

Ordinance No. 120156

Council Bill No. 113461

The City of Seattle
Council Bill/Ordinance

Rush!

AN ORDINANCE relating to Land Use Code enforcement amending Seattle Municipal Code Sections 23.90.018 and 23.90.022 to respond to the Superior Court decision in *Davis vs. City of Seattle*.

11-7-00 Pass 2

CF No. _____

11-13-00

Date Introduced:	OCT 30 2000	
Date 1st Referred:	OCT 30 2000	To: (committee) Landlord/Tenant & Land Use Committee
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: 9-0	
Date Presented to Mayor:	Date Approved: 11-13-00	
Date Returned to City Clerk:	Date Published: Hoops	T.O. _____ F.T. <input checked="" type="checkbox"/>
Date Vetoes by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

This file is complete and ready

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

Julio A. NICAstro
Councilmember

Wah!

Committee Action:

11-7-00 Pass 2-0 JN, MP

11-13-00 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

(u)

City Clerk
Review

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Full Council*

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Indexed

ORDINANCE 120156

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5 AN ORDINANCE relating to Land Use Code enforcement amending Seattle
6 Municipal Code Sections 23.90.018 and 23.90.022 to respond to the Superior Court decision
7 in *Davis vs. City of Seattle*.
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9

10 Section 1. Section 23.90.018 of the Seattle Municipal Code, which was last
11 amended by Ordinance 116795, is amended as follows:
12

13 **23.90.018 Civil penalty.**
14

15 A. In addition to any other sanction or remedial procedure which may be available,
16 any person violating or failing to comply with any of the provisions of Title 23 and who is
17 identified in an order of the Director shall be subject to a cumulative penalty in the amount
18 of Seventy-five Dollars (\$75) per day for each violation from the date set for compliance
19 until the ~~((order is complied with))~~ person complies with the requirements of the code,
20 except as provided in subsection B of this section.

21 B. Violations of Section 23.71.018 are subject to penalty in the amount specified in
22 Section 23.71.018 H.

23 C. The penalty imposed by this section shall be collected by civil action brought in
24 the name of the City. The Director shall notify the City Attorney in writing of the name of
25 any person subject to the penalty, and the City Attorney shall, with the assistance of the
26 Director, take appropriate action to collect the penalty. In any civil action for a penalty, the
27 City has the burden of proving by a preponderance of the evidence that a violation exists or
28 existed; the issuance of the notice of violation or of an order following a review by the
29 Director is not itself evidence that a violation exists.

30 D. The violator may show as full or partial mitigation of liability:

- 31 1. That the violation giving rise to the action was caused by the wilful act, or
32 neglect, or abuse of another; or
33 2. That correction of the violation was commenced promptly upon receipt of
34 the notice thereof, but that full compliance within the time specified was prevented by
35 inability to obtain necessary materials or labor, inability to gain access to the subject
36 structure, or other condition or circumstance beyond the control of the defendant.
37
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39 Section 2. Section 23.90.022 of the Seattle Municipal Code, which was last
40 amended by Ordinance 113978, is amended as follows:
41

42 **23.90.022 Additional relief.**
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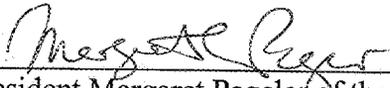
44 The Director may seek legal or equitable relief to enjoin any acts or practices and
45 abate any condition which constitutes or will constitute a violation of the Land Use Code
46 when civil or criminal penalties are inadequate to effect compliance. In any such action, the



1 City has the burden of proving by a preponderance of the evidence that a violation exists or
2 will exist; the issuance of the notice of violation or of an order following a review by the
3 Director is not itself evidence that a violation exists or will exist.
4
5

6 **Section 3.** This ordinance shall take effect and be in full force thirty (30) days from
7 and after its approval by the Mayor, but if not approved and returned by the Mayor within
8 ten (10) days after presentation, it shall take effect as provided by Municipal Code Section
9 1.04.020.

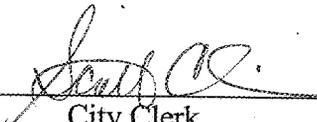
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11 Passed by the City Council the 13th day of November 2000, and signed by me in
12 open session in authentication of its passage this 13th day of November, 2000.
13
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15
16 
17 _____
18 President Margaret Pageler of the City Council
19

20 Approved by me this 13th day of NOVEMBER, 2000.
21

22
23 
24 _____
25 Mayor
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28 Filed by me this 14th day of November, 2000.
29

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31 
32 _____
33 City Clerk
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City of Seattle

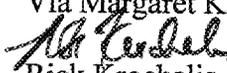
Paul Schell, Mayor

Department of Design, Construction and Land Use

R. F. Krochalis, Director

MEMORANDUM

TO: Margaret Pageler, City Council President
Via Margaret Klockars, Law Department

FROM: 
Rick Krochalis, Director

DATE: October ¹²/₇, 2000

SUBJECT: Proposed Land Use Code Amendments Related to the Decision in
Davis vs. City of Seattle

Transmittal

With this memorandum we are transmitting for City Council consideration, proposed legislation amending the Land Use Code to respond to the Superior Court's decision in *Davis vs. City of Seattle*.

Background

The court in the *Davis* case concluded that the Department of Design, Construction and Land Use (DCLU) Director's Review process does not meet the requirements for due process because it appears to shift the burden of proof concerning the existence of a violation from the City to the defendant. The City believes this conclusion is inconsistent with other court decisions and does not take into consideration the fact that at the trial to impose the penalty the Municipal Court has always required, and DCLU has agreed, that the City has the burden of producing evidence that a violation exists or existed and that the City has the burden of proving that fact by a preponderance of the evidence. The City's motion for reconsideration in the case was denied on June 13th. In addition, people challenging the City's process contended that differences in the wording of provisions providing for a penalty in Title 23 (Land Use Code) and Title 22 (Construction Codes) created a different substantive effect, which DCLU does not intend.

Amendment

The proposed amendment addresses the Superior Court's concern by making it clear that at a trial to impose a civil penalty, both the burden of production and the burden of proof rest with the City. The amendment also makes the penalty language in Title 23 consistent with Title 22. The amendment is not substantive.



Financial Impact

There are no operational financial impacts for DCLU.

Public Hearing/SEPA

Due to the procedural nature of this amendment, environmental review is not required. A public hearing has been scheduled before the Council's Landlord/Tenant and Land Use Committee on November 7, 2000.

If you have questions about the proposed legislation, please call Diane Sugimura at 233-3882 or via email at diane.sugimura@ci.seattle.wa.us.



City of Seattle

ORDINANCE 120156

AN ORDINANCE relating to Land Use Code enforcement amending Seattle Municipal Code Sections 23.90.018 and 23.90.022 to respond to the Superior Court decision in *Davis vs. City of Seattle*.

SECTION 1. Section 23.90.018 of the Seattle Municipal Code, which was last amended by Ordinance 116795, is amended as follows:

23.90.018 CIVIL PENALTY.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of Title 23 and who is identified in an order of the Director shall be subject to a cumulative penalty in the amount of Seventy-five Dollars (\$75) per day for each violation from the date set for compliance until the order is complied with. Person complies with the requirements of the code, except as provided in subsection B of this section.

B. Violations of Section 23.71.018 are subject to penalty in the amount specified in Section 23.71.018 H.

C. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed; the issuance of the notice of violation or of an order following a review by the Director is not itself evidence that a violation exists.

D. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

SECTION 2. Section 23.90.022 of the Seattle Municipal Code, which was last amended by Ordinance 113978, is amended as follows:

23.90.022 ADDITIONAL RELIEF.

The Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the Land Use Code when civil or criminal penalties are inadequate to effect compliance. In any such action, the City has the burden of proving by a preponderance of the evidence that a violation exists or will exist, the issuance of the notice of violation or of an order following a review by the Director is not itself evidence that a violation exists or will exist.

SECTION 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 13th day of November, 2000, and signed by me in open session in authentication of its passage this 13th day of November, 2000.

MARGARET PAGERER,

President Margaret Pagerer of the City Council.

Approved by me this 13th day of November, 2000.

PAUL SCHELL,

Mayor.

Filed by me this 14th day of November, 2000.

(Seal) **SCOTT CLINE,**

Acting City Clerk.

Publication ordered by **JUDITH PIPPIN,** City Clerk.

((Boldface denotes deletion.))

Date of official publication in Daily Journal of Commerce, Seattle, November 16, 2000. 11/16(124705C)

City of Seattle Journal

WASHINGTON - KING COUNTY

Office —ss.

No. ORDINANCE FU

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:120156 ORD. IN FUL

was published on
11/16/00

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

[Signature]
Subscribed and sworn to before me on
11/16/00
[Signature]
Notary Public for the State of Washington,
residing in Seattle

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Cit