The tenants submit "relocation assistance certification forms" to the City, stating their income. The City determines which tenants qualify as "low-income" tenants.

5. The landlord pays half of the total tenant relocation assistance payments to the City.

6. The landlord gives the tenants a 90-day notice of its intention to demolish or renovate the property.

7. Following the expiration of the 90-day notice period, the City may issue a tenant relocation license to the landlord.

8. Once the tenant relocation license is issued, the restriction on evicting tenants (except for good cause) is removed.

9. Eligible tenants may apply for relocation assistance when they move out of their rental units.

See A 21-33 (SMC 22.210.110, .130(C), .140(A)).

These events divide naturally into two parts, with the central event being the issuance of the tenant relocation permit. During the first period, information is exchanged, entitlement to relocation assistance is determined, and the landlord contributes half of the relocation assistance fund. During the second period, the landlord terminates leases, tenants move out, and tenants apply for and receive relocation funds.

Ms. Kinnucan is a low-income tenant who lives in the City. CP 97, 99, 100. From November 2013 through January 2014, Ms. Kinnucan received communications from her landlord indicating that her multi-building complex would be rehabilitated but that tenants in her particular building could stay until October 2014. CP 96, 121-27. Ms. Kinnucan relied on these representations. CP 96. Demolition began in the complex. CP 97. In February 2014, Ms. Kinnucan, on behalf of her apartment complex's tenant's union, expressed concerns to the property owner about an environmental toxin: lead dust generated by the demolition. CP 97, 131-32. These concerns were borne out when tests performed by the

public health department revealed lead levels in Ms. Kinnucan's building in excess of U.S. Environmental Protection Agency standards. CP 97, 134.

On April 3, 2014, the City issued a tenant relocation license to the landlord. CP 41, 62. The next day, April 4, 2014, the landlord gave Ms. Kinnucan notice to terminate her tenancy by April 30, 2014 -- six months earlier than previously indicated -- or be subject to an unlawful detainer action. CP 136. Ms. Kinnucan was the only resident of her building subject to the accelerated termination date. CP 97. Given the difficulty of finding affordable rental units in the City, Ms. Kinnucan's already disabling health problems were exacerbated by stress. *Id.*

On April 21, 2014, Ms. Kinnucan, quoting RCW 59.18.440(5), contacted the City's Office of Hearing Examiner ("OHE") to seek a resolution to the dispute by means of an administrative hearing. CP 98, 142-43. The OHE informed Ms. Kinnucan that it had "authority to hear your complaint," and accordingly Ms. Kinnucan filed a four-page complaint with the OHE. *Id.* The City then changed course and denied Ms. Kinnucan an administrative hearing, relying on SMC 22.210.150(C), which provides:

> A request for a hearing relating to authority to pursue unlawful detainer actions during the relocation

> period shall be filed prior to issuance of the tenant relocation license.

CP 149.

Ms. Kinnucan was then informed by the City that "[y]ou indicate that the Office of Hearing Examiner has refused to hear your complaint in this matter . . . [t]here is no route to an administrative hearing on any of the issues you have raised." CP 99, 156-59. Ms. Kinnucan, proceeding *pro se*, filed a lawsuit against her landlord. CP 99. This was settled and Ms. Kinnucan remained in her apartment until a few weeks before the relocation date originally indicated. CP 100.

B. Procedural Background.

On December 29, 2014, Ms. Kinnucan filed a lawsuit seeking a writ of mandamus to require the City to offer the administrative hearings called for in the statute. CP 1-6. The City filed a motion to dismiss under CR 12(b)(6). The trial court granted the City's motion on October 23, 2015. CP 168-69. Ms. Kinnucan appealed. CP 170. The Court of Appeals, Division I, affirmed the trial court's judgment by unpublished opinion dated December 19, 2016. A 1-16.

ARGUMENT

To support issuance of a writ of mandamus, a party must show that (1) the party subject to the writ has a clear duty to act; (2) the petitioner has no plain, speedy, and adequate remedy in the ordinary course of law;

and (3) the petitioner is beneficially interested. RCW 7.16.160, .170. Here, the Court of Appeals erred in its statutory construction in finding the City had only a discretionary duty and fulfilled that duty where, as here, Ms. Kinnucan was denied the required administrative hearing. Further, the Court of Appeals erred in construing Ms. Kinnucan's relief as "plain, speedy, and adequate" where the facts reflect otherwise. Under RAP 13.4(b)(1) and (4), review should be granted.

A. The Court of Appeals Erred in Determining That RCW 59.18.440 Was Satisfied Even Though the City Denied Ms. Kinnucan Any Hearing When She Actually Faced Relocation.

RCW 59.18.440 is a remedial statute and subject to liberal construction. The Court of Appeals agreed. A 6-7. But in applying the statute to the facts at hand, the Court of Appeals failed to give full effect to the requirement that the City provide administrative hearings "during relocation." There is no dispute that the Court's review of this issue is a question of statutory interpretation is *de novo*. A 6 (citing *State v. LG Elecs., Inc.*, 185 Wn. App. 123, 132, 340 P.3d 915 (2014)).

The term "during relocation" is not defined in the statute. A 8. Accordingly, the term should be given its plain and ordinary meaning. *Finch v. Thurston Cty.,* 186 Wn.2d 744, 758, 381 P.3d 46 (2016) ("Undefined words in a statute must be given their plain and ordinary meaning unless a contrary intent appears." (citing *Dennis v. Dep't of*

Labor & Indus., 109 Wn.2d 467, 479-80, 745 P.2d 1295 (1987))). The plain and ordinary meaning of "relocation" is moving to a new location. The same meaning is assumed in the statute. RCW 59.18.440(3) says that the amount of relocation assistance should be based on "[a]ctual physical moving costs and expenses" and "[a]dvance payments required for moving into a new residence." Thus it should not be controversial that the ordinary (and statutory) meaning of the phrase "during relocation" must include the period during which tenants are actually relocating (moving to a new location).

The City's ordinance plainly fails to satisfy the statute. In fact, the City says, in effect, to Ms. Kinnucan (and all similarly situated tenants): "Your right to a hearing 'during relocation' ends at the moment your landlord gets a license to make you relocate."[1] In sum, the City provides for administrative hearings only pre-relocation, not *during* relocation as required by the statute.

The City does not deny that the term "during relocation" could reasonably mean "while tenants are moving," *i.e.*, that it ***could have*** offered hearings during the period when tenants are actually relocating.

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[1] The City admits that its ordinance makes administrative hearings available only "during the ***first portion of the relocation process***." City's Response Brief on Appeal at p. 7.

City's Response Brief on Appeal at p. 11. But the City instead insisted on "broad discretion" to interpret the phrase "during relocation" to exclude the time when tenant relocations actually occur. *Id.* at pp. 7, 9.

Unfortunately, the Court of Appeals agreed with the City and interpreted the term "during relocation" to refer to a time period when no one is actually permitted to be relocated under the TRAO. The Court of Appeals reasoned:

> Thus, RCW 59.19.440 requires that a participating city establish a system whereby low-income tenants receive relocation assistance that is mutually paid for by the city and by the property owner. Should a dispute arise between the property owner and the tenant *relating to relocation assistance*, the city must allow for an administrative hearing. Tellingly, RCW 59.18.440 is silent as to any dispute or event that occurs after such relocation assistance has been provided. Accordingly, a reading of the statute as a whole leads to but one conclusion – "during relocation" is in reference to the relocation assistance, not physical relocation of the tenants themselves.

A 8 (emphasis in original).

With respect, this argument makes no logical sense. As far as the statute goes (indeed, as far as the TRAO goes), "relocation assistance has been provided" only at the end of the process, which is necessarily after issuance of the tenant relocation license and after the tenant has actually moved or fixed a move-out date. Referring to this late event does nothing to support the City's denial of hearings after the "first portion of the relocation process."

The Court of Appeals' narrow interpretation is incorrect. The municipality determines eligibility for relocation assistance, the amount of assistance, and the landlord's percentage share of that assistance. No disputes can arise between the ***landlord and tenant*** over these matters. The Court of Appeals, by reading the statutory language narrowly, essentially eliminates this statutory mandate for hearings and fails to give required effect to the statute by application of liberal construction for remedial impact.

One of the things the statute contemplates is that landlords, seeking increased rents from property upgrades, will have a strong incentive to evict low-income tenants without giving them time to prepare for a move. The City's ordinance expressly contemplates the same thing:

> Conditions in the current rental market have created a relocation crisis, because tenants, especially low-income tenants, do not have sufficient time to save money for relocation costs or to find comparable housing when they are evicted as a result of demolition, change of use, substantial rehabilitation or removal of use restrictions from their dwelling units.

SMC 22.210.020(A)(6).

The legislature sought to address this "crisis" by allowing municipalities to enact tenant relocation assistance ordinances. This is a remedial statute, subject to liberal construction, and "[t]he same rules of construction apply to interpretation of municipal ordinances as to

interpretation of state statutes." *City of Puyallup v. Pac. Nw. Bell Tel. Co.*, 98 Wn.2d 443, 448, 656 P.2d 1035 (1982). Any such ordinance limits a landlord's ability to evict low-income tenants on short notice. Such limitations naturally create new incentives for evading those restrictions.

Such harassment can occur at any time until the tenant actually moves to a new location. In Ms. Kinnucan's case, the landlord reneged on an earlier assurance regarding her tenancy (allegedly) as retaliation for her protest about the landlord's unsafe practices. This left Ms. Kinnucan in exactly the situation the statute was intended to address: told to vacate before she had a chance to prepare for a move. Reading the statute liberally, this is exactly the kind of thing what the legislature had in mind when it mandated administrative hearings to "resolve disputes between tenants and property owners "relating to . . . unlawful detainer actions during relocation."

The Court of Appeals erred first when it interpreted the phrase "relating to relocation assistance or unlawful detainer actions during relocation" so narrowly as to essentially eliminate the phrase from the statute. The Court of Appeals erred again when it concluded that disputes "during relocation" could never occur "after such relocation assistance has been provided." In doing so, the Court of Appeals failed to give full effect to the statute. In fact, Ms. Kinnucan's dispute with her landlord arose and

she requested a hearing from the City months before she applied for or received any relocation assistance.

The Court of Appeals' error can be seen in its description of the City's ordinance:

> [W]hat the [ordinance] provides are administrative hearings for instances in which a landlord is attempting to unlawfully evict a tenant – or otherwise harass, intimidate, or raise rent to cause a tenant to vacate their apartment – ***so as to avoid paying tenant relocation assistance.***

A 11 (emphasis added).

This may be an accurate summary of the City's thought process, but it has no basis in the statute. The statute does ***not*** say that hearings will be provided for disputes only where the landlord is trying to avoid paying tenant relocation assistance. It says that hearings will be provided for disputes "relating to relocation assistance." The broader term includes instances where a landlord is attempting to unlawfully evict a tenant even after paying its share of relocation assistance (perhaps thinking, "I paid my money, I can throw them out"). That is (allegedly) what happened to Ms. Kinnucan. The day after the relocation license was issued, the landlord told Ms. Kinnucan, alone among residents in her building, that she had to leave earlier than previous indicated.

Trying to justify its conclusion, the Court of Appeals says that Ms. Kinnucan "does not attempt to define when 'during relocation' has

ended." A 8, at Note 1. That is incorrect. Ms. Kinnucan has always asserted that "relocation" means moving to a new location, and that the City was wrong to deny administrative hearings during the only period in which tenants actually move. As a practical matter, a landlord will apply for a tenant relocation license and pay the required contribution only when it is on the verge of taking action that will displace tenants. Tenants must apply for relocation assistance within 180 days of being displaced. SMC 22.210.130(E). These two factors set a limit to the period described as "during relocation."

The Court of Appeals' interpretation and the City's application of the statute improperly limits its effect, far from giving the statute liberal construction as a remedial statute. This is not an issue of usurpation of the superior court's jurisdiction over unlawful detainer proceedings. Nor is it an issue of other, "alternate" remedies. The administrative hearings sought here are specific to the relocation statute and a tenant's rights under the TRAO. Whether or not appropriate cause exists for eviction through the unlawful detainer process is a separate matter for the superior court. But here, the City's arbitrary limitation of administrative hearings to only the "first portion" of the relocation process cuts off administrative hearings during the period when tenants are permitted to be relocated and, thus, in fact moving. And that is precisely when an unlawful detainer

action may arise, and precisely the type of process mandated under the statute.

B. The Court of Appeals Erred in Determining That Ms. Kinnucan Had a "Plain, Speedy, and Adequate" Remedy.

In concluding that Ms. Kinnucan had a "plain, speedy, and adequate" remedy, the Court of Appeals erred by: (1) applying the wrong standard of review; and (2) improperly construing the trial court's "tenable reason" as a factual finding sufficient to support its conclusion. Further, the Court of Appeals focused on the wrong issue in making its determination. Ms. Kinnucan sought not a remedy against her landlord – her particular issue had been settled – but rather a writ to make the City comply with the statute so that Ms. Kinnucan and others would have full administrative hearing rights as required by the legislature under RCW 59.18.440(5). A lawsuit by a tenant against a landlord, even if successful, can never remedy the City's failure to provide "administrative hearings to resolve disputes between tenants and property owners relating to . . . unlawful detainer actions during relocation." RCW 59.18.440(5).

Additionally, the Court of Appeals applied the wrong standard of review to this issue. While determination of whether a plain, speedy, and adequate remedy exists is generally left to a trial court's discretion and reviewed for abuse of that discretion, that standard does not apply here.

This case arises in the context of a CR 12(b)(6) motion that turned on statutory interpretation, not findings of fact. In this case, the question is one of law to be reviewed *de novo*. *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 649 n.5, 310 P.3d 804 (2013).[2]

The Court of Appeals' ruling suggests a concern with the interplay between the City's interest in finality in permitting processes, a landlord's right to develop its property, and a tenant's right to administrative hearings under the TRAO. But the Court of Appeals' concern is misplaced. This is not, as the Court reasons, an issue on which the hearing examiner would have no authority in the context of unlawful detainer actions or issuance of tenant relocation licenses. To the contrary, as another city has found in applying the same statute and adopting its own tenant relocation assistance ordinance, an administrative hearing before a hearing examiner "to resolve disputes between displaced tenants and the owner relating to unlawful detainer actions during relocation" is precisely what the statute requires. Bellevue Municipal Code § 9.21.100.

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[2] Even if the deferential standard were applied, the Court of Appeals' reliance on the trial court's "tenable reason" is not sufficient to support a finding of fact warranting the conclusion that Ms. Kinnucan was afforded a proper remedy. The law requires that the remedy meet all three of the elements – that it be plain, speedy, ***and*** adequate. Even with the most generous interpretation, the trial court at best found only that Ms. Kinnucan had an "alternative" remedy. But an "alternative" remedy does not equate to one that is plain, speedy, and adequate.

C. The Court of Appeals' Errors Involves Issues that Make Review Appropriate Under RAP 13.4(b)(1) and (4).

The test for review under RAP 13.4(b)(1) is whether the Court of Appeals' decision is in conflict with a decision of the Supreme Court. Here the Court of Appeals properly cited *State v. Douty*, 92 Wn.2d 930, 936, 603 P.2d 373 (1979) for the principle that remedial statutes should be construed liberally, but then it abandoned that principle.

Liberal construction requires that the coverage of an act's provisions "be liberally construed and its exceptions be narrowly confined." *Local 1-369 v. Washington Public Power Supply System,* 101 Wn.2d 24, 29, 677 P.2d 108 (1984). There is no dispute that Ms. Kinnucan falls within the scope of RCW 59.18.440 and the TRAO. Indeed, the City approved and disbursed -- albeit months after it issued the tenant relocation license -- relocation assistance funds to Ms. Kinnucan. Moreover, "[l]iberal construction of a statute implies a concomitant intent that its exceptions be narrowly confined." *Miller v. City of Tacoma*, 138 Wn.2d 318, 324, 979 P.2d 429 (1999) citing *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 145, 530 P.2d 302 (1975). Here, the Court of Appeals' construction results in a wide exception to the administrative hearings requirement by concluding that the term 'during

relocation' is in "reference to the relocation assistance, not physical relocation of the tenants themselves." A 8.

In this case the plain language of the statute, on its face, makes express provision for administrative hearings "during relocation." Even assuming that "during relocation" is somehow ambiguous or unclear, use of liberal construction to determine the scope of application supports an expansive reading to give full effect to the statute. The Court of Appeals' acceptance of the City's limitation on administrative hearings is a narrow reading that is inconsistent with liberal construction.

The test for review under RAP 13.4(b)(4), whether an issue constitutes one of "substantial public interest," can be analyzed by looking at how the Court determines whether to review a moot issue. A moot issue can be reviewed when it concerns a matter of continuing and substantial public interest. To determine the degree of public interest involved, the Court considers: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination for the future guidance of public officers; and (3) the likelihood of future recurrence of the question. *See, e.g.*, *In re Pers. Restraint of Mines*, 146 Wn.2d 279, 285, 45 P.3d 535 (2002):

> In *Hart v. Department of Social & Health Services*, 111 Wn.2d 445, 449, 759 P.2d 1206 (1988), this court observed that most cases in which appellate courts utilized

> the exception to the mootness doctrine involved issues of constitutional or statutory interpretation. These types of issues, the court stated, tended to be more public in nature, more likely to arise again, and the decisions helped to guide public officials. *Id.* It further noted that the exception had not been used in cases involving statutory or regulatory interpretation limited to their facts. *Id.*

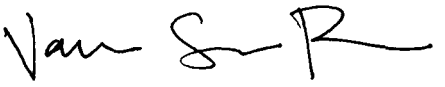
The current case turns on statutory interpretation in a matter of such public interest that the legislature has seen fit to impose requirements on all municipalities seeking to craft tenant relocation ordinances. The issues presented here are likely to arise again as long as the Washington housing market gives landlords a powerful incentive to hurry low-income tenants out of their homes. At least one city has done it right, as reflected by Bellevue's tenant relocation ordinance allowing for administrative hearings "to resolve disputes between displaced tenants and the owner relating to unlawful detainer actions during relocation." The City, in this action, did not, and the Court of Appeals' acrobatic attempt to justify the City's failures cannot stand.

CONCLUSION

For all the reasons stated, this Court should grant review.

DATED: January 18, 2017.

STOEL RIVES LLP



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CERTIFICATE OF SERVICE

I certify that on January 18, 2017, I caused copies of the foregoing **PETITION FOR DISCRETIONARY REVIEW** to be served via email and U.S. mail, first class, postage prepaid, to the following counsel of record, at the following addresses:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Seattle, WA: January 18, 2017

STOEL RIVES, LLP

Vanessa S. Power, WSBA No. 30777

Supreme Court No. _____
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APPENDIX

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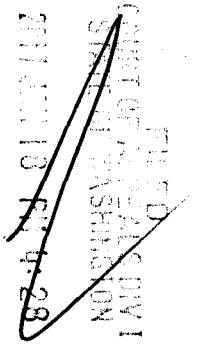

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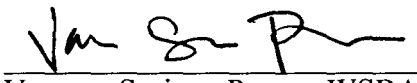

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CERTIFICATE OF SERVICE BY MAIL

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Seattle, WA: January 18, 2017

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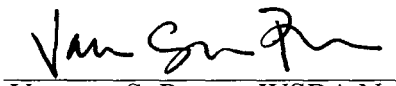

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MICHELLE J. KINNUCAN, Appellant, v. CITY OF SEATTLE, Respondent.	)	DIVISION ONE No. 74360-1-I UNPUBLISHED OPINION FILED: December 19, 2016

DWYER, J. — RCW 59.18.440 authorizes any city, town, county, or municipal corporation to adopt local ordinances that require property owners to pay relocation assistance funds to low-income tenants upon the demolition, substantial rehabilitation, or change of use of the dwelling in which such tenants reside, so long as the ordinances provide for administrative hearings to resolve disputes between the landlord and tenant relating to relocation assistance or unlawful detainer actions during relocation. After the City of Seattle determined that it would not provide Michelle Kinnucan with an administrative hearing to resolve her unlawful detainer action, she filed suit in the King County Superior Court seeking a writ of mandamus to require the City of Seattle to adopt policies and procedures consistent with RCW 59.18.440. The superior court denied Kinnucan's request for the writ and granted the City's motion to dismiss. Finding no error, we affirm.

I

In response to sharp increases in rental prices during the 1980s, the Washington legislature enacted legislation that it hoped would "encourage economic opportunity for all Washington citizens and [ ] promote the availability of affordable housing." Garneau v. City of Seattle, 147 F.3d 802, 804 (9th Cir. 1998). RCW 59.18.440(1) authorizes cities to adopt ordinances that require property owners to provide low-income tenants with relocation assistance funds, so long as the property owner is seeking to demolish, substantially rehabilitate, or change the use of a dwelling occupied by such tenants. Pursuant to RCW 59.18.440(5), cities that adopt such requirements must also adopt policies, procedures, or regulations that "include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation."

The City subsequently adopted the Tenant Relocation Assistance Ordinance (TRAO). The TRAO requires that property owners obtain a tenant relocation license "[p]rior to the demolition, change of use or substantial rehabilitation of any dwelling unit, and prior to the removal of use restrictions from any dwelling unit which results in the displacement of a tenant." Seattle Municipal Code (SMC) 22.210.050. Before the City issues such a license, the property owner must provide all tenants with an informational packet about the TRAO, pay the property owner's share of the relocation assistance funds to the City (half of the total amount due to each tenant), and provide a 90-day advance notice of the demolition of the property to all tenants. SMC 22.210.060. The City

then issues a tenant relocation license to the property owner and provides eligible low-income tenants with relocation assistance funds. SMC 22.210.130.

The TRAO prohibits property owners from increasing rent or otherwise harassing or intimidating tenants in order to avoid paying their share of relocation assistance. SMC 22.210.136, .140. Additionally, the TRAO provides administrative hearings "to appeal a determination concerning a tenant's eligibility for a relocation assistance payment, to resolve a dispute concerning the authority to institute unlawful detainer actions before issuance of the tenant relocation license . . . or to review a decision of the Director [regarding complaints of rent increases]." SMC 22.210.150.

Kinnucan resided at the Lockhaven apartment building pursuant to a fixed-term tenancy from 2009 to 2013. On June 1, 2013, Kinnucan's lease was converted to a month-to-month tenancy. Goodman Real Estate (Goodman) thereafter purchased the Lockhaven apartments and sought to terminate all of the Lockhaven leases in order to substantially rehabilitate the apartments. Goodman applied for a tenant relocation license pursuant to the TRAO, the City determined that Kinnucan was eligible for relocation assistance, and the City issued a tenant relocation license to Goodman.

In early April, immediately after receiving the tenant relocation license, Goodman issued a notice to Kinnucan requiring her to vacate her apartment by the end of the month. Kinnucan thereafter contacted the City's Office of the Hearing Examiner by e-mail to ask if the hearing examiner was the appropriate agency to "hear[ ] disputes concerning the owner's authority to institute unlawful

detainer actions" pursuant to the TRAO. The City responded that the hearing examiner "has the authority to hear your complaint." A hearing was never commenced, however, because the hearing examiner later ruled that she did not have the authority to adjudicate the dispute. Kinnucan sought reconsideration, but the hearing examiner reaffirmed her decision.

Meanwhile, the City notified Goodman that the revised lease termination notification had been issued in violation of Seattle's just cause ordinance, which prohibits eviction without a court order. SMC 22.206.160. Goodman subsequently rescinded the improper notice and issued a new notice of eviction. Proceeding pro se, Kinnucan filed a lawsuit against Goodman seeking a temporary restraining order, eventually dropping the suit after the parties agreed to mediate. Kinnucan ultimately did not vacate Lockhaven until October of 2014.

In December 2014, Kinnucan filed suit against the City seeking a writ of mandamus requiring the City to: (1) grant "administrative hearings to all tenants who, after September 30, 2014, file or have filed appeals to resolve disputes relating to relocation assistance or unlawful detainer actions during relocation within the meaning of RCW 59.18.440(5)"; and (2) adopt "policies, procedures, or regulations that include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation." The City answered, asserting that its existing ordinances and regulations already complied with the law. The superior court denied Kinnucan's application and granted the City's motion to dismiss pursuant to CR 12(b)(6). Kinnucan timely appealed.

II

We review de novo a trial court's ruling on a motion to dismiss pursuant to CR 12(b)(6). Alexander v. Sanford, 181 Wn. App. 135, 141, 325 P.3d 341 (2014). Dismissal pursuant to CR 12(b)(6) is appropriate only when "it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery." Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 330, 962 P.2d 104 (1998). In making this determination, the plaintiff's allegations are presumed to be true and we may consider hypothetical facts, consistent with the averments in the complaint, that are not part of the formal record. Sanford, 181 Wn. App. at 142.

The issuance of a writ of mandamus is an extraordinary remedy. Burg v. City of Seattle, 32 Wn. App. 286, 289, 647 P.2d 517 (1982). Pursuant to RCW 7.16.160, a writ of mandamus may be issued

> by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

A party seeking mandamus must prove three predicates before a writ will issue: "(1) the party subject to the writ is under a clear duty to act, RCW 7.16.160; (2) the applicant has no 'plain, speedy and adequate remedy in the ordinary course of law,' RCW 7.16.170; and (3) the applicant is 'beneficially interested.' RCW 7.16.170." Eugster v. City of Spokane, 118 Wn. App. 383, 402, 76 P.3d 741 (2003).

A

Kinnucan first contends that RCW 59.18.440(5) imposes a clear duty on the City to offer administrative hearings to low-income tenants after a tenant relocation license has been issued to the property owner. We disagree.

The determination of whether a statute specifies a duty is a matter of statutory interpretation that we review de novo. State v. LG Elecs., Inc., 185 Wn. App. 123, 132, 340 P.3d 915 (2014), affirmed 186 Wn.2d 1, 375 P.3d 636 (2016). "Mandamus is appropriate to compel a government official or entity 'to comply with law when the claim is clear and there is a duty to act.'" Eugster, 118 Wn. App. at 404 (quoting In re Pers. Restraint of Dyer, 143 Wn.2d 384, 398, 20 P.3d 907 (2001)). Mandamus "will issue only in relation to the performance of a ministerial duty and not for a duty or power which requires the exercise of discretion." Burg, 32 Wn. App. at 291. A discretionary function "is one involving a basic governmental policy, program, or objective requiring the exercise of a basic policy evaluation, judgment, and expertise on the part of the officer or agency." Moloney v. Tribune Publ'g Co., 26 Wn. App. 357, 360, 613 P.2d 1179 (1980).

Here, whether the City has a clear duty to provide administrative hearings after the issuance of a tenant relocation license turns on the meaning of RCW 59.18.440(5). It should first be noted that RCW 59.18.440 is a remedial statute, intended to address the disparate impact of rising rent on low-income individuals by providing those individuals with relocation funds. Garneau, 147 F.3d at 804. "[R]emedial legislation is construed liberally in order to accomplish the purpose

for which it is enacted." State v. Douty, 92 Wn.2d 930, 936, 603 P.2d 373 (1979). The broader rules of statutory construction require that courts interpret statutes in the manner that best advances the perceived legislative purpose. Morris v. Blaker, 118 Wn.2d 133, 143, 821 P.2d 482 (1992).

Pursuant to RCW 59.18.440(5), a city that requires property owners to pay into a relocation assistance program for low-income tenants must adopt policies, procedures, or regulations that include "administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation." The key phrase—"during relocation"—is neither defined nor referenced elsewhere in the code.

Kinnucan contends that the City's TRAO is flawed in two ways. First, Kinnucan asserts that the plain meaning of "during relocation" includes the period of time in which a low-income tenant is moving from one residence to another. Thus, she contends, the City is impermissibly limiting the period of time in which it offers administrative hearings to exclude the time frame after a tenant relocation license has been issued but before the tenant has moved out of the apartment. Second, Kinnucan asserts that the TRAO impermissibly limits the scope of these administrative hearings with regard to unlawful detainer actions by providing for such hearings only to determine the authority to institute unlawful detainer actions. Kinnucan is wrong on both counts.

1

Kinnucan contends that the plain meaning of the phrase "during relocation" includes the period of time in which a tenant is moving from one

residence to another.[1] Although "during relocation" is not defined in RCW 59.18.440, the scope of the phrase is apparent by reading the statute as a whole.

First, RCW 59.18.440(1) expressly preempts any local regulations or ordinances not authorized by this legislation that require property owners to pay relocation assistance funds to low-income tenants. Second, RCW 59.18.440(3) requires that a participating city determine the amount of relocation assistance to be provided to low-income tenants from property owners and require that those property owners pay that amount. Third, RCW 59.18.440(4)(c) requires that a participating city pay the portion of relocation assistance not covered by property owners. Finally, RCW 59.18.440(5) provides for judicial review of administrative hearing decisions *relating to relocation assistance*.

Thus, RCW 59.18.440 requires that a participating city establish a system whereby low-income tenants receive relocation assistance that is mutually paid for by the city and by the property owner. Should a dispute arise between the property owner and the tenant *relating to relocation assistance*, the city must allow for an administrative hearing. Tellingly, RCW 59.18.440 is silent as to any dispute or event that occurs after such relocation assistance has been provided. Accordingly, a reading of the statute as a whole leads to but one conclusion—"during relocation" is in reference to the relocation assistance, not physical relocation of the tenants themselves.

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[1] Although Kinnucan contends that the phrase "during relocation" leaves nothing to the discretion of the City, she does not attempt to define when "during relocation" has ended—only that it must include some period of time after the City has issued the tenant relocation license.

RCW 59.18.440(5) imposes on the City a duty to adopt "policies, procedures, or regulations" that are consistent with the statute's requirements. The precise details of those policies, procedures, or regulations are left to the discretion of the City. Here, the City adopted the TRAO, which provides for administrative hearings up until the point in time when a tenant relocation license has been issued and, thus, the low-income tenant's eligibility has been determined and the property owner has paid its portion of the relocation assistance. These administrative hearings are available to low-income tenants "during relocation," as understood in the context of RCW 59.18.440 as a whole. Although the City could have exercised its discretion to require a different administrative hearing scheme, a writ of mandamus will not issue to compel a government entity to exercise its discretion in a particular manner.[2] Eugster, 118 Wn. App. at 405.

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[2] In its briefing, amicus Northwest Justice Project suggests that subjects of administrative hearings commenced after the issuance of the relocation license could be (1) the merits of an unlawful detainer action, (2) the merits of a just cause defense to an unlawful detainer action, or (3) a request to revoke the relocation license. This assertion fails.

As the City points out, superior courts have exclusive jurisdiction over the merits of an unlawful detainer action. Thus, the statute at issue cannot be construed as amicus suggests. Also as pointed out by the City, just cause is a defense arising out of Seattle ordinance—not state statute. Thus, it is not credible to assert that the legislature sought to mandate the existence of hearings to resolve just cause issues (solely a City of Seattle matter) postlicense issuance.

Finally, as the City also points out, the sought-after hearings could not be for the purpose of revoking the issued license. In almost all cases, the license will be issued in conjunction with the redevelopment permit. SMC 22.210.050. The issuance of a redevelopment permit is a final land use decision, Ward v. Bd. of County Comm'rs, 86 Wn. App. 266, 270, 936 P.2d 42 (1997) ("a 'land use decision' is 'a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals'" (quoting RCW 36.70C.020(2)), subject to the Land Use Petition Act's (LUPA) 21-day appeal period. RCW 36.70C.040(2), (3). After that, the issue is final. See Habitat Watch v. Skagit County, 155 Wn.2d 397, 407, 120 P.3d 56 (2005) ("[A] land use decision becomes unreviewable by the courts if not appealed to superior court within LUPA's specified timeline."). Any action by the City to revoke the license would necessarily affect the permit and be controlled according to the law applicable to LUPA.

Similarly, if a tenant grievance arises after the issuance of a license, it is subject to the City's code enforcement process. If voluntary compliance is not obtained, the City may bring an

There is nothing in RCW 59.18.440 that imposes a clear duty on the City to offer administrative hearings continuously throughout the period of time in which a low-income tenant is moving from one residence to another. The City lawfully exercised its discretion to limit administrative appeals to the period of time before a tenant relocation license is issued.

2

Kinnucan also contends that the City has wrongfully limited the administrative hearings that it does provide regarding unlawful detainer actions. This is so, she asserts, because RCW 59.18.440(5) requires that the City permit unlawful detainer actions to be adjudicated in administrative hearings.

RCW 59.18.440(5) requires that the City adopt policies, procedures, or regulations that include administrative hearings to resolve disputes "relating to . . . unlawful detainer actions during relocation." The City's TRAO provides for such hearings "to resolve a dispute concerning the authority to institute unlawful detainer actions before issuance of the tenant relocation license." SMC 22.210.150.

Contrary to Kinnucan's position, the TRAO's limitations regarding unlawful detainer actions are entirely consistent with RCW 59.18.440. The superior courts have subject matter jurisdiction over unlawful detainer proceedings. WASH. CONST. Art. IV, § 6; RCW 59.12.050. Such jurisdiction is constitutional in origin and could not have been divested by the Legislature through the enactment of RCW 59.18.440. Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 415, 63

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action in municipal court. There is no indication in the statute at issue that the legislature sought to circumvent or preempt this municipal method of code enforcement.

P.2d 397 (1936). Likewise, the City has no authority to adopt ordinances that divest the superior court of subject matter jurisdiction.

Rather, what the TRAO provides are administrative hearings for instances in which a landlord is attempting to unlawfully evict a tenant—or otherwise harass, intimidate, or raise rent to cause a tenant to vacate their apartment—so as to avoid paying tenant relocation assistance. SMC 22.210.136, .140. These unlawful actions may occur at any time prior to—or during—the time frame in which a property owner is applying for a tenant relocation license, master use permit, or building permit—so long as such actions are motivated by a desire to avoid application of the tenant relocation assistance ordinance. SMC 22.210.136, .140. The hearing examiner's decision regarding any of these unlawful actions would then be appealable to the superior court. RCW 59.18.440(5); SMC 22.210.150(J). Should an unlawful detainer action arise after the City has issued the tenant relocation license, existing laws and ordinances allow landlords and tenants to file suit in the superior court. Thus, the TRAO's language providing for administrative hearings "concerning the authority to institute unlawful detainer actions before issuance of the tenant relocation license" is consistent with the City's mandate to provide for hearings "relating to" unlawful detainer actions. RCW 59.18.440(5); SMC 22.210.150.

RCW 59.18.440(5) requires that the City adopt policies, procedures, or regulations that provide for administrative hearings relating to relocation assistance and unlawful detainer actions during relocation. The City has done so. Kinnucan has not demonstrated that the City is under a clear duty to offer

administrative hearings after the point provided for in the ordinance—the issuance of the relocation license.

B

Issuance of a writ of mandamus also requires that the applicant have no other plain, speedy, and adequate remedy in the ordinary course of law. Eugster, 118 Wn. App. at 402. We review a trial court's determination as to whether another suitable remedy exists for abuse of discretion. River Park Square, LLC v. Miggins, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001). "A remedy is not inadequate merely because it is attended with delay, expense, annoyance, or even some hardship. There must be something in the nature of the action that makes it apparent that the rights of the litigants will not be protected or full redress will not be afforded without the writ." City of Kirkland v. Ellis, 82 Wn. App. 819, 827, 920 P.2d 206 (1996).

Kinnucan asserts that the other remedies available to low-income tenants facing unlawful eviction—specifically, filing suit—are not as speedy as an administrative hearing and cannot fully compensate those tenants. This argument is unavailing.

The correct standard does not require that there be no other remedy as convenient and inexpensive as the remedy sought by the writ but, rather, that there be "no plain, speedy and adequate remedy in the ordinary course of law." City of Kirkland, 82 Wn. App. at 827. By contending that the remedies that currently exist are not *as* speedy or *as* convenient as an administrative hearing, Kinnucan acknowledges that there are other remedies available to low-income

tenants and attempts to change the standard by which those remedies are analyzed.

Kinnucan herself cannot benefit from the writ she seeks and it is not clear how any other low-income tenant could benefit from such an order. When Kinnucan was unlawfully evicted from her apartment she brought suit pursuant to the Residential Landlord-Tenant Act, chapter 59.18 RCW, which prevents landlords from taking retaliatory actions against tenants acting lawfully and in good faith. RCW 59.18.240. Kinnucan also relied on Seattle's just cause ordinance, SMC 22.206.160, which prohibits evictions without a court order. Should a landlord attempt to cause a low-income tenant to vacate their apartment before applying for a tenant relocation license—to avoid paying their portion of the relocation assistance—the TRAO provides for administrative hearings. SMC 22.210.150; SMC 22.210.140(B). These were the other plain, speedy, and adequate remedies available to Kinnucan and these are the same remedies that will be available to other low-income tenants facing unlawful eviction.

Kinnucan correctly acknowledges that low-income tenants may find it difficult and relatively expensive to file suit against their landlords, and that an administrative hearing might be preferable in those instances. However, "[t]here must be something in the nature of the action or proceeding that makes it apparent to this court that it will not be able to protect the rights of the litigants or afford them adequate redress, otherwise than through the exercise of this extraordinary jurisdiction." State ex rel. Miller v. Superior Court of Spokane

County, 40 Wash. 555, 559, 82 P. 877 (1905). The issue of a writ is not proper when other sufficient remedies exist. This is such an instance.

In denying the writ and granting the City's motion to dismiss, the trial court stated, "I do believe that there is an alternative remedy, and that is to file a suit, a lawsuit. I mean, I realize it may be inconvenient. It might be expensive, especially for low-income folks, but there is still that option for people." The trial court voiced a tenable reason for concluding that low-income tenants have another plain, speedy, and adequate remedy at law. Accordingly, the trial court did not abuse its discretion.

C

Issuance of a writ of mandamus is an extraordinary remedy, and Kinnucan has failed to set forth any set of facts that justify such relief. RCW 59.18.440(5) mandates that the City provide administrative hearings to resolve disputes related to relocation assistance and unlawful detainer actions during relocation—the City has done so. Low-income tenants may pursue an administrative hearing to resolve certain disputes pursuant to the TRAO prior to the issuance of the tenant relocation license. SMC 22.210.150. Nothing in RCW 59.18.440 imposes a duty on the City to provide administrative hearings for low-income tenants throughout the period of time in which a tenant is moving from one residence to another. Should a low-income tenant face unlawful eviction, as Kinnucan did, there are other plain, speedy, and adequate remedies available. Issuance of a writ of mandamus was not required.

Finally, it is prudent to address the proposed remedy itself. "Writs are not directed at a general course of conduct" but, rather, "the remedy of mandamus contemplates the necessity of indicating the precise thing to be done." Walker v. Munro, 124 Wn.2d 402, 407, 879 P.2d 920 (1994) (concluding that a writ ordering a state officer to comply with the constitution is a general mandate (citing Clark County Sheriff v. Dep't of Social & Health Servs., 95 Wn.2d 445, 450, 626 P.2d 6 (1981))).

Kinnucan seeks an order directing the City to adopt policies, procedures, or regulations "that satisfy the legislative mandate in RCW 59.18.440(5)" and provide administrative hearings "consistent with the same legislative mandate." Br. of Appellant at 6. It is not clear how such an order would lead to an extended time frame for administrative hearings. The City's position is that the TRAO already complies with the requirements of RCW 59.18.440 without offering such administrative hearings. Kinnucan's proposed order does no more than order the City to comply with the law—a general course of conduct that the City is already engaged in.

Even if the City did offer administrative hearings after the issuance of a tenant relocation license, it is not clear what purpose such hearings would serve. The hearing examiner would have no authority to adjudicate the merits of unlawful detainer actions or revoke licenses relating to the rehabilitation of the property. Indeed, the very claim that Kinnucan sought administrative review of—a violation of Seattle's just cause ordinance—was properly disposed of by the superior court.

The trial court properly granted the City's motion to dismiss.

Affirmed.

We concur:

RCW 7.16.160

Grounds for granting writ.

It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

[**1987 c 202 § 131; 1987 c 3 § 3; 1895 c 65 § 16;** RRS § 1014.]

NOTES:

Intent—1987 c 202: See note following RCW **2.04.190**.

Severability—1987 c 3: See note following RCW **3.70.010**.

RCW 7.16.170

Absence of remedy at law required—Affidavit.

The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested.

[**1895 c 65 § 17**; RRS § 1015.]

RCW 59.18.440

Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require.

(1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW **36.70A.040**(1) is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing development, except as expressly authorized herein or when authorized or required by state or federal law. As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW **59.28.020**, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The *department of community, trade, and economic development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

(a) Actual physical moving costs and expenses;

(b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;

(c) Utility connection fees and deposits; and

(d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from proceeds collected from the excise tax imposed under RCW **82.46.010**.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to

resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in the county where the residential property is located. Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

(a) In violation of constitutional provisions;

(b) In excess of the authority or jurisdiction of the administrative hearing officer;

(c) Made upon unlawful procedure or otherwise is contrary to law; or

(d) Arbitrary and capricious.

(6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW **59.18.040**(3) and if the living arrangement is considered to be a rental or lease not defined as a retail sale under RCW **82.04.050**.

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance.

[1997 c 452 § 17; 1995 c 399 § 151; 1990 1st ex.s. c 17 § 49.]

NOTES:

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Intent—Severability—1997 c 452: See notes following RCW **67.28.080**.

Savings—1997 c 452: See note following RCW **67.28.181**.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW **36.70A.900** and **36.70A.901**.

Sections:

(Ord. 115141 § 2, 1990.)

Severability—If any provision of this ordinance or its application to any person or circumstance is declared illegal, the remainder of the ordinance or its application to other persons or circumstances shall not be affected thereby.

(Ord. 115141 § 5, 1990.)

Severability—An earlier version of the Housing Preservation Ordinance was held to be unconstitutional. **San Telmo Associates v. Seattle,** 108 Wn.2d 20, 735 P.2d 673 (1987); **R/L Associates v. Seattle,** 113 Wn.2d 402, 780 P.2d 838 (1989). Followup actions for damages or refunds under 42 U.S.C. §1983 are **Sintra v. Seattle,** 119 Wn.2d 1, 829 P.2d 765 (1992), and **Robinson v. Seattle,** 119 Wn.2d 34, 830 P.2d 318 (1992).

The exemption of the Washington State Trade and Convention Center from certain housing replacement requirements under an earlier version of the ordinance was valid. **Convention Center Coalition v. Seattle,** 107 Wn.2d 370, 730 P.2d 636 (1986).

Editor's note— Transition reimbursement rule. Any tenant who 1) was determined eligible for relocation assistance before the effective date of Ordinance 117094, 2) has otherwise complied with the requirements of Ordinance 117094, and 3) has received or will receive only the City of Seattle's share of relocation assistance, One Thousand Seventy-one Dollars ($1,071.00), because of the suspension of the owner payment requirement, shall be entitled to reimbursement from the City of Seattle for any actual relocation costs incurred that exceed One Thousand Seventy-one Dollars ($1,071.00). Provided, that the total relocation assistance (including what the City previously paid) may not exceed Two Thousand One Hundred Forty-two Dollars ($2,142.00), that reimbursements shall be based only on actual documented expenses, that reimbursements shall not be paid until final settlement of all claims or lawsuits or potential claims or lawsuits that the tenant has against the City or its officers or employees in connection with the application of SMC Chapter 22.210 to such relocation, and that reimbursements shall be reduced by any other funds paid by any party (including voluntary payments by landlords) to such tenant for relocation costs. For purposes of this provision, "relocation costs" includes only actual physical moving costs and expenses, advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits (less the amount of security and damage deposits returned from the landlord of the building from which the tenant was displaced), utility connection fees and deposits, and increased utility costs and rent for up to one (1) year.

(Ord. 117094 § 11, 1994.)

The ordinance codified in this chapter shall be known and may be cited as the "Tenant Relocation Assistance Ordinance."

(Ord. 115141 § 1(part), 1990.)

22.210.020 - Findings and purpose.

A. Findings.

1. The City of Seattle is experiencing a rapid rate of development that has reduced and continues to reduce the supply of rental housing available to low-and moderate-income tenants and has reduced the supply of rental housing affordable to such tenants.

2. The development and real estate market in Seattle has not been able to replace low-income units lost due to demolition, change of use, substantial rehabilitation and removal of use restrictions from assisted housing, making it more difficult and more costly for low-income persons who are displaced by demolition, change of use, substantial rehabilitation or removal of use restrictions from assisted housing to locate affordable substitute rental housing.

3. Rents in Seattle have been increasing rapidly and vacancies in rental housing are at low levels, making it increasingly difficult for tenants, especially those with low incomes, to locate affordable rental housing.

4. Pursuant to the public hearing held on June 7, 1990, the City Council finds that costs incurred by tenants to relocate within Seattle include actual physical moving costs, advance payments, utility fees, security and damage deposits and anticipated additional rent and utility costs, which, on average, equal or exceed Two Thousand Dollars ($2,000.00) per tenant household.

5. The State of Washington has adopted legislation authorizing local jurisdictions to require the payment of relocation assistance to low-income tenants who are displaced from dwelling units by housing demolition, change of use, substantial rehabilitation or removal of use restrictions from assisted housing.

6. Conditions in the current rental market have created a relocation crisis, because tenants, especially low-income tenants, do not have sufficient time to save money for relocation costs or to find comparable housing when they are evicted as a result of demolition, change of use, substantial rehabilitation or removal of use restrictions from their dwelling units.

B. Purpose. Based upon the above findings, the purpose of this chapter is to provide relocation assistance to low-income tenants displaced by demolition, substantial rehabilitation, or change of use of residential rental property, or the removal of use restrictions from assisted housing developments.

(Ord. 115141 § 1(part), 1990.)

22.210.030 - Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Chapter 22.210:

A. "Assisted housing development" means a multifamily residential housing development that either receives or has received government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives or has received other federal, State, or local government assistance and is subject to use restrictions as defined in this Section 22.210.030.

B. "Change of use" means the conversion of any dwelling unit from a residential use to a nonresidential use that results in the displacement of existing tenants or conversion from residential use to another residential use that requires the displacement of existing tenants,

such as a conversion to a retirement home where payment for long-term care is a requirement of tenancy, or conversion to an emergency shelter or transient hotel. For purposes of this Chapter 22.210, "change of use" shall not mean a conversion of a rental dwelling unit to a condominium.

C. "Demolition" means the destruction of any dwelling unit or the relocation of an existing dwelling unit or units to another site.

D. "Director" means the Director of the Seattle Department of Construction and Inspections, or the Director's designee.

E. "Displacement" means, in the case of demolition, substantial rehabilitation, or change of use, that existing tenants must vacate the dwelling unit because of the demolition, substantial rehabilitation, or change of use; in the case of removal of use restrictions from an assisted housing development, it means that the nonrestricted rent of a dwelling unit after the removal of use restrictions will exceed by 20 percent or more, exclusive of increases due to operating expenses, the restricted rent of the dwelling unit before the removal of use restrictions. For purposes of this Chapter 22.210, "displacement" shall not include the permanent relocation of a tenant from one dwelling unit to another dwelling unit in the same building with the tenant's consent or the temporary relocation of a tenant for less than 72 hours.

F. "Dwelling unit" means a structure or that part of a structure used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

G. "Low income" means total combined income per dwelling unit is at or below 50 percent of the median income, adjusted for family size, in King County, Washington.

H. "Major educational institution" means an educational institution which is designated as a "major institution" in Section 23.84A.025 of the Seattle Municipal Code, or any amendments thereto.

I. "Master use permit" means the document issued by the Seattle Department of Construction and Inspections that records all land use decisions made by the Seattle Department of Construction and Inspections.

J. "Owner" means one or more persons, jointly or severally, in whom is vested:

1. All or any part of the legal title to property; or

2. All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

K. "Rent" means the basic charge for a tenant's use of the dwelling unit and any periodic or monthly fees for other services paid to a landlord by a tenant, but do not include utility charges that are based on usage and that a tenant has agreed in the rental agreement to pay.

L. "Rental agreement" means all oral or written agreements that establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit. For purposes of this Chapter 22.210, "rental agreement" shall not include any agreement relating to the purchase, sale, or transfer of ownership of a dwelling unit.

M. "Substantial rehabilitation" means extensive structural repair or extensive remodeling that requires displacement of a tenant and either requires a building, electrical, plumbing, or mechanical permit, or is valued at $6,000 or more for any tenant's dwelling unit.

N. "Tenant" means any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement and includes those persons who are considered to be tenants under the State Residential Landlord-Tenant Act, chapter 59.18 RCW and those tenants whose living arrangements are exempted from the State Residential Landlord-Tenant Act under RCW 59.18.040(3) if their living arrangement is considered to be a rental or lease pursuant to RCW 67.28.180(1). For purposes of this Chapter 22.210, "tenant" shall not include the owner of a dwelling unit or members of the owner's immediate family.

O. "Use restriction" means any Federal, State, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including an operating subsidy, rental subsidy, mortgage subsidy, mortgage insurance, tax-exempt financing, or low-income housing tax credits by an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within an assisted housing development; imposes any restrictions on the maximum rents that may be charged for any of the units within the assisted housing development; or requires that rents for the units within an assisted housing development be reviewed by any governmental body or agency before the rents are implemented or changed.

(Ord. 124919, § 80, 2015; Ord. 124883, § 2, 2015; Ord. 124882, § 2, 2015; Ord. 121276 §§ 20, 37, 2003; Ord. 115141 § 1(part), 1990.)

22.210.040 - Application of chapter.

This chapter shall apply to displacement caused by demolition, change of use, substantial rehabilitation, or removal of use restrictions from any dwelling unit in The City of Seattle, with the exception of displacements from the following:

A. Any dwelling unit demolished or vacated because of damage caused by an event beyond the owner's control, including that caused by fire, civil commotion, malicious mischief, vandalism, tenant waste, natural disaster or other destruction;

B. Any dwelling unit ordered vacated or demolished by the Director pursuant to SMC Section 22.206.260, because of damage within the owner's control;

C. Any dwelling unit owned by the Seattle Housing Authority;

D. Any dwelling unit being converted from rental housing to a condominium, which conversion is regulated pursuant to SMC Chapter 22.903;

E. Any dwelling unit located inside the boundaries of a major educational institution which is owned by the institution and which is occupied by students, faculty or staff of the institution;

F. Any dwelling unit located in a mobile home park, unless such unit is rented by the occupant thereof from the owner or operator of the mobile home park;

G. Any dwelling unit for which relocation assistance is required to be paid to the tenants pursuant to state, federal or other law.

H. Any dwelling unit for which the Seattle School District is providing relocation assistance according to a plan that the Director has approved as providing substantially equal or greater benefits to dislocated tenants than the benefits required pursuant to this chapter.

I. Any dwelling unit operated as emergency or temporary shelter for homeless persons (whether or not such persons have assigned rooms or beds, and regardless of duration of stay for any occupant) by a nonprofit organization or public agency owning, leasing, or managing such dwelling unit.

(Ord. 117094 § 1, 1994: Ord. 115141 § 1(part), 1990.)

22.210.050 - Tenant relocation license—Required.

Prior to the demolition, change of use or substantial rehabilitation of any dwelling unit, and prior to the removal of use restrictions from any dwelling unit which results in the displacement of a tenant, an owner must obtain a tenant relocation license. The Director shall not issue any permit for the demolition, change of use or substantial rehabilitation of any dwelling unit until the owner has obtained a tenant relocation license.

(Ord. 115141 § 1(part), 1990.)

22.210.060 - Issuance of tenant relocation license.

The Director shall issue a tenant relocation license when the owner has completed all of the following:

A. Submitted an application for a tenant relocation license as provided in Section 22.210.070;

B. Delivered relocation information packets to tenants and submitted proof of delivery as required by Section 22.210.080;

C. Paid the owner's share of tenant relocation assistance as required by Section 22.210.110; and

D. Complied with the ninety (90) day tenant notice provisions as required by Section 22.210.120.

(Ord. 118839 § 1, 1997: Ord. 117094 § 2, 1994; Ord. 115141 § 1(part), 1990.)

22.210.070 - Tenant relocation license—Application.

Prior to or at the time of application for a master use permit necessary for the demolition, change of use or substantial rehabilitation of any dwelling unit, or if no master use permit is required, prior to or at the time of application for any building permit necessary for the demolition, change of use or substantial rehabilitation of any dwelling unit; or prior to a change of use which does not require a master use permit or removal of use restrictions from any dwelling unit which will result in the displacement of a tenant, the owner must submit to the Director a tenant relocation license application on a form established by the Director. The application shall include:

A. A statement certifying the number of dwelling units to be demolished, changed in use, substantially rehabilitated, or from which use restrictions will be removed; and

B. A list containing the name, mailing address and phone number, if available, of each tenant residing in such dwelling units as of the date of the earlier of:

1. The application for the tenant relocation license;

2. The application for the master use permit; or

3. The application for the building permit.

(Ord. 115141 § 1(part), 1990.)

22.210.080 - Tenant relocation information packets.

A. At the time of submission of the tenant relocation license application, the owner shall obtain from the Director one (1) tenant relocation packet for each dwelling unit for which demolition, change of use, substantial rehabilitation or removal of use restrictions is to occur. The tenant relocation information packet shall contain the following:

1. A relocation assistance certification form with instructions for its submission to the Director;

2. A description of the potential relocation benefits available to eligible tenants; and

3. An explanation of the tenants' rights to remain in possession unless evicted for cause as provided in Section 22.206.160 C, excluding subsections C1d and C1e, of the Seattle Municipal Code (Just Cause Eviction Ordinance).

B. Within thirty (30) days after submission of the tenant relocation license application, the owner shall personally deliver or cause to be personally delivered a tenant relocation information packet to an adult tenant of each dwelling unit to be demolished, changed in use, substantially rehabilitated or

from which use restrictions are to be removed. In those cases where the tenant moved after the earlier of the owner's application for a tenant relocation license, a master use permit or a building permit and left the owner no forwarding address, an owner may deliver the tenant relocation information packet by certified mail, return receipt requested and by regular mail addressed to the last known address of the tenant. Except as provided in the preceding sentence, delivery of the packets by depositing them in the United States mail shall not be adequate delivery.

C. 1. The owner shall obtain and submit to the Director a signed delivery receipt from an adult tenant of each affected dwelling unit showing delivery of the tenant relocation information packet.

2. If no adult tenant of a dwelling unit is willing to sign a delivery receipt for the packet, the owner shall deliver the packet and shall submit to the Director a sworn statement describing the date of delivery of the packet and the time and circumstances of the tenant's refusal to acknowledge receipt.

3. If the tenant refuses to accept the packet or if, after diligent efforts by the owner, the tenant cannot be found for delivery of the packet, the owner shall attach the packet to the door of the dwelling unit and shall mail a copy of the packet both by certified mail, return receipt requested and by regular mail to the last known address or forwarding address of the tenant, and shall submit to the Director a sworn statement describing the date of attempted delivery of the packet, efforts made by the owner to deliver the packet, the time and circumstances of the tenant's absence or refusal to accept delivery, the date and time of attaching the packet to the dwelling unit door, the date of mailing by regular and certified mail, and a copy of the return receipt.

4. The delivery receipts and sworn delivery statements shall be submitted to the Director within ten (10) days of delivery of the last tenant information packet.

D. The owner shall personally deliver or shall cause to be personally delivered, or mailed as provided in subsection C of this section, a tenant relocation information packet to any tenant who, after the earlier of the owner's application for a tenant relocation license, master use permit or building permit, moves into a dwelling unit to be demolished, changed in use, substantially rehabilitated, or from which use restrictions are to be removed; provided, that the owner shall not be required to provide a tenant relocation information packet to any new tenant who is not eligible for relocation assistance under subsection B of Section 22.210.100 of this chapter.

(Ord. 115141 § 1(part), 1990.)

22.210.090 - Tenant income verification.

A. Within thirty (30) days after the date of delivery of the tenant relocation information packet, each tenant of a dwelling unit to be demolished, changed in use, substantially rehabilitated or from which use restrictions are to be removed, shall submit to the Director a signed and completed relocation assistance certification form certifying the names and addresses of all occupants of the dwelling unit, the total combined annual income of the occupants of the dwelling unit for the previous calendar year, and the total combined income of the occupants for the current calendar year:

1. Provided that, a tenant who, with good cause, is unable to return the certification form within thirty (30) days may, within thirty (30) days after the date of delivery of the tenant relocation information packet, submit to the Director a written request for an extension of time, which details the facts supporting the claim of "good cause." If the request is submitted within the thirty (30) day period and the facts constitute good cause in accordance with the rules adopted pursuant to this chapter, the deadline for submission of the tenant certification form shall be extended thirty (30) days. When an extension has been granted, the Director shall notify the tenant and the owner of the extension.

B. Any tenant who fails or refuses to submit the relocation assistance certification form, who refuses to provide information regarding his or her income within thirty (30) days of receipt of the information

packet or any extension thereof, or who intentionally misrepresents any material information regarding income or entitlement to relocation benefits shall not be entitled to relocation assistance under this chapter.

C. If information submitted by a tenant on a relocation assistance certification form is incomplete, inadequate or appears to be inaccurate, the Director may require the tenant to submit additional information to establish eligibility for relocation assistance. If the tenant fails or refuses to respond within fifteen (15) days to the Director's request for additional information, such tenant shall not be eligible for relocation assistance.

(Ord. 118839 § 2, 1997; Ord. 117094 § 3, 1994; Ord. 115141 § 1(part), 1990.)

22.210.100 - Tenant eligibility for relocation assistance.

A. Low-income tenants shall be eligible for relocation assistance if:

1. The tenant resided in a dwelling unit to be demolished, substantially rehabilitated, changed in use, or from which use restrictions will be removed on the date of the earlier of:

   a. The owner's application for a tenant relocation license pursuant to this chapter,

   b. The owner's application for a master use permit pursuant to SMC Chapter 23.76, et seq. which is necessary to demolish, substantially rehabilitate, change the use of or remove use restrictions from a dwelling unit, or

   c. The owner's application for a building permit which is necessary to demolish, substantially rehabilitate, change the use of or remove use restrictions from a dwelling unit; or

2. The tenant moved into a dwelling unit after the earlier of the owner's application for a tenant relocation license, a master use permit necessary for demolition, substantial rehabilitation, change of use, or removal of use restrictions, or a building permit necessary for demolition, substantial rehabilitation, change of use, or removal of use restrictions; and, prior to taking possession of the dwelling unit, such tenant was not advised by the owner in writing:

   a. That the dwelling unit may be demolished, substantially rehabilitated, changed in use, or use restrictions removed, and

   b. That the tenant is ineligible for relocation assistance.

B. The owner shall provide the tenant with a copy of the written notice described in subsection A2 of this section prior to the tenant's occupancy of the dwelling unit, and the owner shall retain a copy with the tenant's signature acknowledging its receipt and the date of receipt. Any tenant who is not advised in writing as provided in subsection A2 of this section prior to taking occupancy shall be entitled to full relocation benefits.

C. Within fifteen (15) days of the Director's receipt of the signed relocation assistance certification forms from all tenants listed in the tenant relocation license application or within fifteen (15) days of the expiration of the tenants' thirty (30) day period for submitting signed relocation assistance certification forms to the Director, whichever occurs first, the Director shall send to each tenant household who submitted a signed certification form and to the owner, by both regular United States mail and certified mail, return receipt requested, a notice stating whether the tenant household's certification form indicates eligibility for relocation assistance. For those tenants who have been granted an extension pursuant to Section 22.210.090 A1, the Director shall issue a notice concerning tenant eligibility for relocation assistance to the owner and tenants within five (5) days instead of within fifteen (15) days of receiving the signed and completed relocation assistance certification forms.

D. Either the tenant or the owner may file an appeal with the Hearing Examiner, pursuant to Section 22.210.150, of the Director's determination of the tenant's eligibility for relocation assistance.

(Ord. 118839 § 3, 1997; Ord. 117094 § 4, 1994; Ord. 115141 § 1(part), 1990.)

22.210.110 - Owner's contribution to relocation assistance.

A. The owner of a dwelling unit to be demolished, changed in use, substantially rehabilitated or from which use restrictions will be removed, is responsible for payment of one-half (½) of the total amount of relocation assistance due to eligible tenants pursuant to this chapter. The City is responsible for payment of the remaining one-half (½) of the relocation assistance.

B. 1. Within five (5) days after receipt by the owner of the notice of tenant eligibility pursuant to subsection C of Section 22.210.100, the owner shall provide the Director with a cash deposit or a security instrument in the form of an irrevocable letter of credit with terms acceptable to the Director equal to one-half (½) of the amount of total relocation assistance to be paid to eligible tenants in the dwelling units to be demolished, changed in use, substantially rehabilitated, or from which use restrictions will be removed. The total relocation assistance shall be calculated based on the number of units occupied by tenant households who are determined by the Director to be eligible for relocation assistance, as modified by any decisions by the Hearing Examiner or a court concerning eligibility for relocation assistance at the time of payment of the owner's share of relocation assistance.

2. An owner may, but is not required to, provide the Director with the owner's share of relocation assistance any time after application for the tenant relocation license but prior to the time it is required by subsection B1 above. If the owner chooses this option, the amount to be provided to the Director will be based on the number of units to be demolished, changed in use, substantially rehabilitated, or from which use restrictions will be removed, multiplied by the owner's share per unit for the number of units for which relocation assistance may be required. Returns of unused portions of the owner's share paid pursuant to this subsection shall be returned in accordance with subsection F of Section 22.210.130.

C. If the Director determines, at any time after the owner provides the Director with the owner's share of relocation assistance pursuant to subsection B above, that the owner has not provided sufficient funds to pay the owner's share of relocation assistance to all eligible tenants, the Director shall notify the owner of the additional amount needed, and the owner shall provide the Director with a security instrument in the form of an irrevocable letter of credit or cash deposit in the requested amount within five (5) days of the Director's request.

(Ord. 115141, § 1(part), 1990.)

Editor's note— Ordinance 117290 § 1 suspends this section, effective from October 4, 1994 to October 2, 1995.

22.210.120 - Ninety-day tenant notice.

A. Requirement of Notice. The owner shall deliver to each tenant in each dwelling unit to be demolished, changed in use, substantially rehabilitated, or from which use restrictions are to be removed, a ninety (90) day notice of the owner's intention to demolish, substantially rehabilitate, change the use of or remove use restrictions from the dwelling unit. In addition, a copy of the notice shall be posted at every entrance to any building containing dwelling units to be demolished, changed in use, substantially rehabilitated, or from which use restrictions will be removed.

B. Timing of Notice. The owner may deliver the ninety (90) day notice any time after the expiration of ten (10) days after the owner's receipt of the Director's notices of tenant eligibility for relocation assistance pursuant to Section 22.210.100, so long as the owner has already paid the owner's share of relocation assistance pursuant to SMC Section 22.210.110 B1. Exceptions to this rule are:

1. If a Director's determination of eligibility is appealed to the Hearing Examiner pursuant to Section 22.210.150, the owner may not deliver the ninety (90) day notice to any tenant whose eligibility decision was appealed until the issuance of any final unappealed decision on such tenant's eligibility, unless the owner has paid the owner's share of relocation assistance to the Director pursuant to SMC Section 22.210.110 B2 for the tenant whose eligibility decision is being appealed, in which case the ninety (90) day notice may be delivered after the later of:

    a. The date ten (10) days after receipt of the Director's original notice of eligibility, or

    b. The date the owner's share of relocation assistance was paid to the Director for the tenant(s) pursuant to SMC Section 22.210.110 B2;

2. If the actual date of payment of the owner's share of relocation assistance pursuant to SMC Section 22.210.110 B1 is more than ten (10) days after receipt of the Director's notices of tenant eligibility, then the ninety (90) day notice may not be delivered until after payment of the owner's share of relocation assistance; and

3. If a tenant has been granted an extension pursuant to SMC Section 22.210.090 A1, the owner may deliver the ninety (90) day notice to a tenant either:

    a. Any time after expiration of ten (10) days after the owner's receipt of the Director's notice of eligibility for a tenant with an extension, so long as the owner has already paid the owner's share of relocation assistance pursuant to SMC Section 22.210.110 B1, or

    b. The later of:

        i. The same date the owner would have been able to deliver the ninety (90) day notice to that tenant or any tenant, had no such extension been granted, so long as the owner has paid the owner's share of relocation assistance for all tenants pursuant to SMC Section 22.210.110, or

        ii. The actual date that the owner pays the owner's share of relocation assistance pursuant to Section 22.210.110 for a tenant with an extension.

C. The ninety (90) day notice shall be on a form provided by the Director and shall describe the relocation benefits available to eligible tenants and explain the tenant's right to remain in possession unless evicted for cause as provided in Section 22.210.140 of this chapter.

D. The ninety (90) day tenant notice shall be delivered to the tenants personally or by registered or certified mail with return receipt requested. If personally delivered, an affidavit of service must be completed by the owner.

E. Concurrently with issuance of the ninety (90) day tenant notice, the owner shall provide the Director with a copy of the notice, a list of current tenants in the affected units, and for each tenant who has moved into a unit since the date of application for the earlier of the tenant relocation license application, Master Use Permit application, or building permit application necessary for the demolition, change of use, substantial rehabilitation or removal of use restrictions, proof of delivery of either the tenant relocation information packet or the written notice provided in Section 22.210.100 A2.

F. Within twenty (20) days of delivery of the ninety (90) day notice to the tenants, the owner shall provide the Director with proof of delivery of the notice to a tenant of each dwelling unit to be demolished, changed in use, substantially rehabilitated or for which use restrictions will be removed.

G. No tenant relocation license may be issued by the Director until the expiration of ninety (90) days from the date of delivery of the ninety (90) day notice to all affected tenants.

(Ord. 118839 § 4, 1997: Ord. 117094 § 6, 1994; Ord. 115141 § 1(part), 1990.)

22.210.130 - Relocation assistance payments.

A. Low-income tenants who are displaced by demolition, change of use, substantial rehabilitation, or removal of use restrictions, and who comply with the requirements of this chapter, shall be paid a total relocation assistance payment in the amount of Two Thousand Dollars ($2,000) to be paid by the City, subject to appropriation of sufficient funds for such purpose by the City. The amount of relocation assistance shall be adjusted annually by the percentage amount of change in the housing component of the Consumer Price Index, as published by the United States Department of Labor, Bureau of Labor Statistics. Such adjustments shall be published in a Director's rule.

B. A tenant shall be entitled to obtain a relocation assistance payment only after receipt of a notice from the Director of eligibility for tenant relocation assistance or, if an appeal was taken pursuant to Section 22.210.150, after receipt of a final unappealed decision from the Hearing Examiner or a court that the tenant is eligible for relocation assistance.

C. An eligible tenant may obtain the relocation assistance payment by completing a request for relocation assistance and an affidavit of the date of vacating the unit and submitting the originals to the Director. Within twenty-one (21) days after submission to the Director, a check will be issued.

D. The relocation assistance payment shall be in addition to the refund from the owner of any deposits or other sums to which the tenant is lawfully entitled.

E. If an eligible tenant does not submit a completed request for relocation assistance, or does not negotiate the check for relocation assistance within one hundred eighty (180) days after vacating the dwelling unit to be demolished, changed in use, substantially rehabilitated or from which use restrictions are to be removed, the tenant shall be deemed to have waived his or her right to relocation assistance.

F. Any money remaining in either the cash deposit or the letter of credit which the owner submitted to the Director as the owner's share of relocation assistance pursuant to Section 22.210.110 for tenants whose eligibility was appealed or for tenants who have not claimed the relocation payment, shall be refunded to the owner as follows:

   1. If there was an appeal of a tenant's eligibility and the tenant was found to be not eligible, the owner's share of the relocation assistance for that tenant shall be returned to the owner within thirty (30) days of a final unappealed decision; or

   2. If a tenant has not claimed his or her relocation assistance payment within one hundred eighty (180) days after vacating the dwelling unit, the owner's share of the relocation assistance for that tenant shall be refunded to the owner.

(Ord. 119271 § 1, 1998; Ord. 118839 § 5, 1997; (Ord. 117290 § 2, 1994; Ord. 117094 § 7, 1994: Ord. 115141 § 1(part), 1990.)

22.210.136 - Rent increase to avoid application of Chapter 22.210

A. No owner may increase rent for the purpose of avoiding the application of this Chapter 22.210.

B. If a tenant has received notice of a rent increase of ten percent or more over the periodic or monthly rental rate charged the same tenant for the same housing unit and same services for any period or month during the preceding 12 months that the tenant believes is for the purpose of avoiding the application of this Chapter 22.210, and the tenant makes a complaint to the Director within one year of receiving the notice of the rent increase, the owner shall, within ten days of being notified by the Director of the complaint, complete and file a certification with the Director stating that the rent increase is not for the purpose of avoiding the application of this Chapter 22.210. The failure of the owner to complete and timely file the certification is a defense for the tenant in an eviction action based upon the tenant's failure to pay the increased rent.

C. Regardless of whether a certification is timely filed, the Director may investigate the complaint and decide whether the rent increase was made for the purpose of avoiding the application of this Chapter 22.210. A decision by the Director that the rent increase was made for the purpose of

avoiding the application of this Chapter 22.210 constitutes a finding that the owner violated subsection 22.210.136.A.

D. There is a rebuttable presumption the rent increase was made for the purpose of avoiding the application of this Chapter 22.210 and the owner violated subsection 22.210.136.A if:

1. Within 90 days of the effective date of a rent increase of 20 percent or more over the periodic or monthly rental rate charged the same tenant for the same housing unit and same services for any period or month during the preceding 12 months, that tenant vacates a dwelling unit and, within 180 days of the effective date of the rent increase, the owner:

a. Engages in substantial rehabilitation; or

b. Applies for a permit for a substantial rehabilitation, demolition, change of use, or removal of use restrictions; and

2. The owner failed to complete and timely file a certification after being notified by the Director of a complaint as provided in subsection 22.210.136.B, or failed to follow the provisions of this Chapter 22.210 after completing and timely filing the certification.

E. The Director shall mail a copy of the Director's decision to the owner and to the tenant who made the complaint.

(Ord. 124882, § 3, 2015.)

22.210.140 - Eviction protection

A. After the earlier of (1) the owner's application for a tenant relocation license; (2) the owner's application for a Master Use Permit necessary for demolition, change of use, substantial rehabilitation, or removal of use restrictions from a dwelling unit; or (3) the owner's application for a building permit necessary for demolition, change of use, substantial rehabilitation, or removal of use restrictions from a dwelling unit, the owner shall not evict any tenant except for good cause as defined in subsections 22.206.160.C.1.a, 22.206.160.C.1.b, 22.206.160.C.1.c, 22.206.160.C.1.g, 22.206.160.C.1.h, 22.206.160.C.1.i, 22.206.160.C.1.n, and 22.206.160.C.1.p, and shall not, for the purpose of avoiding or diminishing the application of this Chapter 22.210, reduce the services to any tenant or materially increase or change the obligations of any tenant.

B. Prior to application for a tenant relocation license, a master use permit necessary for demolition, change of use, substantial rehabilitation, or removal of use restrictions from a dwelling unit, or a building permit necessary for demolition, change of use, substantial rehabilitation, or removal of use restrictions from a dwelling unit, an owner shall not harass or intimidate tenants into vacating their units for the purpose of avoiding or diminishing the application of this chapter.

(Ord. 124882, § 4, 2015; Ord. 118839 § 6, 1997; Ord. 117094 § 8, 1994; Ord. 115141 § 1(part), 1990.)

22.210.150 - Administrative appeals

A. Either an owner or a tenant may request a hearing before the Hearing Examiner to appeal a determination concerning a tenant's eligibility for a relocation assistance payment, to resolve a dispute concerning the authority to institute unlawful detainer actions before issuance of the tenant relocation license required by Section 22.210.050, or to review a decision of the Director pursuant to subsection 22.210.136.C.

B. An appeal regarding eligibility for relocation assistance shall be filed within ten days after receipt of the Director's notice of tenant eligibility for relocation assistance.

C. A request for a hearing relating to authority to pursue unlawful detainer actions during the relocation period shall be filed prior to issuance of the tenant relocation license.

D. An appeal to review a decision of the Director pursuant to subsection 22.210.136.C shall be filed within ten days after receipt of the Director's decision.

E. When the last day of the appeal period is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day.

F. All requests for a hearing or appeal shall be in writing and shall clearly state specific objections and the relief sought. The appellant is not required to pay the Hearing Examiner filing fee set forth in Section 3.02.125.

G. Notice of the hearing shall be provided by the Hearing Examiner at least ten days prior to the scheduled hearing date to the tenant, the owner, the Director, and any other interested parties who have requested notice.

H. A record shall be established at the hearing before the Hearing Examiner. Appeals shall be considered de novo. The Director is not a necessary party to any Hearing Examiner proceedings pursuant to this Section 22.210.150.

I. On the day it is issued, the Hearing Examiner shall provide the decision on the appeal to the tenant, the property owner, the Director, and all those requesting notice.

J. The Hearing Examiner's decision is final and conclusive unless, within ten calendar days of the date of the Hearing Examiner decision, an application or petition for a writ of review is filed in King County Superior Court. Judicial review shall be confined to the record of the administrative hearing. The Superior Court may reverse the Hearing Examiner decision only if the decision is arbitrary and capricious, contrary to law, in excess of the authority or jurisdiction of the Hearing Examiner, made upon unlawful procedure, or in violation of constitutional provisions.

(Ord. 124882, § 5, 2015; Ord. 123899, § 21, 2012; Ord. 118839 § 7, 1997; Ord. 117094 § 9, 1994; Ord. 115141 § 1(part), 1990.)

22.210.160 - Administration and enforcement.

A. The Director shall administer and enforce the provisions of this chapter and is authorized to adopt reasonable rules and regulations consistent with the chapter to carry out the Director's duties.

B. Whenever an owner fails to comply with the provisions of this chapter, the Director shall refuse to issue the tenant relocation license.

C. Any failure to comply with the requirements of this chapter or with a decision of the Hearing Examiner under this chapter shall be a violation of the Code.

D. Any failure of a tenant who has received relocation assistance pursuant to this chapter to vacate the dwelling unit on or before the expiration of the ninety (90) day notice issued pursuant to Section 22.210.120 and receipt of relocation assistance pursuant to this chapter by a person not eligible for such assistance under this chapter shall be violations of this chapter.

(Ord. 115141 § 1(part), 1990.)

22.210.170 - Notice of violation.

If after investigation the Director determines that a violation of this chapter has occurred or exists, the Director may have a notice of violation served upon the person responsible for the violation. The notice may be served by personal service, registered mail, or certified mail, return receipt requested, to the last known address of the person responsible for the violation. The notice of violation shall identify the violation of this chapter and what corrective action is necessary to comply.

(Ord. 115141 § 1(part), 1990.)

22.210.180 - Violations and penalties

A. In addition to any other sanction or remedial procedure that may be available, any person violating any provision of this Chapter 22.210 shall be subject to a cumulative civil penalty in the amount of $1,000 per day for each day from the date the violation began until the requirements of this Chapter 22.210 are satisfied, and if:

   1. The violation resulted in a tenant who would have been eligible for relocation assistance not receiving it, the penalty shall be increased by the amount of the violator's share of the relocation assistance that should have been paid; or

   2. The violation is for receipt of relocation assistance by an ineligible tenant or for failure to vacate pursuant to Section 22.210.160, the penalty shall be increased by the amount of relocation assistance received by the tenant.

B. The penalty imposed by this Section 22.210.180 shall be collected by civil action brought in the name of the City. The Director shall notify the City Attorney of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty.

C. Any tenant or person aggrieved by a violation of this Chapter 22.210 may institute a private action to enforce the obligations contained in this Chapter 22.210, provided, that this subsection 22.210.180.C does not create any right of action against the City or any City officer or employee for the failure either to require any owner to pay relocation assistance or to pay tenants the amount of the owner's share with City funds. This section shall be retroactive to June 22, 1993.

(Ord. 124882, § 6, 2015; Ord. 117094 § 10, 1994; Ord. 115141 § 1(part), 1990.)