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No. 95813-1

SUPREME COURT
OF THE STATE OF WASHINGTON

CHONG and MARILYN YIM, KELLY LYLES,
BETH BYLUND, CNA
APARTMENTS, LLC, and EILEEN, LLC,

Respondents,

v.

THE CITY OF SEATTLE,

Appellant.

BRIEF OF *AMICUS CURIAE*
RENTAL HOUSING ASSOCIATION OF WASHINGTON

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A. INTRODUCTION

The City of Seattle (“City”) enacted Ordinance Number 125114 in 2016 requiring landlords in the City to promulgate criteria for the rental of residential units and then mandatorily rent to the first prospective renter who putatively meets such criteria. The centerpiece of that ordinance is Seattle Municipal Code (“SMC”) § 14.08.050.¹

Various landlords sued the City in the King County Superior Court contending that this first-in-time ordinance (“FIT”) unconstitutionally violated their rights to substantive due process of law and to engage in commercial free speech, and constituted a taking of their property. An experienced King County trial judge agreed, invalidating FIT as unconstitutional under well-established constitutional law principles in Washington.

Now, the City seeks review by this Court, arrogantly asserting that the justices of this Court for decades did not know the “correct” law on substantive due process or takings.²

¹ That Ordinance was subsequently amended in 2016 by Ordinance 125228, delaying its effective date to July 1, 2017.

² Quoting his own law review article, offering his spin on substantive due process law largely from the perspective of an attorney defending government intrusions on private property rights, the City’s counsel generously notes that “the City casts no blame on this Court” for misunderstanding the law for decades. Br. of Appellant at 24-25.

The trial court correctly applied the controlling constitutional principles. This Court should reject the City's invitation to elevate its attorney's law review article over the decades-long interpretation of due process and takings by this Court and all three divisions of the Court of Appeals. Such an approach would disrupt settled Washington constitutional law principles and invite uncertainty and new litigation to discern the ramifications of any shift by this Court in its settled constitutional principles.

B. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The identity and interest of the Rental Housing Association of Washington ("RHA") in this action, as required by RAP 10.3(e), are articulated in detail in RHA's motion for leave to submit this *amicus* brief.

C. STATEMENT OF THE CASE

RHA adopts the statement of the case set forth in the respondents' brief. However, RHA wishes to address serious misstatements of fact in the City's briefing regarding its position on FIT. When it was convenient for the City's argument, it discussed RHA's position on what should only be a best practice for landlords, noting that RHA is "one of the most valuable resources for independent rental owners and managers" in Washington. Br. of Appellant at 10. However, when RHA had the audacity to assert that best practices should not be made *mandatory* in the

SMC with attendant civil and criminal penalties for landlords who violate FIT, Resp'ts Br. at 5-6, the City resorts to claiming that RHA only recently "backpedaled" on its position. Reply Br. at 8. That is simply false.

RHA actively participated before the Seattle City Council on the Council Bill that became FIT, articulating its opposition to the City's proposed mandatory FIT law. One of the plaintiffs in the case is a corporation in which Christopher Benis, the former RHA president, is a principal. RHA is quoted in news accounts, welcoming the trial court's ruling here.³ This was not, as the City claims, a "change of heart" on RHA's part. RHA favors FIT as a *best practice* when confronted with multiple, equally valid applications as a "tie breaker." It should not be a City-mandated legal requirement with attendant heavy penalties for many good, practical reasons borne of landlords' real world experiences in renting properties.

³ See, e.g., Sara Anne Lloyd, *Court rules against Seattle's first-in-time law*, Curbed, March 29, 2018, <https://seattle.curbed.com/2018/3/29/17177026/seattle-first-in-time-law> ("In a statement, the Rental Housing Association of Washington (RHAWA)'s interim executive director Sean Martin said he's 'pleased that the court recognized the rights of rental housing owners to decide how to lawfully operate their private property.'"); Daniel Beekman, *Judge rejects Seattle's 'first-come, first-served' rental law as unconstitutional*, Seattle Times, March 28, 2018, <https://www.seattletimes.com/seattle-news/politics/judge-rejects-seattles-first-come-first-served-rental-law/> ("Chris Benis, a real-estate attorney and a plaintiff in the case whose family owns a small apartment building in Magnolia, said getting to know perspective tenants is important. 'The idea of the city preventing us from making a judgmental call to protect our property and other tenants is just plain wrong,' said Benis, who serves as legal counsel for and is a past president of the Rental Housing Association of Washington, a landlord group.").

The City also underplays FIT's implications in practice. If a landlord violates that ordinance, it is an unfair practice under SMC § 14.08.050. CP 335-38. Such an unfair practice subjects a landlord to civil liability with injunctive relief and/or damages and attorney fees. SMC § 14.08.095. A landlord is further subject to administrative charges. SMC §§ 14.08.100-.165. The City Attorney may file an action before the City Hearing Examiner against a landlord after the administrative investigation. SMC § 14.08.180. The Hearing Examiner may exact extensive relief from the landlord including rent refunds or credits and attorney fees. SMC § 14.08.180C. The City may even seek a civil penalty from the landlord - \$11,000 for the first violation, with escalating penalties thereafter. SMC § 14.08.185.

D. ARGUMENT

(1) FIT Constitutes a Taking of Landlords' Property Right to Lease to Persons of Their Choosing

(a) The City Seeks to Overrule the Court's Prior Decisions Without Meeting This Court's *Stare Decisis* Protocol

For this Court to adopt the City's position and uphold FIT would require this Court to overrule its prior, controlling decisions on takings,⁴ as the City tacitly acknowledges in its briefing. Br. of Appellant at 2, 3, 4,

⁴ And on substantive due process as well, as will be discussed *infra*.

47; Reply Br. at 7, 16. However, the City neglects to directly confront this Court's stringent *stare decisis* protocol and also mischaracterizes the Court's opinion in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000) ("*MHCW*") to do so.⁵

As noted by respondents in their brief at 18-19, this Court values *stare decisis*; it has established a *stringent* protocol for overturning prior common law rulings beginning in *In re Stranger Creek and Tributaries of Stevens Cty.*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). The reasons for adhering to past precedents are important. "Although *stare decisis* limits judicial discretion, it also protects the interests of litigants by providing clear standards for determining their rights and the merits of their claims. Therefore, overruling prior precedent should not be taken lightly." *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 278, 208 P.3d 1092 (2009). *Stare decisis* promotes predictability and consistency in the development of legal principles, allows for reliance on those principles, and contributes to the integrity of the judicial process. *Keene v. Edie*, 131 Wn.2d 822, 831, 935 P.2d 588 (1997). A party seeking to overrule prior case law must *clearly* document that the established rule is both incorrect and harmful. *Deggs v. Asbestos Corp, Ltd*, 186 Wn.2d 716, 728-29, 381

⁵ Nor does the City identify with precision the *numerous* decisions of this Court or the Court of Appeals that would need to be overruled to achieve its disruption of settled Washington constitutional law.

P.3d 32 (2016). Indeed, in *State v. Johnson*, 188 Wn.2d 742, 399 P.3d 507 (2017), this Court re-affirmed the stringency of this protocol in adhering to its case law interpreting the law of the case doctrine in criminal cases despite changes in federal law on the same issue. *Id.* at 758-62. The Court also noted that it would not overrule prior decisions based on arguments that were adequately considered and rejected in the original decisions themselves. *Id.* at 757.

Moreover, the City asserts that Justice Ireland's opinion in *MHCW* represented a "fractured decision," Br. of Appellant at 1, that somehow is not binding as a mere plurality opinion. *Id.* at 47. That assertion is both superficial and wrong. As the respondents note in their brief at 9-10, this Court looks to the narrowest holding on which a majority of justices agree as the Court's holding. *Davidson v. Hensen*, 135 Wn.2d 112, 128, 954 P.2d 1327 (1998). As will be noted *infra*, the Court's holding in *MHCW* is clear.⁶

⁶ In *MHCW*, the lead opinion commanded four votes. Justice Madsen concurred in the result only. Justice Sanders concurred that a taking occurred as a result of the imposition of a statutory right of first refusal on property owners wishing to sell mobile home parks. 142 Wn.2d at 379 ("Properly analyzed, what the park owners claim the statute unconstitutionally took from them is their alleged right to sell their mobile home parks in any manner they might choose to whomever they might choose.") Justice Talmadge's dissent plainly understood the lead opinion to represent the majority view of the Court on what constituted a taking under the Washington Constitution. *Id.* at 398 (referencing "The Majority's *Gunwall* analysis and Property Rights in Washington.").

(b) The *MHCW* Court’s Decision on a Taking Is Predicated on Article I, § 16 of the Washington Constitution⁷

As noted *supra*, the outcome in this case is controlled by this Court’s decision in *MHCW*. The Court’s critical holding there, generated after the independent state constitutional analysis required by *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), was that article I, § 16 more broadly defines a “taking” than do the Fifth or Fourteenth Amendments to the United States Constitution.

The City’s briefing neglects to address the fact that the *MHCW* court conducted the requisite *Gunwall* analysis, 142 Wn.2d at 356-61, or that the Court found article I, § 16 to more broadly define a taking than does federal law. *Id.* at 361. The *MHCW* court specifically *rejected* any reliance on *Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993), *cert. denied*, 510 U.S. 1176 (1994), a case arising under federal constitutional principles. The Court also *rejected* treating “takings” identically under federal and state law, as the City now advocates in this case. The Court specifically stated at 356 n. 7: “[I]n this case, we answer the call to

⁷ The City makes reference in its brief at 25-26 to the respondents’ alleged obligation to “prove” FIT’s unconstitutionality beyond a reasonable doubt, as if this were the respondents’ evidentiary burden. It cites old case law for that proposition, omitting this Court’s more recent, and correct, analysis of “reasonable doubt” as an interpretive principle, a shorthand description of this Court’s deference to a legislative enactment, the work of a coordinate branch of government. *In re A.W.*, 182 Wn.2d 689, 701, 344 P.3d 1186 (2015).

conduct a *Gunwall* analysis for the first time and should not be limited to prior pronouncements of parallelism between our state and federal takings' clauses.”⁸

The Court then concluded that a right of first refusal was a property right under Washington law. 142 Wn.2d at 363-68.⁹ The City does not challenge the *MHCW* court's conclusion that a right of first refusal “is a fundamental attribute of ownership and a valuable property right, and that the forced transfer ... constitutes a taking.” 142 Wn.2d at 370. Nor does the City cite any authority calling that decision into question; other jurisdictions apply the fundamental attribute of ownership analysis to takings.¹⁰

⁸ The dissent understood the lead opinion to have conducted the *Gunwall* analysis for that purpose, *id.* at 398-99, and that the lead opinion was departing from a “co-extensive” definition of takings under state and federal constitutional law. *Id.* at 405-06.

⁹ Justice Sanders agreed in his concurrence. *Id.* at 378-81.

¹⁰ See, e.g., *Sterling Park, L.P. v. City of Palo Alto*, 310 P.3d 925, 934-35 (Cal. 2013); (“[A] purchase option is a sufficiently strong interest in the property to require compensation if the government takes it in eminent domain.”); *Gregory v. City of San Juan Capistrano*, 142 Cal. App. 3d 72, 89 (1983) (A requirement that an owner convey a right of first refusal to a particular person or entity “simply appropriates an owner's right to sell his property to persons of his choice,” along with his “legally recognized right to sell a right of first refusal or preemptive right” in the subject property to whomever he chooses.), *disapproved on other grounds, Fisher v. City of Berkeley*, 37 Cal. 3d 644, 686 n.43 (1984); see also, *Gore v. Beren*, 867 P.2d 330, 338 (Kan. 1994) (“Agreements creating an option or a preemptive right to purchase real estate constitutes property interests”); *Ferrero Construction Co. v. Dennis Rourke Corp.*, 536 A.2d 1137, 1139-40 (Md. 1988) (“The vast majority of courts and commentators have held that rights to first refusal, which are more commonly known as ‘preemptive rights,’ are interests in property and not merely contract rights.”); but see *Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc.*, 986 So. 2d 1279, 1286 (Fla. 2008) (holding

The Court concluded that the right of a property owner to sell her/his property to a person of their own choosing was a “fundamental attribute of ownership,” taken by the mobile home park statute at issue there. *Id.* at 369.

Simply put, the *MHCW* court concluded that a taking occurred *under article I, § 16 of the Washington Constitution* if a fundamental attribute of a property owner’s interest in her/his property was taken by governmental action.¹¹ All of the discussion in the City’s brief at 33-45 and its reply brief at 15-16 of federal takings analysis is a sidelight irrelevant to the resolution of the issue now before the Court. The City’s discussion of *MHCW* in its brief at 47-53 and its reply brief at 17-21 essentially ignores the *MHCW* court’s actual holding in the case. Ultimately, the *MHCW* court held that if government action effectuated a deprivation of a property owner’s fundamental attribute of ownership, a taking occurred *under Washington constitutional law*.¹² There, a statutory

that a right of first refusal is not a property right, but recognizing that “courts adopting the majority view generally conclude that an option or right of first refusal creates an interest in property”).

¹¹ That the *MHCW* court ruled on Washington constitutional grounds has been recognized by courts applying *MHCW*’s principles. *See, e.g., Laurel Park Community LLC v. City of Tumwater*, 698 F.3d 1180, 1191-92 (9th Cir. 2012).

¹² This is clear where the lead opinion noted that a taking occurred because private property was transferred to private persons, a uniquely Washington constitutional law factor. “...we are persuaded that a taking has occurred in this case not only because

right of first refusal on the sale of property to another was a taking, even though the owner would receive exactly the same money for her/his property; the only “right” affected was the right of the owner to sell to the person or entity of her/his choosing. 142 Wn.2d at 379. It is no less a taking where FIT proposed to deprive a property owner of the right to lease property to the person of that owner’s choosing. Indeed, the *MHCW* court specifically recognized that the right to transfer property to others was a fundamental ownership attribute. *Id.* at 367. Arguably, FIT is more intrusive than a right of first refusal as to a sale. The owner selling the property has no more relationship to the property; by contrast, the landlord undertakes an *ongoing* relationship with any tenant.

In sum, the trial court did not err in applying this Court’s state constitutional analysis in *MHCW*. This Court should not overrule *MHCW*’s analysis of article I, § 16 that has been in place for nearly twenty years without incident. The City has failed to demonstrate that such analysis is either incorrect or harmful. The fact that Washington courts have for decades determined that the government’s deprivation of a fundamental attribute of property ownership is a taking has not limited the

an owner is deprived of a fundamental attribute of ownership, but also because the property is statutorily *transferred*.” 142 Wn.2d at 369 (Court’s emphasis).

ability of Washington governments to function, or to exercise their eminent domain authority.¹³

The City overreached in enacting FIT. It can point to no analogous law anywhere in the United States in no small part due to the fact that it constitutes such a major deprivation of property owners' rights. Contrary to the City's contention in its brief at 53-54 and reply brief at 21, FIT specifically transfers the ultimate right to determine who rents a landlord's

¹³ See, e.g., *Presbytery of Seattle v. King Cty.*, 114 Wn.2d 320, 330, 787 P.2d 907, cert. denied, 488 U.S. 911 (1990); *Guimont*, 121 Wn.2d at 625 n.6 (Noting that “[n]ot every infringement on a fundamental attribute of property ownership necessarily constitutes a “taking”) (citing *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 82-38, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980), a case holding that a regulation allowing protesters onto private mall property did not deprive the owner of a fundamental attribute of property ownership where the right to exclude is not central to the business property). Other jurisdictions apply this principle as well. E.g., *Hillside Terrace, L.P. ex rel. Hillside Terrace I LLC v. City of Gulfport*, 18 So. 3d 339, 344-45 (Miss. App. 2009) (“A taking is effected if the application of a zoning law denies a property owner of economically viable use of his land. This can consist of preventing the best use of the land or extinguishing a fundamental attribute of ownership.”) (quoting *Vari-Build, Inc. v. City of Reno*, 596 F. Supp. 673, 679 (D. Nev. 1984)); *Perkins v. Bd. of Supervisors of Madison Cty.*, 636 N.W.2d 58, 70 (Iowa 2001) (“Government action that neither prevents the best use of an owner’s land, nor extinguishes a fundamental attribute of ownership does not constitute a taking.”); *State ex rel. Elsass v. Shelby Cty. Bd. of Commrs.*, 751 N.E.2d 1032, 1037 (Ohio 2001) (“In cases of either physical invasion of the land or the destruction of a fundamental attribute of ownership like the right to access, the landowner need not establish the deprivation of all economically viable uses of the land.”); *Briarwood, Inc. v. City of Clarksdale*, 766 So. 2d 73, 82 (Miss. App. 2000) (“A taking is effected if the application of a zoning law denies a property owner of economically viable use of his land. This can consist of preventing the best use of the land or extinguishing a fundamental attribute of ownership.”); *Kavanau v. Santa Monica Rent Control Bd.*, 941 P.2d 851, 874 (Cal. 1997) cert. denied, 522 U.S. 1077 (1998) (“A taking also occurs if a land use regulation extinguishes a fundamental attribute of ownership.”); *Stupak-Thrall v. Glickman*, 988 F. Supp. 1055, 1064 (W.D. Mich. 1997) (“A regulation may also constitute a taking if it extinguishes a fundamental attribute of ownership.”); *Cable Alabama Corp. v. City of Huntsville, Ala.*, 768 F. Supp. 1484, 1508 (N.D. Ala. 1991) (“When governmental action extinguishes a “fundamental attribute of ownership” there has been a taking for purposes of the Fifth and Fourteenth Amendments to the United States Constitution.”).

property to tenants, just like the type of transfer to private interests the *MHCW* court prohibited. 142 Wn.2d at 369-74. For Washington to choose to be more protective of property owners' rights is not harmful, but rather is consistent with the broader thrust of article I, § 16, protecting property including protecting owners from government damaging of property, and the transfer of private property by government to other private interests. If this Court agrees with the foregoing, it need go no farther to affirm the trial court's decision.

(2) FIT Violates Landlords' Rights to Substantive Due Process of Law

(a) Appropriate Test to Analyze Substantive Due Process Issue

Just as the City claims this Court did not know what it was doing for decades as to takings law under article I, § 16, it asserts that the Court was equally dim in its analysis of substantive due process. It argues that this Court should merely adopt *en toto*, its lawyer's academic interpretation of the United States Supreme Court's analysis of that principle. Br. of Appellant at 15-17; Reply Br. at 2-8.

The City's central contention is that this Court has eliminated the requirement that a regulation must not be "unduly oppressive" as part of a substantive due process analysis after *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 143 P.3d 571 (2006), *cert. denied*, 549 U.S. 1282 (2007), a

case involving a party's liberty, not property, interests, because federal constitutional analysis mandates that outcome. But the City's position *vastly* overstates both this Court's analysis and that of the United States Supreme Court, as the respondents note. Resp'ts Br. at 23-29.

First, the *Amunrud* court did not overrule this Court's land use-related precedents applying the "unduly oppressive" prong of the substantive due process analysis that have been a part of our law for thirty or more years.¹⁴ In fact, the *Amunrud* majority *expressly* recognized that the "unduly oppressive" analysis is part of Washington's analysis of substantive due process for property-related cases. 158 Wn.2d at 226 n.5. In *Laurel Park*, the Ninth Circuit perceived the unduly oppressive prong to be a facet of a substantive due process analysis under Washington Constitution, article I, § 3. 698 F.3d at 1193-95. Moreover, in its recent opinion in *Fields v. Dep't of Early Learning*, __ Wn.2d __, 434 P.3d 999 (2019), a case with significant substantive due process overtones, this Court's three opinions all discussed *Amunrud*, but none of them indicated that this Court's 3-step analysis of substantive due process claims from *West Main Associates* and *Presbytery of Seattle* had been altered.

¹⁴ E.g., *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 52, 720 P.2d 782 (1986); *Presbytery*, 114 Wn.2d at 330. This prong of the substantive due process analysis has thus been a part of Washington law for more than 30 years, if not longer.

That the “unduly oppressive” prong of the substantive due process test remains alive in property-related cases in the eyes of Washington courts is documented by the fact that all three divisions of the Court of Appeals in *numerous* cases have continued to apply it over the last 13 years since *Amunrud* was decided, believing *Amunrud* did not eliminate that prong of the substantive due process analysis.¹⁵

If it is the City’s contention that *Amunrud* somehow eliminated the “unduly oppressive” prong *sub silentio*, it is wrong. This Court has long *disfavored* the *sub silentio* overruling of its precedents. As the Court stated in *Lunsford*:

Where we have expressed a clear rule of law as we did in *Robinson*, we will not—and should not—overrule it *sub silentio*. *Accord State v. Studd*, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999). To do so does an injustice to parties who rely on this court to provide clear rules of law and risks increasing litigation costs and delays to parties who cannot determine from this court’s precedent whether a rule of decisional law continues to be valid.

166 Wn.2d at 280.

Additionally, as respondents note at 27-29, federal substantive due process analysis at its core requires that the regulation “substantially advance” the government’s purpose in a regulation and must not unduly

¹⁵ See, e.g., *Craddock v. Yakima County*, 166 Wn. App. 435, 443, 271 P.3d 289 (2012) (Division III); *Bayfield Resources Co. v. Western Wash. Growth Management Hearings Bd.*, 157 Wn. App. 1067, 2010 WL 3639906 (2010) (Division II); *Klineburger v. Wash. State Dep’t of Ecology*, 4 Wn. App. 2d 1077, 2018 WL 3853574 at *4-5 (2018), *review dismissed*, 192 Wn.2d 1018 (2019) (Division I).

oppress the affected citizen in any event. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542-43, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005). The adverse impact of a regulation on the property owner is essential to that analysis and goes beyond the notion that there is merely a rational basis for such regulation. As that Court has observed, “a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause.” *Id.* at 542. Obviously, this analysis does not focus only on the government’s ostensible objective in the regulation, but also on how that regulation impacts the legitimate property interests of the regulated landowner. How else to assess the “arbitrariness” or “irrationality” of the regulation in the language of the *Lingle* court? The City invites this Court to focus *only* on the government’s ostensible regulatory objective and to *ignore* the impact of the regulation on the property owner. That would set the fundamental purpose of the Due Process Clause on its ear. “The touchstone of due process is *protection of the individual* against arbitrary action of government.” *Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974) (emphasis added).

Ultimately, the City wants this Court to treat property rights harms under a rational basis type of due process analysis, even though, as will be noted *infra*, such harms constitute the impairment of a fundamental right,

usually reviewed under a strict or heightened scrutiny analytical framework. Br. of Appellant at 15-17. The City's argument is far too deferential to government intrusions on property rights, and will compel future litigation to determine which, if any, rights remain fundamental in nature.

(b) FIT Is Arbitrary, Unduly Oppressive of Landlords' Property Rights and Fails to Advance Its Own Ostensible Regulatory Purpose

FIT was designed to avert landlords' discrimination in rentals by eliminating landlord subjectivity and assuring the application of allegedly objective criteria in property rentals. FIT requires both "objective" criteria and a threshold for each. FIT fails of its ostensible goal and substitutes instead a Rube Goldberg-like regulatory regime that will subject landlords to possible civil lawsuits, administrative investigations, and heavy penalties. CP 182-83 ("flow chart" for FIT compliance).

FIT's mandate takes away a landlord's freedom of contract, because once the terms of tenancy are advertised, the terms, acceptable by any one, are set in stone and negotiations are impossible without meeting FIT's truly arcane procedures. The reality is that the rental market is far more fluid than the City appreciates. Landlords' criteria for rentals change and, by the time criteria are published, marketplace considerations require

new criteria. Criteria set in stone, as FIT contemplates, prevent such adjustments.

Landlords need flexibility on the exact terms of a residential tenancy. Smaller landlords usually negotiate in a “give and take” way with prospective tenants on a variety of factors. The first person to apply might want a 6 month lease instead of a year’s lease. That person might want to move in on February 1, not December 1. To obtain a desirable unit, a prospective tenant might offer a higher rental rate or request other concessions in negotiations.¹⁶

Moreover, a landlord can never know all the “deal killers” that may arise in negotiations. An ordinance that requires a landlord to specify in advance all criteria for tenancy and a threshold for each item, takes away all discretion. A landlord cannot possibly envision all the circumstances that might arise before a deal is struck with a potential tenant.¹⁷

¹⁶ A prospective tenant might come to a landlord saying, “will you replace the carpet if I pay \$50 more per month?” The landlord may want to reply, “OK, but for that, I am going to require a 2-year lease.” Under FIT, that cannot occur.

¹⁷ If an African-American landlord sets the criteria for the rental of a unit and a neo-Nazi skinhead emblazoned with swastika tattoos arrives at the door, wearing a “I love the KKK” button, can that landlord use that fact to say this tenant is not a good fit? And even if criteria can be developed, what if the criteria are essentially subjective in nature? If a landlord has a client who owns a duplex, lives in one half, and rents out the other. She has a dog and allows her tenants to have pets. She has “doggy dates” between her dog and the prospective tenants’ to see if the pets get along. She does this before she offers them an application for tenancy. How is she able to establish a threshold for how

With a mandatory FIT (and its civil and criminal penalties), any error by the landlord only guarantees litigation, with its attendant aggravation and expense.

More critically, if the City's goal is to eliminate landlord "subjectivity" and "implicit bias" in rentals, as the City claims, Br. of Appellant at 6-9, FIT fails. According to the City, Br. of Appellant at 31, a landlord may essentially establish whatever "criteria" she/he might choose for the rental of a property. But, of course, in the real world, it is not as simple as the City portrays. The City baldly asserts that the criteria need not even be "quantifiable or objective." *Id.* at 31. If that is true, how can landlord subjectivity or implicit bias then be eliminated by FIT? In any event, that assertion is simply untrue. In fact, SMC § 14.08.050A.1.a requires a landlord to promulgate "the criteria the owner will use to screen prospective occupants *and* the minimum threshold for each criterion that the potential occupant must meet to move forward in the application process..." Subsection b. mandates posting of all "information, documentation, and other submissions necessary for the owner to conduct screening using the criteria stated in the notice required" in subsection a.

In the examples noted *supra*, what if the African-American landlord who wishes to avoid renting to the Neo-Nazi establishes a

satisfactory the dogs' interaction must be to go to the next step in the process? Similar situations are legion.

criterion that any renter must be “compatible with the landlord’s social values?” Would that highly subjective criterion pass muster or does the City have authority under FIT to invalidate what it deems to be objectionable criteria? In the landlord and dog scenario, n.17 *supra*, if the landlord established a criterion that the renter’s dog must be satisfactory to the landlord, would that work?

Simply put, FIT cannot eliminate all landlord “subjectivity” in the rental of properties without ultimately deciding in its administration of FIT that certain inherently subjective criteria established by landlords will be unacceptable to the City. Thus, FIT is arbitrary.

The City may also claim that it does not have to be perfect in its regulatory effort, and that this Court should defer to legislative discretion on such a policy question. But this Court has rejected the notion that the Legislature may always constitutionally approach a problem “one step at a time.” In *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 148-49, 960 P.2d 919 (1998), this Court invalidated a medical negligence state of repose because “the relationship between the goal of alleviating any medical insurance crisis and the class of persons affected by the eight-year statute of repose is too attenuated to survive rational basis scrutiny.” *Id.* at 149. Such a “trust us” argument from the City only implicitly

acknowledges the ultimate vagueness of the FIT law, suggesting that it may be subject to a due process challenge on such grounds.¹⁸

Here, FIT is too arbitrary to survive even a rational basis analysis for the reasons set forth above, let alone an “unduly oppressive/substantially advances” analysis, given its disruption of a landlord’s fundamental attribute of property ownership, and the heavy potential penalties it imposes.

E. CONCLUSION¹⁹

FIT is an overreach by the City. It constitutes an unconstitutional taking under article I, § 16 of a fundamental attribute of landlords’ attributes of ownership – the right to transfer property. Moreover, FIT violates landlords’ rights to substantive due process and commercial free speech. This Court should affirm the trial court’s March 28, 2018 order.

¹⁸ “Vague laws invite arbitrary power.” *Sessions v. Dimaya*, ___ U.S. ___, 138 S. Ct. 1204, 1223, 200 L. Ed. 2d 549 (2018) (Gorsuch, J. concurring). See *City of Chicago v. Morales*, 527 U.S. 41, 56, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999). (Prosecution under a loitering ordinance held invalid); *Voters Educ. Committee v. Wash. State Pub. Disclosure Comm’n*, 161 Wn.2d 470, 484-85, 166 P.3d 1174 (2007), *cert. denied*, 553 U.S. 1076 (2008) (This Court affirmed that statutes are enforceable on due process grounds under the Fourteenth Amendment if persons of common intelligence differ at their application or must guess at their meaning.) *State v. Murray*, 190 Wn.2d 727, 416 P.3d 1225 (2018) (affirming the void for vagueness analysis and upholding statute relating to conditions for sex offender’s release).

¹⁹ RHA does not have anything to add to the analysis of commercial free speech set forth in the respondents’ brief at 42-48. RHA agrees that FIT violates landlords’ rights to commercial free speech.

DATED this 16th day of May, 2019.

Respectfully submitted,



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Rental Housing Association of Washington

APPENDIX

FILED
KING COUNTY, WASHINGTON

MAR 28 2018
SUPERIOR COURT CLERK
BY Regina Saucier
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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

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CHONG and MARILYN YIM, KELLY
LYLES, BETH BYLUND, CNA
APARTMENTS, LLC, and EILEEN, LLC,

Plaintiffs,

v.

THE CITY OF SEATTLE, a Washington
Municipal corporation,

Defendant.

Case No. 17-2-05595-6 SEA

ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

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THIS MATTER having come on before the undersigned judge of the above

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entitled Court on Cross-Motions for Summary Judgment. The Court reviewed the

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supporting and responsive pleadings filed herein as follows:

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1. The Plaintiffs' complaint and amended complaint;

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2. The City's Answers;

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3. The Plaintiffs' Motion for Summary Judgment and supporting documents;

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4. The City's Motion for Summary Judgment and supporting documents;

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JUDGMENT - 1

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King County Superior Court
516 Third Avenue
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1 5. Pertinent portions of the stipulated facts and stipulated record; and,

2 6. Relevant case law and other authorities cited by the parties.

3 The Court having heard oral argument, makes the following FINDINGS based on
4 the above submissions and Stipulated Facts and Record:

5 1. There is no genuine issue as to any material fact.

6 2. Plaintiffs mount a facial challenge to Seattle Municipal Code Section
7 14.08.050 enacted in August, 2016. The law, often called the First-in-Time or "FIT" rule,
8 requires landlords to establish screening criteria and offer tenancy to the first applicant
9 meeting them regardless of other factors such as whether other applicants are more
10 qualified or offer a longer lease or more favorable terms.

11 3. The FIT rule has a laudable goal of eliminating the role of implicit bias in
12 tenancy decisions. In certain respects, the FIT rule attempts to codify industry-
13 recommended best practice by requiring landlords to establish screening criteria and offer
14 tenancy to the first applicant meeting them.

15 4. While the Rental Housing Association of Washington ("RHA") which
16 submitted an amicus memorandum, recommends screening candidates in chronological
17 order, the Association opposed mandating first-in-time as a matter of law: "For rental
18 housing owners this poses a serious threat to the screening process, and removes a great
19 deal of discretion owners would typically be allowed to determine whether or not an
20 applicant is someone they would wish to rent to."

21 5. It is undisputed, and specifically acknowledged by the City, that the FIT
22 rule affects a landlord's ability to exercise discretion when deciding between potential

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24 ORDER RE. MOTIONS FOR SUMMARY
JUDGMENT - 2.

Suzanne Parisien, Judge
King County Superior Court
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1 tenants that may be based on factors unrelated to whether a potential tenant is a member of
2 a protected class.

3 6. Plaintiffs claim the FIT rule, on its face, violates the Washington
4 Constitution by: taking their property without compensation; taking their property for an
5 improper public use; violating their rights to substantive due process; and violating their
6 free speech rights.

7 7. Though the City argues to the contrary, *Manufactured Housing*
8 *Communities v. State*, 142 Wn.2d 347, is binding precedent that this Court must follow. It
9 is a plurality opinion in which five justices joined in the rationale and holding in that case.
10 A plurality opinion is often regarded as highly persuasive, even if not fully binding. *See*
11 *Texas v. Brown*, 460 U.S. 730, 737, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983) (plurality
12 opinion) (holding that while one particular plurality opinion was “not a binding precedent,
13 as the considered opinion of four Members of this Court it should obviously be the point
14 of reference for further discussion of the issue”).

15 8. Our Supreme Court itself has cited the lead opinion in *Limstrom* as an
16 interpretation by “this court”, and saying “we have held,” even while recognizing it as a
17 plurality opinion. *See Soter v. Cowles Publishing Co.*, 162 Wash.2d 716, 733, 740, 174
18 P.3d 60 (2007).

19 9. In *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d
20 347, 363-65, 13 P.3d 183 (2000) the Supreme Court held that an owner’s right to sell a
21 property interest to whom he or she chooses is a fundamental attribute of property
22 ownership, which cannot be taken without due process and payment of just compensation.

1 10. The Washington Supreme Court's opinion in *Manufactured Housing* is the
2 most recent and on-point decision regarding this "fundamental attribute" doctrine. There,
3 a state law granted mobile-home park tenants the power to exercise a right of first refusal
4 if the park owner decided to sell the property. *Manufactured Housing*, 142 Wn.2d at 351-
5 52. The Court held that the law constituted a facial taking because it took "from the park
6 owner the right to freely dispose of his or her property and [gave] to tenants a right of first
7 refusal to acquire the property." The right to freely dispose of property, the Court reasoned,
8 is a fundamental attribute of property ownership, and the right of first refusal law caused a
9 taking when it destroyed that attribute.

10 11. Choosing a tenant is a fundamental attribute of property ownership. Like a
11 sale of a fee interest, a lease is a disposition of a property interest. *Manufactured Housing*
12 held that selecting a buyer to purchase a property interest is a fundamental attribute of
13 property ownership. Similarly, the right to grant a right of first refusal in the context of a
14 leasehold is just as fundamental as the right to sell fee title in *Manufactured Housing*.

15 12. The FIT rule's few concessions to landlords' interests do not redeem it.
16 While landlords are permitted to set their own rental criteria. See SMC § 14.08.050(A).
17 This preliminary, general rental criteria does not substitute for the discretion to choose a
18 specific tenant. Notably, the ability to negotiate, for instance—a key element of the right
19 to freely dispose of property—is extinguished by the FIT rule. Even if landlords can impose
20 some limits on the pool of qualified applicants, landlords and tenants still cannot bargain
21 for an arrangement that suits their interests.

22 13. The FIT rule also violates the "private use" requirement. Article I, Section
23 16, of the state constitution says, "[p]rivate property shall not be taken for private use."

1 This provision offers greater protection to property owners than its federal counterpart.
2 See *Manufactured Housing*, 142 Wn.2d at 360. Our state Supreme Court has described
3 Article I, Section 16, as an “absolute prohibition against taking private property for
4 private use.”

5 14. In *Manufactured Housing*, the mobile-home law gave “tenants a right to
6 preempt the [mobile-home park] owner’s sale to another and to substitute themselves as
7 buyers.” *Manufactured Housing*, 142 Wn.2d at 361. The law therefore was a private use
8 taking because it took the right to freely dispose of property and handed a corollary right
9 of first refusal to the tenants. *Id.* at 361-62. Rather than placing property in public hands
10 or increasing public access, “[t]he statute’s design and its effect provide a beneficial use
11 for private individuals only.”

12 15. A taking is not for a public use just because it offers a “public benefit.”
13 *Manufactured Housing*, 142 Wn.2d at 362. “[T]he fact that the public interest may
14 require it is insufficient if the use is not really public.” *In re City of Seattle*, 96 Wn.2d
15 616, 627, 638 P.2d 549 (1981). The state in *Manufactured Housing* defended the right-of-
16 first-refusal law by lauding its public benefits: preserving housing stock for the poor.
17 *Manufactured Housing*, 142 Wn.2d at 371. The Court held that such benefits could not
18 transform the private nature of the taking into a public one. Similarly, the FIT rule is a
19 taking for private use, regardless of any public benefit.

20 16. Due process embodies a promise that government will pursue legitimate
21 purposes in a just and rational manner. As set forth in *Presbytery*, 114 Wn.2d at 330 to
22 determine if a law violates due process, courts must address three questions:

23 a. Is the regulation aimed at achieving a legitimate public purpose?

1 b. Does the regulation use means reasonably necessary to achieving that purpose?

2 c. Is the regulation unduly oppressive?

3 17. As to the first question, the court finds that the regulation is aimed at
4 achieving a legitimate public purpose.

5 18. As to the second question, the court finds it does not. The principle that
6 government can eliminate ordinary discretion because of the possibility that some people
7 may have unconscious biases has no limiting principle—it would expand the police
8 power beyond reasonable bounds. While the City can regulate the use of property so as
9 not to injure others, a law that undertakes to abolish or limit the exercise of rights beyond
10 what is necessary to provide for the public welfare cannot be included in the lawful
11 police power of the government. See *Ralph v. Wenatchee*, 34 Wn.2d 638, 644, 209 P.2d
12 270 (1949). Moreover, a law is not reasonably necessary if its rationale and methodology
13 have no meaningful limiting principle. See *Beard v. Banks*, 548 U.S. 521, 546, 126 S. Ct.
14 2572, 165 L. Ed. 2d 697 (2006) (Scalia, J., concurring).

15 19. The FIT rule is also an unreasonable means of pursuing anti-discrimination
16 because of its sweeping overbreadth. “The overbreadth doctrine involves substantive due
17 process and asks whether a statute not only prohibits unprotected conduct, but also
18 reaches constitutionally protected conduct.” *Rhoades v. City of Battle Ground*, 115 Wn.
19 App. 752, 768, 63 P.3d 142 (2002); *Am. Dog Owners Ass’n v. City of Yakima*, 113
20 Wn.2d 213, 217, 777 P.2d 1046 (1989). The FIT rule is overbroad since with few
21 exceptions, landlords renting to the general population cannot deny tenancy to the first
22 qualified applicant, period.

1 20. As to the third question, the court finds the FIT rule is unduly oppressive
2 because it severely restricts innocent business practices and bypasses less oppressive
3 alternatives for addressing unconscious bias. The court reaches this conclusion in
4 analyzing the following non-exclusive factors to weigh as set forth in *Presbytery*:

5 On the public's side:

- 6 • The seriousness of the public problem.
- 7 • The extent of the landowner's contribution to the problem.
- 8 • The degree to which the chosen means solve the problem.
- 9 • The feasibility of alternatives.

10 On the landowner's side:

- 11 • The extent of the harm caused.
- 12 • The extent of remaining uses.
- 13 • The temporary or permanent nature of the law.
- 14 • The extent to which the landowner should have anticipated the law.
- 15 • The feasibility of changing uses.

16 21. The FIT rule mandates the methods by which landlords communicate with
17 prospective tenants and controls the content of those communications. See SMC
18 § 14.08.050(A)(1)-(2). The rule must therefore face intermediate scrutiny as a
19 commercial speech restriction. See generally *Expressions Hair Design v. Schneiderman*,
20 137 S. Ct. 1144, 1151, 197 L. Ed. 2d 442 (2017).

21 22. Under the FIT rule, landlords must post written notice of all rental criteria
22 in the leasing office or at the rental property, as well as in any website advertisement of
23

1 the unit. SMC § 14.08.050(A)(1). The information that must be communicated via these
2 means is comprehensive, including all “the criteria the owner will use to screen
3 prospective occupants and the minimum threshold for each criterion that the potential
4 occupant must meet to move forward in the application process.”

5 Id. § 14.08.050(A)(1)(a). The notice must also include “all information, documentation,
6 and other submissions necessary for the owner to conduct screening using the criteria
7 stated in the notice.” Id. § 14.08.050(A)(1)(b).

8 An application is deemed “complete” once the applicant has provided all the
9 information stated in the mandatory notice. The landlord must offer the unit to the first
10 applicant who satisfies the criteria in the advertisement. Id. § 14.08.050(A)(4).

11 23. The FIT rule not only constrains the means by which landlords
12 communicate, it also controls the content of that communication. A landlord may not post
13 a rental on the web and say, “call to learn how to apply” or “email me for further details.”
14 Rather, the landlord must list online all information regarding how to apply and all
15 criteria by which applications will be assessed. It is undisputed that the FIT rule violates
16 landlords’ speech rights by prohibiting advertisements based on content and dictating
17 how landlords can advertise.

18 24. Regulations that burden commercial speech must satisfy intermediate
19 scrutiny. The state constitution protects advertising because “society has a strong interest
20 in preserving the free flow of commercial information.” *Kitsap Cty. v. Mattress*
21 *Outlet/Gould*, 153 Wn.2d 506, 512, 104 P.3d 1280 (2005).

22 To protect that interest, the state constitution requires that commercial speech
23 regulations satisfy a four-part test:

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- 1. • Whether the speech is about lawful activity and is not deceptive;
- 2. • Whether the government interest at stake is substantial;
- 3. • Whether the speech restriction “directly and materially” serves that
- 4. interest; and
- 5. • Whether the restriction is “no more extensive than necessary.”

6. Id. at 513. A landlord’s advertisement for a vacant unit is commercial speech
7. because it “propose[s] a commercial transaction.” *United States v. Edge Broad. Co.*, 509
8. U.S. 418, 426, 113 S. Ct. 2696, 125 L. Ed. 2d 345 (1993). Because the FIT rule burdens
9. that commercial speech, it must satisfy the four-part test.

10. 25. The first and second factors are clear: the speech affected by the FIT rule
11. is neither misleading nor related to unlawful activity and the City has a legitimate interest
12. in preventing discrimination. As to the last two steps, the speech restriction does not
13. “directly and materially” advance the City’s interest in stopping discrimination, and it
14. restricts more speech than necessary.

15. 26. The FIT rule does not “directly and materially” advance the City’s interest
16. in preventing discrimination because it precludes the use of landlord discretion. To satisfy
17. this component of the commercial speech test, the City must offer more than “mere
18. speculation and conjecture; rather, a governmental body seeking to sustain a restriction
19. on commercial speech must demonstrate that the harms it recites are real and that its
20. restriction will in fact alleviate them to a material degree.” *Mattress Outlet*, 153 Wn.2d at
21. 513 (quoting *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555, 121 S. Ct. 2404, 150 L.
22. Ed. 2d 532 (2001)). The City cannot sustain this burden.

1 27. Finally, the City must show that the speech restriction is not more
2 extensive than necessary. A government restricting commercial speech must shoulder the
3 burden of demonstrating that the law is narrowly tailored to achieve its ends. *Mattress*
4 *Outlet*, 153 Wn.2d at 515. The FIT rule is not narrowly tailored. The City conceded as
5 much in the record when it stipulated to a staff memo stating that the “first in time policy
6 affects a landlord’s ability to exercise discretion when deciding between potential tenants
7 that may be based on factors unrelated to whether a potential tenant is a member of a
8 protected class.” SR 000064.

9 28. The FIT rule restricts far more speech than necessary to achieve its
10 purposes in stopping discrimination. It imposes sweeping advertising restrictions on all
11 Seattle landlords, restricting their speech without any individualized suspicion of
12 disparate treatment. It forbids valuable speech activities like case-by-case negotiation and
13 tells landlords how to communicate their criteria. Therefore, the City’s decision to restrict
14 speech cannot survive intermediate scrutiny.

15 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Plaintiffs’ Motion for
16 Summary Judgment is hereby **GRANTED** and the Defendant’s Motion for Summary Judgment
17 is **DENIED**.

18 SIGNED on this 28th day of March, 2018.

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21 Honorable Suzanne R. Parisien

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CITY OF SEATTLE
ORDINANCE 125114
COUNCIL BILL 118755

AN ORDINANCE relating to the Open Housing Ordinance; adding antidiscrimination protections based on a renters' use of a subsidy or verifiable alternative source of income; adding a first-in-time policy; prohibiting preferred employer programs; adding Section 14.08.050 to, and amending Sections 14.08.015, 14.08.020, 14.08.040, 14.08.045, 14.08.060, 14.08.070 and 14.08.190 of, the Seattle Municipal Code.

WHEREAS, in September 2014 the Council adopted Resolution 31546, in which the Mayor and Council jointly convened the Seattle Housing Affordability and Livability Agenda (HALA) Advisory Committee to evaluate potential strategies to make Seattle more affordable, equitable, and inclusive; in particular to promote the development and preservation of affordable housing for residents of the City; and

WHEREAS, in July 2015, HALA published its Final Advisory Committee Recommendations and the Mayor published *Housing Seattle: A Roadmap to an Affordable and Livable City*, which outlines a multi-prong approach of bold and innovative solutions to address Seattle's housing affordability crisis; and

WHEREAS, in October 2015 Council proposed and adopted, with the Mayor concurring, Resolution 31622 declaring the City's intent to expeditiously consider strategies recommended by the HALA Advisory Committee; and

WHEREAS, in 2015 the HALA Advisory Committee recommended the City develop legislation to remove barriers based on income type and the Mayor included this recommendation in his Action Plan to address Seattle's Housing Affordability Crisis; and

WHEREAS, for over 25 years, the City of Seattle has protected a person's right to housing using a Section 8 housing voucher (Seattle Municipal Code Chapter 14.08); and

1 WHEREAS, Seattle's protection of a person's right to housing using a Section 8 housing
2 voucher was unanimously passed in 1989 in response to the housing affordability crisis,
3 at the time when between 3,000 and 5,000 people a night were experiencing
4 homelessness and thousands more faced rental restrictions due to their use of the U.S.
5 Housing and Urban Development (HUD) programs that helped offset their rent payments.
6 Many of them were elderly, disabled, or low-income people of color; and

7 WHEREAS; in the last eight years, ten percent of housing discrimination cases investigated by
8 the Seattle Office for Civil Rights involved denial based on a Section 8 housing voucher;
9 and

10 WHEREAS, due to existing racial inequities, people of color face disproportionate rates of
11 poverty and are overrepresented as Section 8 voucher holders in Seattle. African
12 Americans, Native Americans, and Asian Pacific Islanders are doubly represented as
13 voucher holders compared to their total proportion of the Seattle population, meaning that
14 discrimination on the basis of a Section 8 voucher has a disproportionate impact on
15 communities of color; and

16 WHEREAS, in 2016 Seattle continues to face a challenge of housing affordability, with
17 individuals and families experiencing a denial of housing based on their use of subsidies
18 and verifiable alternative sources of income such as child support payments, Social
19 Security, Supplemental Security Income, unemployment insurance, short-term rental
20 assistance, or veteran's benefits; and

21 WHEREAS, communities of color, people with disabilities, parents, and others who are
22 disproportionately impacted by Section 8 discrimination are also impacted by a denial of

1 housing based on the use of other subsidies and alternative sources of income to pay their
2 rent; and

3 WHEREAS, furthering fair housing for all Seattle's residents is an affirmation of The City of
4 Seattle's longstanding commitment to race and social justice; and

5 WHEREAS, the first-in-time policy will not apply to single-family dwellings including
6 accessory dwelling units wherein the owner or person entitled to possession maintains a
7 permanent residence, as described in 14.08.190.A; and

8 WHEREAS, the City convened a diverse group of stakeholders comprised of landlords,
9 nonprofit housing providers, social service agencies, and tenant advocates to review the
10 issue and provide input on legislation; NOW, THEREFORE,

11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section 1. Section 14.08.015 of the Seattle Municipal Code, last amended by Ordinance
13 123014, is amended as follows:

14 **14.08.015 Seattle Open Housing Poster ((r))**

15 All persons required to post a fair housing poster pursuant to 24 CFR 110 shall also post
16 a Seattle Open Housing Poster at the same locations required in the federal regulation. A person
17 who fails to post a Seattle Open Housing Poster as required in this section is subject to a fine of
18 ~~((One Hundred Twenty Five Dollars (\$125)))~~ \$125 for a first violation and a fine of ~~((Five~~
19 ~~Hundred Dollars (\$500)))~~ \$500 for each subsequent violation. The Seattle Open Housing Poster
20 shall provide a notice that it is illegal in ~~((the))~~ The City of Seattle to discriminate against any
21 person because of race, color, creed, religion, ancestry, national origin, age, sex, marital status,
22 parental status, sexual orientation, gender identity, political ideology, honorably discharged
23 veteran or military status, participation in a section 8 or other subsidy program, alternative source

1 of income, the presence of any disability, or the use of a trained dog guide or service animal by a
2 disabled person. The Department shall adopt a rule or rules to enforce this ~~((section))~~ Section
3 14.08.015 ~~((which))~~ that shall include the availability of such posters from the Department.

4 Section 2. Section 14.08.020 of the Seattle Municipal Code, last amended by Ordinance
5 124829, is amended as follows:

6 **14.08.020 Definitions ~~((r))~~**

7 Definitions as used in this ~~((chapter))~~ Chapter 14.08, unless additional meaning clearly
8 appears from the context, shall have the meanings subscribed:

9 ~~((A-))~~ "Aggrieved person" includes any person who:

10 1. Claims to have been injured by an unfair practice prohibited by this ~~((chapter))~~

11 Chapter 14.08; or

12 2. Believes that he or she will be injured by an unfair practice prohibited by this
13 ~~((chapter))~~ Chapter 14.08 that is about to occur.

14 "Alternative source of income" means lawful, verifiable income derived from sources
15 other than wages, salaries, or other compensation for employment. It includes but is not limited
16 to monies derived from Social Security benefits, supplemental security income, unemployment
17 benefits, other retirement programs, child support, the Aged, Blind or Disabled Cash Assistance
18 Program, Refugee Cash Assistance, and any federal, state, local government, private, or
19 nonprofit-administered benefit program.

20 ~~((B-))~~ "Blockbusting" means, for profit, to promote, induce, or attempt to promote or
21 induce any person to, engage in a real estate transaction by representing that a person or persons
22 of a particular race, color, creed, religion, ancestry, national origin, age, sex, marital status,
23 parental status, sexual orientation, gender identity, political ideology, alternative source of

1 income, or who participates in a Section 8 or other subsidy program, or who is disabled, or who
2 is a disabled person who uses a service animal has moved or may move into the neighborhood.

3 ~~((G.))~~ "Charge" means a claim or set of claims alleging an unfair practice or practices
4 prohibited under this ~~((chapter))~~ Chapter 14.08.

5 ~~((D.))~~ "Charging party" means any person who files a charge alleging an unfair practice
6 under this ~~((chapter))~~ Chapter 14.08, including the Director.

7 ~~((E.))~~ "City" means The City of Seattle.

8 ~~((F.))~~ "City department" means any agency, office, board, or commission of the City, or
9 any department employee acting on its behalf, but shall not mean a public corporation chartered
10 under Chapter ~~((.))~~ 3.110 ~~((SMC))~~, or any contractor, consultant, or concessionaire or lessee.

11 ~~((G.))~~ "Commission" means the Seattle Human Rights Commission.

12 ~~((H.))~~ "Department" means the Seattle Office for Civil Rights.

13 ~~((I.))~~ "Director" means the Director of the Seattle Office for Civil Rights or the Director's
14 designee.

15 ~~((J.))~~ "Disabled" means a person who has a disability.

16 ~~((K. 1.))~~ "Disability" means the presence of a sensory, mental, or physical impairment
17 that: ~~((a. Is))~~ is medically cognizable or diagnosable; or ~~((b. Exists))~~ exists as a record or history;
18 or ~~((c. Is))~~ is perceived to exist whether or not it exists in fact. ~~((2.))~~ A disability exists whether it
19 is temporary or permanent, common or uncommon, mitigated or unmitigated, ~~((e))~~ whether or
20 not it limits the ability to work generally or work at a particular job, or whether or not it limits
21 any other activity within the scope of this ~~((chapter))~~ Chapter 14.08. ~~((3.))~~ For purposes of this
22 definition, "impairment" includes, but is not limited to:

1 ((a-)) 1. Any physiological disorder, or condition, cosmetic disfigurement, or
2 anatomical loss affecting one or more of the following body systems: neurological,
3 musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular,
4 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

5 ((b-)) 2. Any mental, developmental, traumatic, or psychological disorder,
6 including but not limited to cognitive limitation, organic brain syndrome, emotional or mental
7 illness, and specific learning disabilities.

8 ((L-)) "Discriminate" means to do any act which constitutes discrimination.

9 ((M-)) "Discrimination" means any conduct, whether by single act or as part of a practice,
10 the effect of which is to adversely affect or differentiate between or among individuals or groups
11 of individuals, because of race, color, creed, religion, ancestry, national origin, age, sex, marital
12 status, parental status, sexual orientation, gender identity, political ideology, honorably
13 discharged veteran or military status, alternative source of income, participation in a Section 8 or
14 other subsidy program, the presence of any disability, or the use of a service animal by a disabled
15 person.

16 ((N-)) "Dual-filed" means any charge alleging an unfair practice that is filed with both the
17 Department of Housing and Urban Development and the Seattle Office for Civil Rights without
18 regard to which of the two agencies initially processed the charge.

19 ((O-)) "Dwelling" means any building, structure, or portion thereof which is occupied as,
20 or is designed or intended for occupancy as, a residence by one or more individuals or families,
21 and any vacant land which is offered for sale or lease for the construction or location thereon of
22 any such building, structure, or portion thereof.

1 “Ensuring meaningful access” means the ability of a person with limited English
2 proficiency to use or obtain language assistance services or resources to understand and
3 communicate effectively, including, but not limited to, translation or interpretation services.

4 ~~((P-))~~ “Gender identity” means a person’s gender-related identity, appearance, or
5 expression, whether or not traditionally associated with one’s biological sex or one’s sex at birth,
6 and includes a person’s attitudes, preferences, beliefs, and practices pertaining thereto.

7 ~~((Q-))~~ “Hearing Examiner” means the Seattle Hearing Examiner.

8 “Housing costs” means the compensation or fees paid or charged, usually periodically,
9 for the use of any housing unit. “Housing costs” include the basic rent charge and any periodic or
10 monthly fees for other services paid to the owner by the occupant, but do not include utility
11 charges that are based on usage and that the occupant has agreed in the rental agreement to pay,
12 unless the obligation to pay those charges is itself a change in the terms of the rental agreement.

13 ~~((R-))~~ “Lender” means any bank, insurance company, savings or building and loan
14 association, credit union, trust company, mortgage company, or other person or agent thereof,
15 engaged wholly or partly in the business of lending money for the financing or acquisition,
16 construction, repair, or maintenance of real property.

17 ~~((S-))~~ “Marital status” means the presence or absence of a marital relationship and
18 includes the status of married, separated, divorced, engaged, widowed, single, or cohabiting.

19 ~~((T-))~~ “Occupant” means any person who has established residence or has the right to
20 occupy real property.

21 ~~((U-))~~ “Owner” means any person who owns, leases, subleases, rents, operates, manages,
22 has charge of, controls or has the right of ownership, possession, management, charge, or control
23 of real property on their own behalf or on behalf of another.

1 ~~((V-))~~ "Parental status" means being a parent, step-parent, adoptive parent, guardian,
2 foster parent, or custodian of a minor child or children under the age of 18 years, or the designee
3 with written permission of a parent or other person having legal custody of a child or children
4 under the age of 18 years, which child or children shall reside permanently or temporarily with
5 such parent or other person. In addition, parental status shall refer to any person who is pregnant
6 or who is in the process of acquiring legal custody of a minor child under the age of 18 years.

7 ~~((W-))~~ "Party" means the person charging or making a charge or complaint or upon
8 whose behalf a complaint is made alleging an unfair practice, the person alleged or found to have
9 committed an unfair practice, and the Seattle Office for Civil Rights.

10 ~~((X-))~~ "Person" means one or more individuals, partnerships, organizations, trade or
11 professional associations, corporations, legal representatives, trustees, trustees in bankruptcy and
12 receivers. It includes any owner, lessee, proprietor, manager, agent or employee, whether one or
13 more natural persons, and any political or civil subdivision or agency or instrumentality of the
14 City.

15 ~~((Y-))~~ "Political ideology" means any idea or belief, or coordinated body of ideas or
16 beliefs, relating to the purpose, conduct, organization, function or basis of government and
17 related institutions and activities, whether or not characteristic of any political party or group.

18 ~~((This term))~~ "Political ideology" includes membership in a political party or group and includes
19 conduct, reasonably related to political ideology, which does not interfere with the property
20 rights of the landowner as it applies to housing.

21 "Preferred employer program" means any policy or practice in which a person provides
22 different terms and conditions, including but not limited to discounts or waiver of fees or
23 deposits, in connection with renting, leasing, or subleasing real property to a prospective

1 occupant because the prospective occupant is employed by a specific employer. "Preferred
2 employer program" does not include different terms and conditions provided in city-funded
3 housing or other publicly funded housing, for the benefit of city or public employees, housing
4 specifically designated as employer housing which is owned or operated by an employer and
5 leased for the benefit of its employees only, or any program affirmatively furthering fair housing.
6 For purposes of this definition, "affirmatively furthering fair housing" means assisting homeless
7 persons to obtain appropriate housing and assisting persons at risk of becoming homeless;
8 retention of the affordable housing stock; and increasing the availability of permanent housing in
9 standard condition and affordable cost to low-income and moderate-income families, particularly
10 to members of disadvantaged minorities, without discrimination on the basis of race, color,
11 creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual
12 orientation, gender identity, political ideology, honorably discharged veteran or military status,
13 alternative source of income, participation in a Section 8 program or other subsidy program, the
14 presence of any disability or the use of a service animal by a disabled person. "Affirmatively
15 furthering fair housing" also means increasing the supply of supportive housing, which combines
16 structural features and services needed to enable persons with special needs, including persons
17 with HIV/AIDS and their families, to live with dignity and independence; and providing housing
18 affordable to low-income persons accessible to job opportunities.

19 ((Zr)) "Prospective borrower" means any person who seeks to borrow money to finance
20 the acquisition, construction, repair, or maintenance of real property.

21 ((AA-)) "Prospective occupant" means any person who seeks to purchase, lease, sublease,
22 or rent real property.

1 ~~((BB-))~~ "Real estate agent, salesperson or employee" means any person employed by,
2 associated with, or acting for a real estate broker to perform or assist in the performance of any
3 or all of the functions of a real estate broker.

4 ~~((CC-))~~ "Real estate broker" means any person who for a fee, commission, or other
5 valuable consideration, lists for sale, sells, purchases, exchanges, leases or subleases, rents, or
6 negotiates or offers or attempts to negotiate the sale, purchase, exchange, lease, sublease, or
7 rental of real property of another, or holds themselves out as engaged in the business of selling,
8 purchasing, exchanging, listing, leasing, subleasing, or renting real property of another, or
9 collects the rental for use of real property of another.

10 ~~((DD-))~~ "Real estate transaction" means the sale, purchase, conveyance, exchange, rental,
11 lease, sublease, assignment, transfer, or other disposition of real property.

12 ~~((EE-))~~ "Real estate-related transaction" means any of the following:

- 13 1. The making or purchasing of loans or providing other financial assistance:
14 a. For purchasing, constructing, improving, repairing, or maintaining real
15 property, or
16 b. Secured by real property; or
17 2. The selling, brokering, or appraising of real property; or
18 3. The insuring of real property, mortgages, or the issuance of insurance related to
19 any real estate transaction.

20 ~~((FF-))~~ "Real property" means dwellings, buildings, structures, real estate, lands,
21 tenements, leaseholds, interests in real estate cooperatives, condominiums, and any interest
22 therein.

1 ~~((GG.))~~ "Respondent" means any person who is alleged to have committed an unfair
2 practice prohibited by this ~~((chapter))~~ Chapter 14.08.

3 ~~((HH.))~~ "Section 8 or other subsidy program" means short or long term federal, state or
4 local government, private nonprofit, or other assistance programs in which a tenant's rent is paid
5 either partially by the ~~((government))~~ program (through a direct ~~((contract))~~ arrangement
6 between the ~~((government))~~ program and the owner or lessor of the real property), and partially
7 by the tenant or completely by the program. Other subsidy programs include but are not limited
8 to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs
9 (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

10 ~~((H.))~~ "Service animal" means an animal that provides medically necessary support for
11 the benefit of an individual with a disability.

12 ~~((JJ.))~~ "Sexual orientation" means actual or perceived male or female heterosexuality,
13 bisexuality, or homosexuality, and includes a person's attitudes, preferences, beliefs, and
14 practices pertaining thereto.

15 ~~((KK.))~~ "Steering" means to show or otherwise take an action which results, directly or
16 indirectly, in steering a person or persons to any section of the City or to a particular real
17 property in a manner tending to segregate or maintain segregation on the basis of race, color,
18 creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual
19 orientation, gender identity, political ideology, alternative source of income, participation in a
20 Section 8 or other subsidy program, the presence of any disability, or the use of a service animal
21 by a disabled person.

22 "Verifiable" means the source of income can be confirmed as to its amount or receipt.

23 ~~((LL.))~~ "Honorably discharged veteran or military status" means:

1 1. A veteran, as defined in RCW 41.04.007; or

2 2. An active or reserve member in any branch of the armed forces of the United
3 States, including the national guard, coast guard, and armed forces reserves.

4 Section 3. Section 14.08.040 of the Seattle Municipal Code, last amended by Ordinance
5 121593, is amended as follows:

6 **14.08.040 Unfair practices—Generally ((7))**

7 A. It is an unfair practice for any person to discriminate by:

8 1. Undertaking or refusing to engage in a real estate transaction or otherwise deny
9 or withhold such real property; or

10 2. Refusing to negotiate a real estate transaction; or

11 3. Representing that such real property is not available for inspection, sale, rental,
12 or lease when in fact it is so available; or

13 4. Expelling or evicting an occupant from real property or otherwise making
14 unavailable or denying a dwelling; or

15 5. Applying different terms, conditions, or privileges of a real estate transaction,
16 including but not limited to the setting of rates for rental or lease, ((or)) establishment of damage
17 deposits ((,)) or other financial conditions for rental or lease, ((or)) in the furnishing of facilities
18 or services in connection with such transaction.

19 B. It is an unfair practice for any real estate broker, real estate agent, salesperson, or
20 employee to discriminate by:

21 1. Refusing or intentionally failing to list real property for sale, rent, or lease; or

22 2. Refusing or intentionally failing to show real property listed for sale, rental, or
23 lease; or

1 3. Refusing or intentionally failing to accept and/or transmit any reasonable offer
2 to purchase, lease, or rent real property.

3 C. It is an unfair practice to discriminate by denying a person access to, or membership or
4 participation in, a multiple listing service or real estate brokers' organization or other service, or
5 to discriminate in the terms and conditions of such access, membership, or participation.

6 D. It is an unfair practice to prohibit reasonable modifications needed by a disabled
7 tenant. Whether or not the landlord permits tenants in general to make alterations or additions to
8 a structure or fixtures, it is an unfair practice for a landlord to refuse to make reasonable
9 accommodations in rules, policies, practices, or services, when such accommodations may be
10 necessary to afford a disabled person equal opportunity to use and enjoy any dwelling, or to
11 refuse to allow a person to make alterations or additions to existing premises occupied or to be
12 occupied by a disabled person which are necessary to make the rental property accessible by
13 disabled persons, under the following conditions:

14 1. The landlord is not required to pay for the alterations, additions, or restoration
15 unless otherwise required by federal law;

16 2. The landlord has the right to demand assurances that all modifications will be
17 performed pursuant to local permit requirements, in a professional manner, and in accordance
18 with applicable building codes;

19 3. The landlord may, where it is reasonable to do so, condition permission for
20 modification on the tenant's agreement to restore the interior of the premises to its pre-existing
21 condition, reasonable wear and tear excepted.

22 E. It is an unfair practice under this chapter for any person to design or construct a
23 building or structure that does not conform with 42 U.S.C. ((§)) 3604, the Washington State

1 Barrier Free Act, WAC (~~Ch. 51-40-01~~) Ch. 51-50 as required by chapters 19.27 RCW and
2 70.92 RCW, other regulations adopted under 42 U.S.C. 3604 and chapters 19.27 RCW and 70.92
3 RCW, any other applicable laws pertaining to access by disabled persons, or any rules or
4 regulations promulgated thereunder. If the requirements of the applicable laws differ, those
5 which require greater accessibility for disabled persons shall govern.

6 F. It is an unfair practice for an owner or lessor of real property, when determining tenant
7 eligibility for purposes of leasing, subleasing, or renting real property, to apply income screening
8 criteria (such as an income to rent ratio) in a manner inconsistent with the following:

9 1. Any payment from a Section 8 or other subsidy program that reduces the
10 amount of rent for which the tenant is responsible must be subtracted from the total of the
11 monthly rent.

12 2. All sources of income must be included as a part of the tenant's total income
13 except in situations where the rental housing unit is subject to income and/or rent restrictions in a
14 housing regulatory agreement or subsidy agreement and income is determined pursuant to the
15 agreement.

16 G. For purposes of applying the definitions of "discriminate" and "discrimination" in
17 Section 14.08.020 to this Section 14.08.040, "discrimination" only includes "alternative source
18 of income" when referring to a person leasing, subleasing, or renting real property or who seeks
19 to lease, sublease, or rent real property.

20 H. It is an unfair practice for a person to fail to:

21 1. cooperate with a potential or current occupant in completing and submitting
22 required information and documentation for the potential or current occupant to be eligible for or
23 to receive rental assistance from Section 8 or other subsidy program;

1 2. accept a written pledge or commitment by a Section 8 or other subsidy program
2 to pay for past due or current housing costs, and court costs or reasonable attorney's fees already
3 incurred and directly related to recovery of the unpaid housing costs lawfully owed, under all of
4 the following conditions:

5 a. By itself or in combination with: other payments from a Section 8 or
6 other subsidy program, and any verifiable source of income including but not limited to wages,
7 salaries, or other compensation for employment, and all alternative sources of income, the
8 written pledge or commitment is sufficient to allow the occupant to become current on all
9 housing costs, and court costs or reasonable attorney's fees already incurred and directly related
10 to the recovery of the unpaid housing costs lawfully owed once the pledge or commitment is
11 fulfilled.

12 b. The written pledge or commitment is received by the owner at any time
13 prior to:

14 1) The issuance of a notice served under RCW 59.12.030(3) or (4)
15 or 59.04.040; or

16 2) The end of the time period allowed for compliance in notice
17 served under RCW 59.12.030(3) or (4) or 59.04.040.

18 c. The written pledge or commitment does not commit the owner to any
19 conditions, including any agreement not to pursue future unlawful detainer actions, except those
20 requiring the owner to timely provide any information necessary for payment.

21 d. The Section 8 or other subsidy program provider commits to paying the
22 written pledge or commitment to the owner within five business days of issuing the written

1 pledge or commitment to the owner. The payment shall be made directly from the Section 8 or
2 other subsidy program provider to the owner, where possible.

3 I. It is an unfair practice to advertise, institute, or maintain a preferred employer program.
4 Any preferred employer program that is part of an unexpired rental agreement upon the effective
5 date of the ordinance introduced as Council Bill 118755 may continue until the occupant vacates
6 the unit and the rental agreement is terminated.

7 J. Short-term voucher evaluation

8 The Department shall ask the City Auditor to conduct an evaluation of the impact of the
9 amendment to the definition of "Section 8 program" in subsection 14.08.020 (effective on the
10 date of the ordinance introduced as Council Bill 118755) to include short-term assistance to
11 determine if the addition of short-term assistance to the definition should be maintained,
12 amended, or repealed. The evaluation should include an analysis of the impact on the ability of
13 tenants to enter into and successfully remain in housing and the impact on the rate of eviction.
14 The City Auditor, at their discretion, may retain an independent, outside party to conduct the
15 evaluation. The evaluation shall be submitted to the City Council by the end of 2018.

16 Section 4. Subsection 14.08.045.B of the Seattle Municipal Code, which section was last
17 amended by Ordinance 123014, is amended as follows: _____

18 **14.08.045 Retaliation, harassment, or coercion.**

19 * * *

20 B. It is an unfair practice for any person, whether or not acting for profit, to harass,
21 intimidate, discriminate against, or otherwise abuse any person or person's friends or associates
22 because of race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental
23 status, sexual orientation, gender identity, political ideology, honorably discharged veteran or

1 ~~military status, alternative source of income, participation in a Section 8 or other subsidy~~
2 ~~program, the presence of any disability, or the use of a trained dog guide or service animal by a~~
3 ~~disabled person with the purpose or effect of denying to such person the rights granted in this~~
4 ~~chapter or the right to quiet or peaceful possession or enjoyment of any real property.~~

5 * * *

6 Section 5. A new Section 14.08.050 is added to the Seattle Municipal Code as follows:

7 **14.08.050 First-in-time**

8 ~~A. Effective January 1, 2017, it is an unfair practice for a person to fail to:~~

9 1. provide notice to a prospective occupant, in writing or by posting in the office
10 of the person leasing the unit or in the building where the unit is physically located and, if
11 existing, on the website advertising rental of the unit, in addition to and at the same time as
12 providing the information required by RCW 59.18.257(1), of:

13 ~~a. the criteria the owner will use to screen prospective occupants and the~~
14 ~~minimum threshold for each criterion that the potential occupant must meet to move forward in~~
15 ~~the application process; including any different or additional criteria that will be used if the~~
16 ~~owner chooses to conduct an individualized assessment related to criminal records.~~

17 ~~b. all information, documentation, and other submissions necessary for the~~
18 ~~owner to conduct screening using the criteria stated in the notice required in subsection~~
19 ~~14.08.050.A.1.a. A rental application is considered complete when it includes all the~~
20 ~~information, documentation, and other submissions stated in the notice required in this~~
21 ~~subsection 14.08.050.A.1.b. Lack of a material omission in the application by a prospective~~
22 ~~occupant will not render the application incomplete.~~

1 c. information explaining how to request additional time to complete an
2 application to either ensure meaningful access to the application or a reasonable accommodation
3 and how fulfilling the request impacts the application receipt date, pursuant to subsection
4 14.08.050.B and C.

5 d. the applicability to the available unit of the exceptions stated in
6 subsections 14.08.050.A.4.a and b.

7 2. note the date and time of when the owner receives a completed rental
8 application, whether submitted through the mail, electronically, or in person.

9 3. screen completed rental applications in chronological order as required in
10 subsection 14.08.050.A.2 to determine whether a prospective occupant meets all the screening
11 criteria that are necessary for approval of the application. If, after conducting the screening, the
12 owner needs more information than was stated in the notice required in subsection
13 14.08.050.A.1.b to determine whether to approve the application or takes an adverse action as
14 described in RCW 59.18.257(1)(c) or decides to conduct an individualized assessment, the
15 application shall not be rendered incomplete. The owner shall notify the prospective occupant in
16 writing, by phone, or in person of what additional information is needed, and the specified period
17 of time (at least 72 hours) that the prospective occupant has to provide the additional
18 information. The owner's failure to provide the notice required in this subsection 14.08.050.A.3
19 does not affect the prospective occupant's right to 72 hours to provide additional information. If
20 the additional information is provided within the specified period of time, the original
21 submission date of the completed application for purposes of determining the chronological
22 order of receipt will not be affected. If the information is not provided by the end of the specified
23 period of time, the owner may consider the application incomplete or reject the application.

1 4. offer tenancy of the available unit to the first prospective occupant meeting all
2 the screening criteria necessary for approval of the application. If the first approved prospective
3 occupant does not accept the offer of tenancy for the available unit within 48 hours of when the
4 offer is made, the owner shall review the next completed rental application in chronological
5 order until a prospective occupant accepts the owner's offer of tenancy. This subsection
6 14.08.050.A.4 does not apply when the owner:

7 a. is legally obligated to set aside the available unit to serve specific
8 vulnerable populations;

9 b. voluntarily agrees to set aside the available unit to serve specific
10 vulnerable populations, including but not limited to homeless persons, survivors of domestic
11 violence, persons with low income, and persons referred to the owner by non-profit
12 organizations or social service agencies.

13 B. If a prospective occupant requires additional time to submit a complete rental
14 application because of the need to ensure meaningful access to the application or for a reasonable
15 accommodation, the prospective occupant must make a request to the owner. The owner shall
16 document the date and time of the request and it will serve as the date and time of receipt for
17 purposes of determining the chronological order of receipt pursuant to subsection 14.08.050.A.2.
18 The owner shall not unreasonably deny a request for additional time. If the request for additional
19 time is denied, the date and time of receipt of the complete application shall serve as the date and
20 time of receipt pursuant to subsection 14.08.050.A.2. This subsection 14.08.050.B does not
21 diminish or otherwise affect any duty of an owner under local, state, or federal law to grant a
22 reasonable accommodation to an individual with a disability.

1 C. To maintain the prospective occupant's chronological position noted at the time of
2 notice, the owner may require that the prospective occupant provide reasonable documentation
3 of the need for additional time to ensure meaningful access along with the completed application.

4 The owner must notify the prospective occupant at the time the owner grants any request for
5 additional time if the owner will require submission of reasonable documentation. If such notice
6 is given and reasonable documentation is not provided with the completed application, the owner
7 may change the date and time of receipt from when the request was made to the date and time
8 the complete application is submitted. This subsection 14.08.050.C applies only to requests for
9 additional time based on the need to ensure meaningful access to the application. It does not
10 apply to requests for reasonable accommodation.

11 D. First-in-time evaluation

12 The Department shall ask the City Auditor to conduct an evaluation of the impact of the
13 program described in subsections 14.08.050.A-C to determine if the program should be
14 maintained, amended, or repealed. The evaluation shall only be conducted on the basis of the
15 program's impacts after 18 months of implementation. The evaluation should include an analysis
16 of the impact on discrimination based on a protected class and impact on the ability of low-
17 income persons and persons with limited English proficiency to obtain housing. The City
18 Auditor, at their discretion, may retain an independent, outside party to conduct the evaluation.
19 The evaluation shall be submitted to the City Council by the end of 2018.

1 Section 6. Section 14.08.060 of the Seattle Municipal Code, last amended by Ordinance
2 121593, is amended as follows:

3 **14.08.060 Discrimination in real estate-related transactions ((c))**

4 It is an unfair practice for any lender, or any agent or employee thereof, to whom
5 application is made for financial assistance for the purchase, lease, acquisition, construction,
6 rehabilitation, repair, or maintenance of any real property, or any other person whose business
7 includes engaging in real estate related transactions, to:

8 A. Discriminate against any person, prospective occupant, or occupant of real property in
9 the granting, withholding, extending, making available, modifying, or renewing, or in the rates,
10 terms, conditions, or privileges of a real estate related transaction, or in the extension of services
11 in connection therewith; or

12 B. Discriminate by using any form of application for a real estate related transaction or
13 making any record of inquiry in connection with applications for a real estate related transaction
14 which expresses, directly or indirectly, an intent to discriminate unless required or authorized by
15 local, state, or federal laws or agencies to prevent discrimination in real property; provided that,
16 nothing in this provision shall prohibit any party to a credit transaction from requesting
17 designation of marital status for the purpose of considering application of community property
18 law to the individual case or from taking reasonable action thereon or from requesting
19 information regarding age, parental status, or participation in a Section 8 or other subsidy
20 program when such information is necessary to determine the applicant's ability to repay the
21 loan.

1 Section 7. Section 14.08.070 of the Seattle Municipal Code, last amended by Ordinance
2 123527, is amended as follows:

3 **14.08.070 Unfair inquiries or advertisements ((-))**

4 It is an unfair practice for any person to:

5 A. Require any information, make or keep any record, or use any form of application
6 containing questions or inquiries concerning race, color, creed, religion, ancestry, national origin,
7 age, sex, marital status, parental status, sexual orientation, gender identity, political ideology,
8 honorably discharged veteran or military status, participation in a Section 8 or other subsidy
9 program, the presence of a disability, or the use of a trained dog guide or service animal by a
10 disabled person in connection with a real estate transaction unless used solely:

11 1. For making reports required by agencies of the federal, state, or local
12 government to prevent and eliminate discrimination or to overcome its effects or for other
13 purposes authorized by federal, state, or local agencies or laws or rules adopted thereunder,

14 2. As to "marital status," for the purpose of determining applicability of
15 community property law to the individual case, or

16 3. As to "age," for the purpose of determining that the applicant has attained the
17 age of majority, or in the case of housing exclusively for older persons as described in ((SMC))
18 subsection 14.08.190 E, for the purpose of determining the eligibility of the applicant;

19 B. Publish, print, circulate, issue, or display, or cause to be published, printed, circulated,
20 issued, or displayed, any communication, notice, advertisement, statement, or sign of any kind
21 relating to a real estate transaction or listing of real property which indicates directly or indicates
22 an intention to make any preference, limitation, or specification based on race, color, creed,
23 religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation,

1 gender identity, political ideology, honorably discharged veteran or military status, alternative
2 source of income, the participation in a Section 8 or other subsidy program, the presence of a
3 disability, or the use of a service animal by a disabled person.

4 Section 8. Section 14.08.190 of the Seattle Municipal Code, which was last amended by
5 Ordinance 123014, are amended as follows: ...

6 **14.08.190 Exclusions.**

7 Nothing in this chapter shall:

8 * * *

9 B. Be interpreted to prohibit any person from making a choice among prospective
10 purchasers or tenants of real property on the basis of factors other than race, color, creed,
11 religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation,
12 gender identity, political ideology, honorably discharged veteran or military status, alternative
13 source of income, participation in a Section-8 or other subsidy program, the presence of any
14 disability, or the use of a trained dog guide or service animal by a disabled person where such
15 factors are not designed, intended or used to discriminate;

16 * * *

17 J. Prohibit any person from limiting the rental or occupancy of a dwelling based on the
18 use of force or violent behavior by an occupant or prospective occupant, including behavior
19 intended to produce or incite imminent force or violence to the person or property of the owner,
20 manager, or other agent of the owner ((-)) ; or

21 K. Be interpreted to restrict a person's obligation or ability to lease or sell real property
22 that has been designated for certain types of tenants or purchasers as part of a government
23 sponsored or legally required low-income housing program or policy, subsidy, voucher, or tax-

- 1 related program for the provision of affordable housing, to such tenants intended to be served or
- 2 benefited by such designation or program.

3

1 Section 9. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 8th day of August, 2016, and
5 signed by me in open session in authentication of its passage this 8th day of
6 August, 2016.

7 

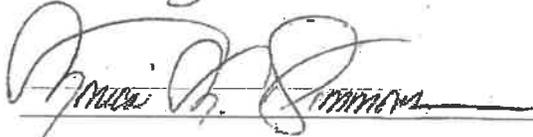
8
9 President _____ of the City Council

10
11 Approved by me this 17th day of August, 2016.

12 

13
14 Edward B. Murray, Mayor

15
16 Filed by me this 17th day of August, 2016.

17 

18
19 Monica Martinez Simmons, City Clerk

20
21 (Seal)

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Revised Brief of Amicus Curiae Rental Housing Association of Washington* in Supreme Court Cause No. 95813-1 to the following:

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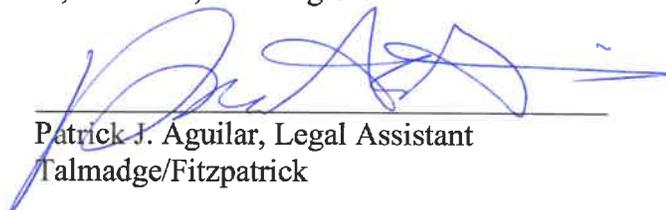
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Original E-filed with:
Supreme Court Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 10, 2019, at Seattle, Washington.



Patrick J. Aguilar, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK/TRIBE

May 10, 2019 - 12:55 PM

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Superior Court Case Number: 17-2-05595-6

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Comments:

Revised Motion for Leave to File Memorandum of Amicus Curiae RHA per May 8, 2019 Letter from Commissioner Johnston Revised Brief of Amicus Curiae Rental Housing Association of Washington per May 8, 2019 Letter from Commissioner Johnston

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