

RECEIVED

SEP 26 2016

WASHINGTON STATE
SUPREME COURT

No. 92978-5

THE SUPREME COURT OF WASHINGTON

FILED E
OCT 06 2016
WASHINGTON STATE
SUPREME COURT
bjh

STEPHEN FACISZEWSKI AND VIRGINIA KLAMON,

Respondents,

v.

MICHAEL R. BROWN AND JILL A. WAHLEITHNER,

Appellants.

**BRIEF OF AMICUS CURIAE
CITY OF SEATTLE**

PETER S. HOLMES
Seattle City Attorney

By ROGER D. WYNNE, WSBA # 23399
Assistant City Attorney
*Attorney for Amicus Curiae
City of Seattle*

Seattle City Attorney's Office
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7097
(206) 233-2177



ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	1
II. IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	2
III. STATEMENT OF THE CASE	2
IV. ARGUMENT.....	2
A. The JCEO's text does not preclude a tenant from challenging an owner's claimed just cause.....	2
B. The JCEO's structure confirms that a private cause of action is not an exclusive remedy; it is one of three independent means of implementing the JCEO.....	4
1. Subsections 1, 4, and 5 provide a defense that no cause exists to justify an eviction.	4
2. Subsection 6, bolstered by subsection 1.e, enables the City to enforce the JCEO if an owner evicts and fails to follow through on their stated intent.....	6
3. Subsection 7 authorizes a tenant to seek damages if an owner evicts and fails to follow through on their stated intent.	7
C. The underlying purpose of the JCEO is furthered by an interpretation that an owner's certification does not preclude a tenant from challenging an owner's claimed just cause.....	8
D. The legislative history of the 1995 ordinance underscores that the JCEO is implemented through multiple nonexclusive means.....	10
V. CONCLUSION.....	12

• APPENDICES

- A. Seattle Ordinance 117942, passed by the City Council on December 11, 1995.
- B. Bob Morgan, DIVIDED REPORT: JUST CAUSE EVICTION ORDINANCE. ITEM #12 CB 111018 (Nov. 30, 1995).

The appendices are printed from the electronic ordinance file on record with the City Clerk's Office for Ord. 117942:
http://clerk.ci.seattle.wa.us/~legislativeItems/Ordinances/Ord_117942.pdf
(last visited Sept. 21, 2016).

TABLE OF AUTHORITIES

Page(s)

Cases

<u>Faciszewski v. Brown</u> , 192 Wn. App. 441, 367 P.3d 1085 (2016).....	1
<u>West Coast, Inc. v. Snohomish County</u> , 112 Wn. App. 200, 48 P.3d 997 (2002).....	3

Statutes

RCW 9A.72.085.....	3
RCW 59.18.380.....	3

Rules

CR 56(c).....	3
---------------	---

Ordinances

Ord. 109219 (1991).....	9
Ord. 115671 § 1.....	9
Ord. 117942.....	9, 10, 11, 12
SMC 22.200.020.D.....	9
SMC 22.206.160.....	passim
SMC 22.206.280.....	6

Miscellaneous

Bob Morgan, Divided Report: Just Cause Eviction Ordinance, Item #12 CB 111018 (Nov. 30, 1995).....	11, 12
---	--------

I. INTRODUCTION AND SUMMARY

The Court is considering whether Petitioner tenants were entitled to a trial on whether Respondent owners had a just cause for terminating the tenants' lease. The Court of Appeals answered that question in the negative, reading the City of Seattle's Just Cause Eviction Ordinance ("JCEO") to mean that, if an owner files a certification attesting to the owner's intent to occupy a rental unit or have an immediate family member occupy it, a tenant's exclusive remedy is to accede to the eviction and pursue a private cause of action should the owner fail to follow through on that intent.¹

The Court of Appeals misread the JCEO. Its text, structure, purpose, and history demonstrate that it does not limit a tenant to a post-eviction remedy. They show instead that the JCEO provides several nonexclusive means of deterring an owner from falsely claiming an intent to occupy a unit or have an immediate family member do so. The primary means the JCEO employs are defenses to eviction—defenses tenants retain in addition to post-eviction remedies.

The City takes no position on whether the tenants here were entitled to a trial. The answer to that question depends on facts and law beyond the JCEO's remedies. The City maintains only that the answer is

¹ *Faciszewski v. Brown*, 192 Wn. App. 441, 452-54, 367 P.3d 1085 (2016).

not dictated by the JCEO, which does not constrain a tenant's ability to demonstrate to the trier of fact in an unlawful detainer action that, notwithstanding an owner's certification, the owner has failed to prove the existence of a just cause for eviction.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae City of Seattle is a first class Washington charter city. The City has an interest in helping the judiciary properly construe and apply the City's JCEO.

III. STATEMENT OF THE CASE

The City relies on the statements of the case provided by the Appellants and Respondents.

IV. ARGUMENT

A. The JCEO's text does not preclude a tenant from challenging an owner's claimed just cause.

The JCEO allows a rental unit owner to evict a tenant only for certain "just causes," among them that the owner wants to occupy the unit or have an immediate family member do so.² If a tenant receives a notice from an owner invoking that reason for an eviction, the tenant may complain to the City, which then requires the owner to file with the City a

² Seattle Municipal Code ("SMC") 22.206.160.C.1 and .C.1.e. Section IV.B of this brief quotes those provisions. The public may access the SMC on line at: https://www.municode.com/library/wa/seattle/codes/municipal_code.

certification of the owner's intent to occupy the unit or have an immediate family member do so.³

The JCEO provides that an owner's failure to make a requested certification is a defense to eviction in a future unlawful detainer action: "The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground."⁴

The JCEO goes no further. It does not stop a tenant from rebutting a certification in an unlawful detainer action. The certification, made under penalty of perjury, is tantamount to a declaration.⁵ State law addresses the weight to be given a declaration in civil litigation and when a case may proceed to trial notwithstanding a declaration.⁶ That law governs the implication of a filed certification or other declarations in an unlawful detainer action. The JCEO does not. It does not preclude a tenant

³ SMC 22.206.160.C.4.

⁴ *Id.*

⁵ *See* CP 77 (certification filed in this case). *See also* RCW 9A.72.085 (elements of unsworn declarations and certifications); GR 13 (allowing use of unsworn statements).

⁶ An unlawful detainer action may proceed from the show cause hearing to trial if the case presents a substantial issue of material fact. RCW 59.18.380. That echoes the genuine-issue-of-material-fact standard employed in summary judgment motions, where both parties may submit declarations—the initial declaration does not preclude an opposing party from raising a genuine issue of material fact. *See* CR 56(c); *West Coast, Inc. v. Snohomish County*, 112 Wn. App. 200, 205-06, 48 P.3d 997 (2002).

from raising a substantial issue of material fact about an owner's claimed just cause.

B. The JCEO's structure confirms that a private cause of action is not an exclusive remedy; it is one of three independent means of implementing the JCEO.

The JCEO is structured around three independent means of helping to ensure an owner evicts a tenant only for a just cause. None is exclusive.

1. Subsections 1, 4, and 5 provide a defense that no cause exists to justify an eviction.

The primary means is to prevent an eviction by providing a tenant with a potential defense in an unlawful detainer action. This is codified in three subsections of the JCEO.

First, subsection 1 establishes the basic rule that owners shall not evict a tenant unless the owner can prove in court that one of the enumerated just causes exists:

1. . . . Owners of housing units shall not evict or attempt to evict any tenant, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this Section 22.206.160;

- e. The owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building, and the owner has given the

tenant at least 90 days' advance written notice of the date the tenant's possession is to end⁷

Second, subsection 4 provides a specific defense in court if the owner fails to file a requested certification of the owner's intent to perform certain acts, including an intent to have the owner or a member of their immediate family occupy the unit:

4. If a tenant who has received a notice of termination of tenancy claiming subsection 22.206.160.C.1.e, 22.206.160.C.1.f, or 22.206.160.C.1.m as the ground for termination believes that the owner does not intend to carry out the stated reason for eviction and makes a complaint to the Director, then the owner must, within ten days of being notified by the Director of the complaint, complete and file with the Director a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground.⁸

Third, a tenant's specific defense in subsection 4 is followed by a tenant's universal defense in subsection 5:

5. In any action commenced to evict or to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for such eviction or termination as provided in this Section 22.206.160.⁹

⁷ SMC 22.206.160.C.1.

⁸ SMC 22.206.160.C.4.

⁹ SMC 22.206.160.C.5.

That universal defense applies to all asserted just causes, including those for which subsection 4 might yield a certification of intent.

2. Subsection 6, bolstered by subsection 1.e, enables the City to enforce the JCEO if an owner evicts and fails to follow through on their stated intent.

A second means of helping to ensure evictions occur only for a just cause is City enforcement where an owner fails to follow through on their stated intent. This takes the form of penalties up to \$3,500 the City may seek through a Municipal Court action for a violation.¹⁰ The foundation for this is subsection 6 of the JCEO, which declares a violation for not carrying out the intended reason for the eviction:

6. It shall be a violation of this Section 22.206.160 for any owner to evict or attempt to evict any tenant or otherwise terminate or attempt to terminate the tenancy of any tenant using a notice which references subsections 22.206.160.C.1.e, 22.206.160.C.1.f, 22.206.160.C.1.h, 22.206.160.C.1.k, 22.206.160.C.1.l, or 22.206.160.C.1.m as grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy.¹¹

Where the asserted just cause is an owner's intent to occupy the unit or for an immediate family member to do so, the City's ability to enforce is bolstered by a rebuttable presumption in subsection 1.e:

¹⁰ The City pursues civil enforcement through SMC 22.206.280. *See* SMC 22.206.280.D (setting the penalty amount for violating the JCEO.)

¹¹ SMC 22.206.160.C.6.

There is a rebuttable presumption of a violation of this subsection 22.206.160.C.1.e if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction using this subparagraph as the cause for eviction . .

¹²

3. Subsection 7 authorizes a tenant to seek damages if an owner evicts and fails to follow through on their stated intent.

The final means of trying to limit evictions to just causes is a private cause of action. As explained in subsection 7, a tenant may pursue an action for damages against an owner who fails to carry out the intended reason for the eviction:

7. An owner who evicts or attempts to evict a tenant or who terminates or attempts to terminate the tenancy of a tenant using a notice which references subsections 22.206.160.C.1.e, 22.206.160.C.1.f or 22.206.160.C.1.h as the ground for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy shall be liable to such tenant in a private right for action for damages up to \$2,000, costs of suit, or arbitration and reasonable attorney's fees.¹³

All of these three means are available. None precludes another. Each deters an owner from falsely claiming an intent to occupy a unit or to have an immediate family member do so.

¹² SMC 22.206.160.C.1.e.

¹³ SMC 22.206.160.C.7.

The JCEO's three-part structure cannot support the Court of Appeals' conclusion that the JCEO limits a tenant to a private cause of action if a landlord files a certification about their intent. A certification is required only if a tenant complains to the City, but a tenant is not required to complain. Either way—with or without a complaint or certification—the JCEO provides no grounds for inferring that a tenant's right to pursue a JCEO-provided cause of action *after* an eviction limits a tenant's right to assert JCEO-provided defenses *before* an eviction.

C. The underlying purpose of the JCEO is furthered by an interpretation that an owner's certification does not preclude a tenant from challenging an owner's claimed just cause.

The general purpose of the JCEO, and the specific purpose of the 1995 ordinance adopting the language at issue in this case, are furthered by reading the private cause of action as an additional, nonexclusive remedy.

The JCEO is premised on a belief that arbitrary evictions undercut the public interest. When first adopting the JCEO in 1980, the City Council found that "arbitrary eviction of responsible tenants imposes upon such tenants the hardship of locating replacement housing and provides no

corresponding benefit to property owners.”¹⁴ The most direct way to prevent arbitrary evictions is to place the burden on the owner to prove a just cause and provide the tenant with a defense that the owner lacks a just cause. Limiting a tenant to a post-eviction private cause of action would undercut the JCEO’s purpose of preventing improper evictions.

That purpose is echoed in the recitals of the 1995 ordinance adopting the provisions at issue in this case.¹⁵ They indicate the City Council intended the post-eviction private cause of action to complement post-eviction City enforcement, both of which help deter owners’ misuse of the JCEO:

WHEREAS,...there currently exists no private right of action under the Just Cause Eviction Ordinance that would allow tenants to sue owners for violations of certain provisions of the Just Cause Eviction Ordinance that are particularly difficult for the City to enforce, specifically, the just causes relating to...the owner’s desire to occupy the unit as a primary residence; and

WHEREAS, the City Council recognizes that certain just causes may be misused, that the City’s ability to impose penalties for violations of those just causes may not, as a practical matter, protect from eviction those tenants who

¹⁴ Ord. 109219 at 1. In 1991, the Council codified that finding in the Housing and Building Maintenance Code, which includes the JCEO. Ord. 115671 § 1; SMC 22.200.020.D. The public may search for City ordinances through a City Clerk web site: <http://clerk.ci.seattle.wa.us/~public/CBOR1.htm> (last visited Sept. 21, 2016).

¹⁵ See Ord. 117942. Appendix A of this brief provides the ordinance as maintained in the ordinance file on record with the City Clerk’s Office: http://clerk.ci.seattle.wa.us/~legislative/items/Ordinances/Ord_117942.pdf (last visited Sept. 21, 2016).

may be subjected to misuse of those just causes, and that a private right of action may help to deter misuse of those certain just causes for eviction....¹⁶

In a similar but independent vein, the purpose of a *pre*-eviction certification is to help assure—not conclusively prove—that the owner’s claimed cause actually exists:

WHEREAS, the City Council recognizes that it may be difficult to determine if some of the just causes actually exist because the “cause” that is the basis for the eviction occurs after the eviction and involves actions that are difficult to monitor, and finds that requiring the owner in certain instances to certify in writing that the Owner will carry out the activity that is the reason for the eviction... will help in assuring that the invoked causes actually exist.¹⁷

These purposes are advanced by reading the JCEO as providing three nonexclusive means of implementation: defenses to an unlawful detainer action, City enforcement, and a private cause of action.

D. The legislative history of the 1995 ordinance underscores that the JCEO is implemented through multiple nonexclusive means.

The history of the JCEO underscores that the City Council did not intend an owner’s filing of a certification to limit a tenant’s ability to defend against an unlawful detainer action for lack of a just cause. The 1995 ordinance originated with the City Council’s Housing, Community

¹⁶ Ord. 117942 at 3. *See* App. A.

¹⁷ *Id.*

Development, and Urban Environment Committee.¹⁸ The Committee report to the full Council indicates an intent for tenants to have access to multiple protections, none of which is exclusive. The report focused attention on a recommendation by a majority of the Committee to add an owner's intent to sell a single family home as a just cause.¹⁹ The majority explained how its recommendation "includes **numerous provisions** to avoid misuse of this just cause and protect tenants."²⁰ Among those nonexclusive provisions were "a complaint-based certification **and** a private right of action are provided for this just cause to deter misuse and **allow tenants several avenues of recourse** in the event of misuse."²¹ The majority did not intend to force the tenant to choose between those provisions; both were among the avenues of recourse the Committee intended to accord the tenant. The Council adopted the majority recommendation, along with the Committee's proposal to apply those

¹⁸ See Bob Morgan, DIVIDED REPORT: JUST CAUSE EVICTION ORDINANCE, ITEM #12 CB 111018 (Nov. 30, 1995). Appendix B of this brief provides the report, as maintained in the ordinance file on record with the City Clerk's Office for Ord. 117942: http://clerk.ci.seattle.wa.us/~legislativeItems/Ordinances/Ord_117942.pdf (last visited Sept. 21, 2016).

¹⁹ *Id.* at 5-6.

²⁰ *Id.* (emphasis added).

²¹ *Id.* at 6 (emphasis added).

same provisions to other intent-based just causes, including the owner's intent to occupy the unit or have an immediate family member do so.²²

Underscoring that neither the certification nor the private cause of action is exclusive, the Committee report listed and discussed each separately in a summary of the bill's major provisions—without linking them or indicating one excluded the other.²³

The Court of Appeals' reading of the JCEO is at odds with this legislative history. The Council members did not suggest an owner's filing of a certification precludes a tenant's ability to defend against an unlawful detainer action for lack of a just cause, or limits the tenant to a private cause of action after the eviction. The Committee intended tenants to have both avenues of recourse.

V. CONCLUSION

Whether the tenant in this case is entitled to a trial on the owner's claimed just cause for eviction depends on the record and questions rooted in the Unlawful Detainer Act, court rules, case law, and other sources of state law. The JCEO does not obviate that inquiry. As the JCEO's text,

²² See Ord. 117942 § 2 at 18 – 19 (enacting subsections 4 and 7 of the JCEO). See App. A.

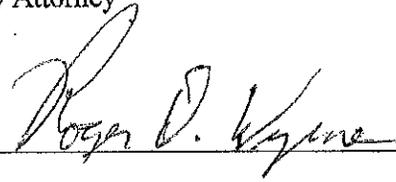
²³ REPORT at 8. See App. B.

structure, purpose, and history demonstrate, it does not limit a tenant to a post-eviction cause of action for damages.

Respectfully submitted September 26, 2016.

PETER S. HOLMES
Seattle City Attorney

By: _____

A handwritten signature in cursive script, appearing to read "Roger D. Wynne", is written over a horizontal line.

ROGER D. WYNNE, WSBA # 23399
Assistant City Attorney
Attorney for Amicus Curiae City of Seattle

APPENDIX A

ORDINANCE

117942

1
2
3
4 AN ORDINANCE relating to Just Cause Eviction, amending the
5 definitions in the Housing and Building Maintenance Code,
6 SMC 22.204.200, and amending SMC Section 22.206.160C to
7 clarify and amend the existing procedures and just causes
8 for eviction, to provide additional just causes for
9 eviction, and to create a private right of action for
10 tenants when evicted under certain just cause provisions.

11 WHEREAS, the Just Cause Eviction Ordinance (Ordinance 109219, as
12 amended), codified as Section 22.206.160C of the Seattle
13 Municipal Code, provides that an owner seeking to evict a
14 tenant must have a just cause for the eviction and lists
15 certain reasons that constitute just cause for the
16 termination of tenancies; and

17 WHEREAS, users of the Just Cause Eviction Ordinance, both tenants
18 and landlords, have expressed misunderstandings about the
19 standards of proof and procedural requirements for evictions
20 under state law and the City Council intends to clarify the
21 same; and

22 WHEREAS, the Just Cause Eviction Ordinance has used the term
23 "major reconstruction or rehabilitation," while the Tenant
24 Relocation Assistance Ordinance has used the term
25 "substantial rehabilitation" for the same concept and the
26 City Council intends to make consistent use of terms; and

27 WHEREAS, the Just Cause Eviction Ordinance has not clearly
28 indicated that an owner's "immediate family" includes an
29 owner's domestic partner, as well as the parents,
30 grandparents, children, brothers and sisters of an owner's
31 domestic partner; and

32 WHEREAS, the City Council finds that property owners have
33 experienced financial and practical difficulties when trying
34 to sell single family dwelling units occupied by tenants,
35 including preparing, repairing, and showing them and making
36 them available to new owners upon closing, and the City
37 Council intends to allow, with certain restrictions, owners
38 to evict tenants in such circumstances; and

39 WHEREAS, the Land Use Code was amended in 1994 by Ordinance No.
40 117203 to allow accessory dwelling units in single family

NOTICE: IF THIS DOCUMENT IS FILED IN THE PUBLIC RECORDS, IT IS SUBJECT TO THE QUALITY OF THE DOCUMENT.

Division
November 20, 1994
just cause
(Ver. 9harrle)

1 houses, but the current Just Cause Eviction Ordinance does
2 not allow a tenancy of the accessory dwelling unit to be
3 terminated if the owner of the single family house desires
4 or is required to discontinue the accessory dwelling unit,
5 and

6 WHEREAS, the Land Use Code was amended in 1994 by Ordinance No.
7 117202 to limit to eight the number of unrelated individuals
8 that may occupy a dwelling unit, the termination of one or
9 more tenancies in a unit may be required to comply with the
10 reduced occupancy limits, and the Just Cause Eviction
11 Ordinance does not currently allow an eviction in order to
12 comply with the occupancy limit; and

13 WHEREAS, new just cause provisions in this ordinance may result
14 in the eviction of innocent tenants, i.e., tenants being
15 evicted because of ordinance violations that were created by
16 or as a result of actions by the owner, and in such cases,
17 relocation assistance is warranted in order to assist the
18 tenants to move; and

19 WHEREAS, the Housing and Building Maintenance Code emergency
20 order provisions allow DCLU to order a housing unit vacated
21 and closed when the Director determines that the unit
22 presents an imminent threat to the health or safety of the
23 occupants or the public, and the Just Cause Eviction
24 Ordinance has not allowed an owner to evict a tenant under
25 such circumstances; and

26 WHEREAS, the Just Cause Eviction Ordinance currently does not
provide a separate just cause for illegal drug activity,
but pursuant to Director's Rule 8-88, DCLU interprets
illegal drug activity as a nuisance pursuant to RCW 7.43,
and authorizes evictions under the nuisance provisions of
the Just Cause Eviction Ordinance as well as under the
criminal activity provisions of the Just Cause Eviction
Ordinance; and

WHEREAS, the Just Cause Eviction Ordinance currently provides
that engaging in criminal activity on the premises is a just
cause for eviction, but does not specify the type of
criminal activity required or whether there must be a
conviction to support such an eviction; and

WHEREAS, state law provides that an owner may terminate the
tenancy of any tenant who engages in activity that is
imminently hazardous to other tenants or the owner and that
results in an arrest and of any tenant who engages in

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN HIS NOTICE
PLEASE REFER TO THE QUALITY OF THE DOCUMENT

1 illegal drug activity whether or not the illegal drug
2 activity substantially affects the health or safety of other
tenants or the owner; and

3 WHEREAS, requiring that owners, in order to evict a tenant for
4 criminal activity, assure that the notice of termination,
which includes the specific crime alleged to have been
5 committed and the facts supporting the allegation, has been
received by DCLU as well as the tenant, provides a measure
6 of protection for tenants from eviction based on false
accusations; and

7 WHEREAS, except as otherwise provided in state law, only crimes
8 that are committed on the premises, on abutting property, or
on abutting public right of way and that substantially
9 affect the safety of other tenants or the owner constitute a
justifiable basis for eviction; and

10 WHEREAS, tenants have a private right of action under the City's
11 Tenant Relocation Assistance Ordinance and the Rental
Agreement Regulation Ordinance, but there currently exists
12 no private right of action under the Just Cause Eviction
Ordinance that would allow tenants to sue owners for
13 violations of certain provisions of the Just Cause Eviction
Ordinance that are particularly difficult for the City to
14 enforce, specifically, the just causes relating to sale of
single family houses, substantial rehabilitation of the
15 unit, and the owner's desire to occupy the unit as a primary
residence; and

16 WHEREAS, the City Council recognizes that certain just causes may
17 be misused, that the City's ability to impose penalties for
violations of those just causes may not, as a practical
18 matter, protect from eviction those tenants who may be
subjected to misuse of those just causes; and that a private
19 right of action may help to deter misuse of those certain
just causes for eviction; and

20 WHEREAS, the City Council recognizes that it may be difficult to
21 determine if some of the just causes actually exist because
the "cause" that is the basis for the eviction occurs after
22 the eviction and involves actions that are difficult to
monitor, and finds that requiring the owner in certain
23 instances to certify in writing that the owner will carry
out the activity that is the reason for the eviction and
24 that providing a rebuttable presumption that the owner has
violated the just cause ordinance when the owner takes or
25 does not take certain prescribed steps after the eviction
will help in assuring that the invoked causes actually
26 exist.

9mw:9mw
November 20, 1995
just cause
(Ver. 9harrie)

1
2 Now, Therefore,

3 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

4 Section 1. Section 22.204.200 of the Seattle Municipal
5 Code ("SMC"), as last amended by Section 4 of Ordinance 113548,
6 is further amended to read as follows:

7 SMC 22.204.200 "g."

8 A. "Single-family dwelling unit" means a detached
9 structure containing one (1) dwelling unit and having a
10 permanent foundation.

11 B. "Single room occupancy unit (SRO unit)" means an
12 existing housing unit with one (1) combined sleeping and
13 living room of at least seventy (70) square feet but of not
14 more than one hundred thirty (130) square feet. Such
15 units may include a kitchen and a private bath.

16 ((B))C. "Smoke detector" means an approved device
17 which senses the products of combustion. The device shall be
18 approved by a testing agency having a service for inspection
19 of materials and workmanship at the factory during
20 fabrication and assembly.

21 ((E))D. "Stairway enclosure" means the space enclosing
22 interior stairs, landings between flights, corridors, and
23 passageways used for direct exit to the exterior of a
24 building, and any lobbies or other common areas that open
25 onto such direct exits. Any space in a lobby or common area
26

SMW:SMW
November 20, 1994
Just Cause
(Ver. 9 Harris)

1 that is separated from a direct exit by a one (1) hour fire
2 assembly shall not be considered part of a stairway
3 enclosure.

4 ((D))E. "Storage room" means a room for the storage of
5 supplies or personal belongings in a location other than an
6 individual housing unit, but excluding such spaces as
7 personal storage lockers.

8 ((E))F. "Story" means that portion of a building
9 included between the upper surface of any floor and the
10 upper surface of the floor next above; provided, that the
11 top story is that portion of a building included between the
12 upper surface of the topmost floor and the ceiling or roof
13 above. If the finished floor level directly above a basement
14 or unused underfloor space is more than six feet (6') above
15 grade for more than fifty (50) percent of the total
16 perimeter, or is more than twelve feet (12') above grade for
17 more than twenty-five feet (25') at the perimeter, then the
18 basement or unused underfloor space shall be considered a
19 story. Required driveways up to twenty-two feet (22') in
20 width shall not be used in measuring the twenty-five feet
21 (25') unless the driveway is within ten feet (10') of the
22 twenty-five-foot (25') exemption.

23 ((F))G. "Structure" means anything that is built or
24 constructed, an edifice or building of any kind, or any
25

SMW 1 SMW
November 20, 199
just cause
(Var. Harris)

1 piece of work artificially built up or composed of parts
2 joined together.

3 ((E))H. "Substandard building" means any building
4 which fails to comply with the minimum standards set forth
5 in SMC Chapter 22.206.

6 I. "Substantial rehabilitation" means extensive
7 structural repair or extensive remodeling which requires a
8 building, electrical, plumbing or mechanical permit, and
9 which cannot be done with the tenant in occupancy.

10 ((H))J. "Supplied" means paid for, furnished by
11 provided by, or under the control of the owner of a
12 building.

13
14 Section 2. Subsection 22.206.160(C) of the SMC, as last
15 amended by Section 1 of Ordinance 115877, is further amended to
16 read as follows:

17 C. Just Cause Eviction.

18 1. Pursuant to provisions of the state Residential
19 Landlord-Tenant Act (RCW 59.18.290), owners may not evict
20 residential tenants without a court order, which can be
21 issued by a court only after the tenant has an opportunity
22 in a show cause hearing to contest the eviction (RCW
23 59.18.380). In addition, o((E))wners of housing units shall
24 not evict or attempt to evict any tenant, or otherwise

amw:smw
November 20, 195
just cause
(Ver.9harris)

1 terminate or attempt to terminate the tenancy of any tenant
2 unless the building containing such housing unit has a
3 current rental housing registration, as required by SMC
4 Section 22.202.060, and unless otherwise specifically
5 provided below, the owner can prove in court by a
6 preponderance of the evidence that just ((except for good))
7 cause exists. The reasons for termination of tenancy listed
8 below, and no others, shall constitute ((good)) just cause
9 under this section:

10 a. The tenant fails to comply with a three (3) day
11 notice to pay rent or vacate pursuant to RCW 59.12.030(3); a
12 ten (10) day notice to comply or vacate pursuant to RCW
13 59.12.030(4); or a three (3) day notice to vacate for waste,
14 nuisance (including a drug-related activity nuisance
15 pursuant to RCW chapter 7.43) or maintenance of an unlawful
16 business or conduct pursuant to RCW 59.12.030(5);

17 b. The tenant habitually fails to pay rent when due
18 which causes the owner to notify the tenant in writing of
19 late rent four (4) or more times in a twelve (12) month
20 period;

21 c. The tenant fails to comply with a ten (10) day
22 notice to comply or vacate that requires compliance with a
23 material term of the rental agreement or that requires
24 compliance ((fails to comply)) with a material obligation
25
26

amw:amw
November 20, 199
just cause
(Ver. 9harris)

1 under RCW 59.18 (~~after service of a ten (10) day notice to~~
2 ~~comply or vacate~~);

3 d. The tenant habitually fails to comply with the
4 material terms of the rental agreement which causes the
5 owner to serve a ten (10) day notice to comply or vacate
6 three (3) or more times in a twelve (12) month period;

7 e. The owner seeks possession ~~so that~~ ((~~for~~)) the
8 owner or ((~~for~~)) a member of his or her immediate family may
9 occupy the unit as that person's principal residence and no
10 substantially equivalent unit is vacant and available in the
11 same building. "Immediate family" shall include the owner's
12 domestic partner registered pursuant to section 1 of
13 Ordinance 117244 or the owner's spouse, and the parents,
14 grandparents, children, brothers and sisters of the owner,
15 of the ((~~or~~)) owner's spouse, or of the owner's domestic
16 partner. There shall be a rebuttable presumption of a
17 violation of this subsection if the owner or a member of the
18 owner's immediate family fails to occupy the unit as that
19 person's principal residence for at least sixty (60)
20 consecutive days during the ninety (90) days immediately
21 after the tenant vacated the unit pursuant to a notice of
22 termination or eviction using this subparagraph as the cause
23 for eviction;

smw:smw
November 20, 1991
just cause
(Ver. 9harris)

1 f. The owner elects to sell a single family dwelling
2 unit and gives the tenant at least sixty (60) days written
3 notice prior to the date set for vacating, which date shall
4 coincide with the end of the term of a rental agreement, or
5 if the agreement is month to month, with the last day of a
6 monthly period. For the purposes of this section, an owner
7 "elects to sell" when the owner makes reasonable attempts to
8 sell the dwelling within thirty (30) days after the tenant
9 has vacated, including, at a minimum, listing it for sale at
10 a reasonable price with a realty agency or advertising it
11 for sale at a reasonable price in a newspaper of general
12 circulation. There shall be a rebuttable presumption that
13 the owner did not intend to sell the unit if 1) within
14 thirty (30) days after the tenant has vacated, the owner
15 does not list the single family dwelling unit for sale at a
16 reasonable price with a realty agency or advertise it for
17 sale at a reasonable price in a newspaper of general
18 circulation, or 2) within ninety (90) days after the date
19 the tenant vacated or the date the property was listed for
20 sale, whichever is later, the owner withdraws the rental
21 unit from the market, rents the unit to someone other than
22 the former tenant, or otherwise indicates that the owner
23 does not intend to sell the unit.

smw:smw
November 20, 1998
just cause
(Ver. 9harris)

1 g((f)). The tenant's occupancy is conditioned upon
2 employment on the property and the employment relationship
3 is terminated;

4 h((g)). The owner seeks to do substantial
5 rehabilitation (~~major reconstruction or rehabilitation~~) in
6 the building (~~which cannot be done with tenants in~~
7 ~~occupancy~~); provided that the owner must obtain a tenant
8 relocation license if required by SMC Chapter 22.210 and at
9 least one permit necessary for the rehabilitation, other
10 than a master use permit, before terminating the tenancy.

11 Any tenants dispossessed pursuant to this provision shall be
12 notified in writing by the owner (~~landlord~~) at the time of
13 vacating the unit that the tenant has a right of first
14 refusal for the rehabilitated unit. The owner (~~landlord~~)
15 shall notify the tenant in writing, mailed by regular mail
16 to the last address provided by the tenant, when the unit is
17 ready to be reoccupied (~~for reoccupancy~~); and the tenant
18 shall exercise such right of first refusal within thirty
19 (30) days of the owner's (~~landlord's~~) notice;

20 i((h)). The owner elects to demolish the building,
21 convert it to a condominium or a cooperative, or convert it
22 to a nonresidential use; provided, that the owner must
23 obtain a tenant relocation license if required by SMC
24 Chapter 22.210 and a ((all)) permit((s which are)) necessary

SMW:SMW
November 20, 1995
just cause
(Vef:Sharris)

1 to demolish or change the use before terminating any
2 tenancy;

3 i. ~~(i)~~. The owner seeks to discontinue use of a
4 housing unit unauthorized by Title 23 ~~((ex-24))~~ of the
5 Seattle Municipal Code after receipt of a notice of
6 violation thereof. ~~((provided that))~~ The owner is
7 required to pay relocation assistance to the tenant(s) of
8 each such unit at least two (2) weeks prior to the date set
9 for termination of the tenancy, at the rate of

10 (i) Two Thousand Dollars (\$2,000.00) for a tenant
11 household ~~((s))~~ with an income during the past twelve
12 (12) months at or below fifty percent (50%) of the
13 County median income, or ~~((and or))~~

14 (ii) ~~1~~ ~~((s))~~ two (2) months' rent for a tenant
15 household ~~((s))~~ with an income during the past twelve
16 (12) months above fifty percent (50%) of the County
17 median income ~~((is paid to the tenant(s) of each such~~
18 ~~unit at least two (2) weeks prior to the date set for~~
19 ~~compliance in the notice of violation))~~;

20 k. The owner seeks to reduce the number of
21 individuals residing in a dwelling unit to comply with the
22 maximum limit of individuals allowed to occupy one dwelling
23 unit, as required by SMC Title 23, and:
24
25
26

smw:smw
November 20, 1994
just cause
(Ver. 9harris)

1 (i) (a) the number of such individuals was more than
2 is lawful under the current version of SMC Title 23 or
3 Title 24 but was lawful under SMC Title 23 or 24 on
4 August 10, 1994,

5 (b) that number has not increased with the
6 knowledge or consent of the owner at any time after
7 August 10, 1994, and

8 (c) the owner is either unwilling or unable to
9 obtain a permit to allow the unit with that number of
10 residents;

11 (ii) the owner has served the tenants with a thirty
12 (30) day notice, informing the tenants that the number
13 of tenants exceeds the legal limit and must be reduced
14 to the legal limit;

15 (iii) after expiration of the thirty (30) day notice,
16 the owner has served the tenants with and the tenants
17 have failed to comply with a ten (10) day notice to
18 comply with the limit on the number of occupants or
19 vacate; and

20 (iv) if there is more than one rental agreement for
21 the unit, the owner may choose which agreements to
22 terminate, provided that the owner may either terminate
23 no more than the minimum number of rental agreements
24 necessary to comply with the legal limit on the number

smw:amw
November 20, 1952
just cause
(Ver. 9harris)

1 of occupants, or, at the owner's option, terminate only
2 those agreements involving the minimum number of
3 occupants necessary to comply with the legal limit.

4 1. (1) The owner seeks to reduce the number of
5 individuals who reside in one dwelling unit to comply with the
6 legal limit after receipt of a notice of violation of the SMC
7 Title 23 restriction on the number of individuals allowed to
8 reside in a dwelling unit and:

9 (a) the owner has served the tenants with a
10 thirty (30) day notice, informing the tenants that
11 the number of tenants exceeds the legal limit and
12 must be reduced to the legal limit, provided that
13 no thirty (30) day notice is required if the
14 number of tenants was increased above the legal
15 limit without the knowledge or consent of the
16 owner;

17 (b) after expiration of the thirty (30) day
18 notice required by subsection (a) above, or at any
19 time after receipt of the notice of violation if
20 no thirty (30) day notice is required pursuant to
21 subsection (a), the owner has served the tenants
22 with and the tenants have failed to comply with a
23 ten (10) day notice to comply with the maximum
24

amw:amw
November 29, 1980
just cause
(Substitute page)

1 legal limit on the number of occupants or vacate;
2 and
3 (c) if there is more than one rental agreement
4 for the unit, the owner may choose which
5 agreements to terminate, provided that the owner
6 may either terminate no more than the minimum
7 number of rental agreements necessary to comply
8 with the legal limit on the number of occupants;
9 or, at the option of the owner, terminate only
10 those agreements involving the minimum number of
11 occupants necessary to comply with the legal
12 limit.

13 (ii). For any violation of the maximum legal limit
14 on the number of individuals allowed to reside in a unit
15 that occurred with the knowledge or consent of the owner,
16 the owner is required to pay relocation assistance to the
17 tenant(s) of each such unit at least two (2) weeks prior to
18 the date set for termination of the tenancy, at the rate of:

19 (a) Two Thousand Dollars (\$2,000.00) for a tenant
20 household with an income during the past twelve
21 (12) months at or below fifty percent (50%) of the
22 County median income, or

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THE NOTICE
ITEMS DUE TO THE QUALITY OF THE DOCUMENT

1 (b) Two (2) months' rent for a tenant household with
2 an income during the past twelve (12) months above
3 fifty percent (50%) of the County median income;
4 m. The owner seeks to discontinue use of an accessory
5 dwelling unit for which a permit has been obtained pursuant to
6 SMC Section 23.44.025 after receipt of a notice of violation of
7 the development standards provided in that section. The owner is
8 required to pay relocation assistance to the tenant household
9 residing in such a unit at least two (2) weeks prior to the date
10 set for termination of the tenancy, at the rate of:

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

smw:smw
November 29, 1988
just cause
(Substitute page)

1 (i) Two Thousand Dollars (\$2,000.00) for a tenant
2 household with an income during the past twelve (12)
3 months at or below fifty percent (50%) of the County
4 median income, or

5 (ii) Two (2) months' rent for a tenant household with
6 an income during the past twelve (12) months above
7 fifty percent (50%) of the County median income;

8 n. An emergency order requiring that the housing unit
9 be vacated and closed has been issued pursuant to SMC
10 Section 22.206.260 and the emergency conditions identified
11 in the order have not been corrected;

12 o ((5)). The owner seeks to discontinue sharing with a
13 tenant the owner's own housing unit, i.e., the unit in which
14 the owner resides, or seeks to terminate the tenancy of a
15 tenant of an accessory dwelling unit authorized pursuant to
16 SMC 23.44.025 that is accessory to the housing unit in which
17 the owner resides, so long as the owner has not received a
18 notice of violation of the development standards of SMC
19 23.44.025 regarding that unit. If the owner has received
20 such a notice of violation, subsection m applies. ((If a
21 tenant is a resident of the owner's own housing unit, the
22 owner may evict the tenant at any time in the manner
23 provided by law));

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

p>(*). ((If a)) A tenant, or with the consent of the
tenant, his or her subtenant, sublessee, resident or guest,
has engaged ((s)) in criminal activity ((or conduct in the
building or)) on the premises, or on the property or public
right of way abutting the premises, and the owner has
specified in the notice of termination the crime alleged to
have been committed and the general facts supporting the
allegation, and has assured that the Department of
Construction and Land Use has recorded receipt of a copy of
the notice of termination.

For purposes of this subsection a person has "engaged in
criminal activity" if he or she:

- 1) engages in drug-related activity that would
constitute a violation of RCW Chapters 69.41, 69.50 or
69.52; or
- 2) engages in activity that is a crime under the laws
of this state, but only if the activity substantially
affects the health or safety of other tenants or the
owner.

2. Any rental agreement provision which waives or
purports to waive any right, benefit or entitlement created
by this subsection C shall be deemed void and of no lawful
force or effect.

NOTICE: THIS DOCUMENT MAY BE SUBJECT TO DISCOVERY IN A LITIGATION
AND IS NOT TO BE USED FOR THE PURPOSES OF THE DOCUMENT

1 3. With any termination notices required by law,
2 owners terminating any tenancy protected by this section
3 shall advise the affected tenant or tenants in writing of
4 the reasons for the termination and the facts in support of
5 those reasons.

6 4. If a tenant who has received a notice of
7 termination of tenancy claiming subparagraph 1e, 1f, or 1m
8 as the ground for termination believes that the owner does
9 not intend to carry out the stated reason for eviction and
10 makes a complaint to the Director, then the owner must,
11 within ten (10) days of being notified by the Director of
12 the complaint, complete and file with the Director a
13 certification stating the owner's intent to carry out the
14 stated reason for the eviction. The failure of the owner to
15 complete and file such a certification after a complaint by
16 the tenant shall be a defense for the tenant in an eviction
17 action based on this ground.

18 5. In any action commenced to evict or to otherwise
19 terminate the tenancy of any tenant, it shall be a defense
20 to the action that there was no current rental housing
21 registration, as required by SMC Section 22.202.060, for the
22 building in which the tenancy existed, or that there was no
23 ((good)) just cause for such eviction or termination as
24 provided in this section.
25
26

NOTICE: IF THE DOCUMENT NUMBER FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

1 6((5)). It shall be a violation of this section for
2 any owner to evict or attempt to evict any tenant or
3 otherwise terminate or attempt to terminate the tenancy of
4 any tenant using a notice which references subparagraphs 1e,
5 1f, ((or 1g)), 1h, 1k, 1l, or 1m of this subsection C as
6 grounds for eviction or termination of tenancy without
7 fulfilling or carrying out the stated reason for or
8 condition justifying the termination of such tenancy.

9 7. An owner who evicts or attempts to evict a tenant
10 or who terminates or attempts to terminate the tenancy of a
11 tenant using a notice which references subparagraphs 1e, 1f,
12 or 1h of this subsection C as the ground for eviction or
13 termination of tenancy without fulfilling or carrying out
14 the stated reason for or condition justifying the
15 termination of such tenancy shall be liable to such tenant
16 in a private right for action for damages up to two thousand
17 dollars (\$2000.00), costs of suit or arbitration, and
18 reasonable attorney's fees.

19
20 Section 3. The amendments contained herein shall
21 not affect any right accrued, any time limit for compliance,
22 any penalty incurred or any proceeding commenced under or by
23 the superseded provisions.
24
25
26

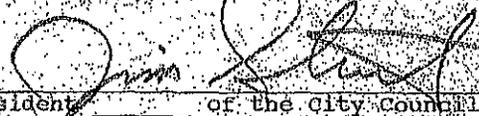
NOTICE: THE DOCUMENT LENGTH FRAME IS LESS THAN THIS NOTICE IS DUE FOR THE DURATION OF THE DOCUMENT

enw:snw
December 4, 1995
just cause
(Substitute page)

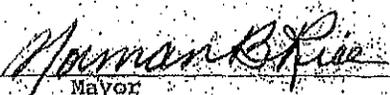
1 Section 4. The provisions of this ordinance are
2 declared to be separate and severable. The invalidity of any
3 clause, sentence, paragraph, subdivision, section or portion
4 of this ordinance, or the invalidity of the application
5 thereof to any person or circumstance shall not affect the
6 validity of the remainder of this ordinance, or the validity
7 of its application to other persons or circumstances.

8
9 Section 5. This ordinance shall take effect and be
10 in force thirty (30) days from and after its approval by the
11 Mayor, but if not approved and returned by the Mayor within
12 ten (10) days after presentation, it shall take effect as
13 provided by Municipal Code Section 1.04.020.

14 Passed by the City Council the 11 day of December
15 1995, and signed by me in open session in authentication of its
16 passage this 11 day of December, 1995.

17
18 
19 President of the City Council

20 Approved by me this 13 day of December
21 1995.

22 
23 Mayor

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

smw:smw
December 4, 1995
just cause
(Substitute page)

1 Filed by me this 14 day of December
2 1995.

3 Margaret Catta
4 Clerk

5 (Seal)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS THE DUTY OF THE CLERK TO THE COURT TO FILE THIS DOCUMENT

APPENDIX B

**HCDUE
Divided Report**

**Just Cause Eviction Ordinance
Amendments**

NOTES: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE,
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Seattle City Council

Memorandum

Date: November 30, 1995

To: All Councilmembers

From: *JM* Bob Morgan, Central Staff

Subject: Divided Report: Just Cause Eviction Ordinance: Item #12 CB 11018

Background:

Amendments to the Just Cause Eviction ordinance were proposed by the executive for several reasons; to make house-keeping corrections; to accommodate changes in other city codes, (such as the addition of accessory units to the land use code, and new limits on the number of unrelated tenants who can live in a dwelling unit), and to respond to owner concerns about the ability to prepare a dwelling for sale, and to evict for criminal activity. A complete list of the significant provisions of the bill as approved by the HDCUE Committee majority is attached.

The HDCUE Committee unanimously recommends passage of CB 110018 amending the City's Just Cause Eviction Ordinance, with divided reports on two issues:

DIVIDED REPORT #1 CRIMINAL ACTIVITY

The current Just Cause Eviction ordinance provides that criminal activity is a just cause for eviction. This provision has been interpreted by DCLU to mean that a conviction is required to evict for criminal activity.

The proposed ordinance includes several provisions concerning criminal activity that are agreed upon by all committee members. The agreed upon provisions would do the following:

- I. Clarify in the ordinance that the "nuisance" cause for eviction includes drug-related activity. "Nuisance" is a permitted cause for eviction which does not require conviction;
- II. Clarify that drug-related activity can also be considered criminal activity, a cause for eviction that is separate from nuisance, and that conviction is not required to evict for drug-related criminal activity;

- III. Limit eviction for *non*-drug-related crimes to those that significantly affect the health or safety of tenants or owners;
- IV. Permit eviction for crimes committed in the building, on the premises and on right of way abutting the premises. Currently only crimes committed in the building or on the premises are cause for eviction; and
- V. Require that notices of termination given to tenants include the reasons for termination and the facts in support of those reasons.

The Committee divided, on the standard of proof that is required in order to evict for crimes other than drug-related activity:

Harris, Drago:

Require conviction in order to have just cause for eviction for criminal activity, except, as provided by state law, for physical assaults and unlawful use of a firearm or other deadly weapon where there is an arrest, or for drug-related activity.

Street:

Do not require conviction or arrest for eviction for non-drug-related criminal activity. Require that the owner go on record by stating the criminal allegations as part of the notice of termination to DCLU as well as to the tenant.

Majority Reasons (Harris, Drago):

The majority position is supported by both the Tenants Union and the Apartment Association of Seattle and King County.

Our original interest in the criminal activity cause for eviction had to do with evictions for drug-related activity. We believe that issue has been adequately addressed by the clarifications agreed upon unanimously by the committee; neither conviction nor arrest are required to evict for drug-related activity, either as a nuisance or as criminal activity.

For criminal activity that is imminently hazardous to other persons on the premises and that involves a physical assault or unlawful use of a firearm or other deadly weapon, we believe it is appropriate and consistent with state law to require an arrest instead of conviction before an eviction can occur. If this type of criminal activity has occurred, the police should be involved to help prevent the activity from reoccurring.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

For the narrow band of criminal activity which does not involve drug-related activity, and for which state law does not already allow eviction without a conviction, we believe it is important to maintain the conviction requirement, because tenants may not realize their rights and may move in response to an unfounded accusation. If the tenant agrees to move, there is never a hearing or trial at which the owner would have to prove the accusation. In addition, a tenant could be accused of a crime and asked to vacate his or her home without ever having the crime reported to or investigated by the police.

Also, an eviction for criminal activity will carry a stigma which tenants should not have to bear without the higher standard of proof required for conviction.

Finally, some activities that fall under the "criminal activity" just cause may also fall under other just causes, which do not require an arrest or conviction, such as nuisance or failure to comply with rental agreement terms or rules. In such cases, an eviction could be sought under the alternative just cause without an arrest or conviction.

Minority Reasons (Street):

The criminal activities at issue here are those that significantly affect the health or safety of other tenants or the owner. Other tenants' right to live in a building without such risk is at stake.

The result of eviction for criminal activity is the same result as eviction for any of the other causes permitted by our ordinance. It is a civil result and one for which a civil standard is appropriate. It is ironic that a tenant may be evicted relatively easily for innocuous things such as violating laundry room hours, or having a pet against rules, and yet the owner must take extraordinarily difficult action to evict a tenant for serious crimes that significantly affect the health or safety of other tenants or the owner.

A tenant may not be evicted based solely on the accusation of an owner. If the tenant does not concur with an owner's accusation he or she is entitled to a hearing, and the owner must prove in court by a preponderance of the evidence that the alleged crime has taken place. I have also recommended that the owner go on record with the notice of termination which states what crime is alleged and the facts supporting the allegation to discourage those who would not go on record falsely accusing their tenant of a crime.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

DIVIDED REPORT #2 SALE OF A SINGLE FAMILY DWELLING

Currently eviction in order to sell a single family dwelling is not a permitted just cause. Owners have expressed concern about being able to prepare a house for sale and show the house to prospective buyers without hinderance. Tenants are not currently required to vacate a house until a sale has closed, and the new owner seeks to evict the tenant to occupy the house. The State Landlord Tenant Act requires property owners to give 48 hours notice to make repairs or improvements and 24 hours notice when showing property to prospective purchasers. Also, owners may enter the property only at reasonable times and must have the consent of the tenant.

Harris Drago:

Make sale of a single family dwelling just cause for eviction, so that owners may make ready and show property to prospective buyers. Provide for extraordinary 60 days notice to tenants, set minimum requirements to demonstrate intent to sell, provide a rebuttable presumption of violation if the dwelling is taken off the market within 90 day, require owners to certify their intent if tenants complain, and provide a private right of action to tenants if falsely evicted for this reason.

Street:

Do not permit eviction in order to sell a single family dwelling.

Majority Reasons:

Current regulations which require notice before entering to make repairs and before showing property, together with the presence of the tenant, are an unwarranted hinderance to a person who would like to sell their rental house. In addition, single family dwelling units, more than any other type of rental unit, may be purchased by owners who want to occupy rather than rent the house. Without this new just cause, new owners would have to wait 20 days at a minimum after closing before they could occupy their new house.

The 60 days notice gives tenants more than adequate notice to relocate, which they may have to face at some point regardless of this amendment.

Our recommendation also includes numerous provisions to avoid misuse of this just

cause and protect tenants. The owner must attempt to sell the house within 30 days after the tenant vacates the house, and, at a minimum, must list it for a reasonable price with a realtor or advertise it for sale at a reasonable price in a newspaper. There is a rebuttable presumption that the owner did not intend to sell the house if it is not listed as required within 30 days of being vacated, or if it is withdrawn from the market within 90 days of being vacated or listed.

Finally, a complaint-based certification and a private right of action are provided for this just cause to deter misuse and allow tenants several avenues of recourse in the event of misuse.

Minority Reasons:

In many cases when a rental property is sold it will continue to be a rental unit. A new owner may not seek to occupy the unit. The same arguments in favor of allowing eviction for sale of a single family dwelling also apply to duplexes and apartments, but we do not permit such evictions because the impact on the tenant (which might not be necessary if the unit is to continue to be rented) weighs more heavily than the inconvenience of the owner.

In addition, tenants are required to grant reasonable requests to enter the house for repairs or to show for sale.

**Summary of Major Provisions
of CB 111018 Just Cause Eviction Ordinance Amendments
as Approved by the HCDUE Committee Majority**

The Council bill would:

1. **Criminal Activity:**

- A. Clarify in the ordinance that the "nuisance" cause for eviction includes drug-related activity. "Nuisance" is a permitted cause for eviction which does not require conviction.
- B. Limit eviction for *non*-drug related crimes to those that significantly affect the health or safety of tenants or owners.
- C. Permit eviction for crimes committed in the building, on the premises and on right of way abutting the premises. Currently only crimes committed in the building or on the premises are cause for eviction.
- D. Provide that conviction is required to evict for criminal activity, *except* for crimes for which state law permits eviction without a conviction: drug-related activity, and physical assaults or unlawful use of firearm or other deadly weapon when there has been an arrest. The current ordinance has been interpreted as requiring conviction to evict for any criminal activity.

2. **Rebuttable Presumption of Violation for Certain Causes.**

Provide that there is a rebuttable presumption of violation of the just cause ordinance under specific conditions when evicting in order to sell a single family dwelling or when the owner or immediate family seeks to occupy the unit. The presumption of violation may be rebutted by the owner if there are extenuating circumstances. The rebuttable presumption shifts the burden of proof under specific circumstances to favor the tenant.

The causes and the conditions which result in the rebuttable presumption are as follows:

- ◆ **Sale of a single family dwelling:** If the owner does not list the dwelling for sale as required by the ordinance, within 90 days of vacating or listing the unit for sale, withdraws the unit from the market, rents the unit to someone other

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

than the tenant, or otherwise indicates that he or she does not intend to sell the unit; and

◆ When the owner or immediate family seeks to occupy the unit: If the owner or a member of the owner's immediate family fails to occupy the unit as their principal residence for at least 60 consecutive days during the 90 day period after the tenant has vacated the unit.

3. Private Right of Action

Give tenants a private right of action for damages up to \$2,000 when certain causes for eviction are employed, but the stated reasons for eviction are not fulfilled or carried out. The causes are those which occur after the tenant has vacated the unit, and are therefore difficult for the City to enforce. The causes are as follows:

- ◆ the sale of a single family dwelling,
- ◆ when planning to undertake substantial rehabilitation, and
- ◆ when the owner or owner's family member seeks to occupy the unit.

4. Complaint-based certification

For certain just causes, give DCEU authority to require owners to certify to DCEU their intended cause for eviction if there is a complaint by a tenant, and make failure to submit certification a defense to eviction. The causes to which this applies are as follows:

- ◆ when the owner or immediate family seeks to occupy the unit,
- ◆ the sale of a single family dwelling, and
- ◆ when the owner intends to discontinue use of an ADU as a result of a notice of violation.

5. Sale of a Dwelling as Just Cause

Permit owners to evict tenants when they intend to sell a single family dwelling. Owners are required to give tenants 60 days notice and must make reasonable attempts to sell the dwelling, including at a minimum listing or advertising it for sale at a reasonable price.

Several provisions are intended to prevent abuse of this cause for eviction. As noted above, there would be a rebuttable presumption of violation if the unit is

NOTICE: IF THE DOCUMENT ON THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

not advertised as required, or is taken off the market or re-rented within 90 days. DCLU may require certification of the intended cause for eviction if there is a tenant complaint, and tenants are given a private right of action in connection with this cause.

6. Eviction from Accessory Dwelling Units (ADUs).

In addition to the permitting eviction from an ADU for causes already provided in the ordinance, permit eviction from an ADU if an owner simply decides to terminate the tenancy, and/or if a notice of violation of development standards for ADUs has been issued.

If the eviction is in response to a notice of violation, the owner is required to pay relocation assistance, and must certify to DCLU the reason for eviction if a complaint is made.

7. Requirements when reducing the number of tenants to comply with the legal limit:

Permit evictions to reduce the number of tenants to comply with newly adopted limits on the number of unrelated adults who may reside in a unit. (The limit was recently reduced from 10 to 8.)

Also add the following requirements:

- A. Require a 30 day notice to tenants that the number of tenants must be reduced.
- B. After expiration of the 30 day notice require another 10 day notice that tenants have the opportunity to voluntarily come into compliance.
- C. If there are multiple rental agreements for a unit, the owner is to have the discretion of which agreements to terminate, but may terminate only the minimum number of agreements required to come into compliance with the limit, or those agreements with the minimum number of occupants required to come into compliance with the limit.
- D. Require the owner to pay relocation assistance if the number of tenants must be reduced to comply with a notice of violation and the violation occurred with the knowledge and consent of the owner.

8. Eviction when the owner or member of the owner's immediate family seeks to occupy the unit.

NOTICES IN THIS DOCUMENT IN U.S. ENGLISH ARE LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT

Add requirements to this existing cause for eviction as follows:

- A. Provide for a rebuttable presumption of violation if the owner or owner's immediate family does not occupy the unit for a continuous period of 60 days within the first 90 days after the tenant vacates, as described above.
- B. Require certification to DCLU of the intended cause for eviction if the tenant complains.

9. Relocation assistance when evicting due to non-compliance with limits on the number of occupants (when the owner is responsible) or noncompliance with ADU development standards:

- A. Require relocation assistance be paid by the owner when evicting due to non-compliance with the limits on the number of occupants, when a violation was created with the knowledge or consent of the owner.
- B. Require relocation assistance when evicting the tenant of an ADU after receiving a notice of violation of ADU development standards.
- C. In the above situations, the amount of relocation assistance shall be \$2,000 for households at or below 50% of median income, or 2 times the rental amount for households above 50% of median income.

10. Description of Just Cause Eviction Processes

- A. Generally describe in the ordinance the state procedural requirements for court orders and the opportunity for hearing before eviction.
- B. Indicate that for eviction the owner must prove by a preponderance of the evidence that good cause exists, except where specifically provided otherwise (such as when the criminal activity cause is employed and conviction or arrest is required).
- C. Require that owners state the facts supporting cause for eviction in the notice of termination to the tenant.

11. Who Constitutes "Immediate Family" when Evicting so that the Owner's Immediate Family may Occupy the Unit.

Include the owner's domestic partner registered pursuant to city code and the parents, grandparents, children, brothers and sisters of the owner's domestic partner among those who are considered the owner's immediate family for the purposes of permitting eviction when the owner or owner's immediate family seeks to occupy a unit.

NOTICE: IS THE DOCUMENT IN THIS FRAME AS BESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT

12. Emergency Orders

Permit eviction pursuant to DCU emergency orders.

13. Substantial Rehabilitation Term

Change the term "major reconstruction or rehabilitation" to "substantial rehabilitation" to be consistent with the Tenant Relocation Assistance Ordinance.

NOTICE: IF THE DOCUMENT ON THIS PAGE DOES NOT PRINT FULLY, PLEASE CONTACT THE COUNTY CLERK'S OFFICE FOR ASSISTANCE.

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, September 26, 2016 12:55 PM
To: 'Reise, Alicia L'
Cc: tjk@tjkeanelaw.com; dmp@tjkeanelaw.com; ccutting@loefflerlegal.com; sidney@tal-fitzlaw.com; ericd@nwjustice.org; allysono@nwjustice.org; leticia@nwjustice.org; cbenis@hbslegal.com; kgeorge@hbslegal.com
Subject: RE: Faciszewski v. Brown, No. 92978-5

Received 9/26/16.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:
http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:
http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:
<http://dw.courts.wa.gov/>

From: Reise, Alicia L [<mailto:Alicia.Reise@seattle.gov>]
Sent: Monday, September 26, 2016 12:35 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: tjk@tjkeanelaw.com; dmp@tjkeanelaw.com; ccutting@loefflerlegal.com; sidney@tal-fitzlaw.com; ericd@nwjustice.org; allysono@nwjustice.org; leticia@nwjustice.org; cbenis@hbslegal.com; kgeorge@hbslegal.com
Subject: Faciszewski v. Brown, No. 92978-5

Dear Clerk,

Please find attached for filing in *Faciszewski v. Brown*, No. 92978-5, the City of Seattle's Motion for Permission to File an *Amicus Curiae* Brief and the proposed Brief of *Amicus Curiae* City of Seattle.

By agreement, the City is serving the other parties by copy of this message.

Thank you,



Alicia Reise
Legal Assistant, Land Use
Section

Seattle City Attorney's Office

Civil Division
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Phone: 206-684-8247
FAX: 206-684-8284
alicia.reise@seattle.gov

CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client privilege, the attorney work product doctrine, or by other confidentiality provisions. If this message was sent to you in error, any use, disclosure, or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.