

Ordinance No. 121409

Council Bill No. 114246

The City of Seattle
Council Bill/Ordinance

we

AN ORDINANCE deleting a tenant's right of first refusal to purchase when rental units are converted to cooperatives by amending SMC Sections 22.902.080 and 22.902.210 and repealing SMC Sections 22.902.070, 22.902.090, 22.902.100, and 22.902.220.

CF No. _____

Date Introduced: <u>JUL 15 2002</u>	<u>NICASTRO</u>	
Date 1st Referred: <u>JUL 15 2002</u>	To: (Committee) <u>Land Use Committee</u>	
Date Re- Referred: <u>FEB - 9 2004</u>	To: (committee) <u>Urban Development & Planning</u>	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>3-1-04</u>	Full Council Vote:	
Date Presented to Mayor: <u>3-2-04</u>	Date Approved: <u>3/2/04</u>	
Date Returned to City Clerk: <u>3/5/04</u>	Date Published: <u>3/11/04</u>	T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/>
Date Vetoes by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

3-1-04 Pass

This file is complete and ready

3/5/04

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by:

[Signature]
Councilmember

STEINBRUECK

NICASTRO

Committee Action:

Approved 3-0 B, TR, R

3-1-04 Passed 9-0

This file is complete and ready for presentation to Full Council.

Committee: _____

(initials)

Law Department

Law Dept. Review

OMP Review

[Signature]
City Clerk Review

[Signature]
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ORDINANCE

121409

AN ORDINANCE deleting a tenant's right of first refusal to purchase when rental units are converted to cooperatives by amending SMC Sections 22.902.080 and 22.902.210 and repealing SMC Sections 22.902.070, 22.902.090, 22.902.100, and 22.902.220.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. SMC Section 22.902.070, which Section was enacted by Ordinance 107707, is repealed in its entirety.

Section 2. SMC Section 22.902.080, which Section was last amended by Ordinance 115105, is amended as follows:

22.902.080 Purchase rights of tenants whose units are offered for sale prior to effective date.

Tenants of rental units which were offered for sale as cooperative units prior to the effective date of the ordinance codified in this chapter¹ but for which offers there have been no acceptances, shall be entitled to the rights and benefits of this chapter (~~except that those rights provided by Section 22.902.100 shall terminate sixty (60) days from the offer of sale of the unit to the tenant~~)).

Section 3. SMC Section 22.902.090, which Section was enacted by Ordinance 107707, is repealed in its entirety.



1
2 **Section 4.** SMC Section 22.902.100, which Section was enacted by
3 Ordinance 107707, is repealed in its entirety.

4
5 **Section 5.** Subsection B of SMC Section 22.902.210, which Section was enacted
6 by Ordinance 107707, is amended as follows:

7
8 **22.902.210 Delivery of notice and other documents.**

9
10 B. The one-hundred-twenty (120) day notice of intention to sell required by
11 Section 22.902.060, ~~((the developer's offer to sell,))~~ and all disclosure documents shall be
12 delivered to the tenants in a converted building at a meeting between the developer and the
13 tenants. The meeting shall be arranged by the developer at a time and place convenient to
14 the tenants. At the meeting the developer shall discuss with the tenants the effect that the
15 conversion will have upon the tenants. Should any tenant refuse to acknowledge acceptance
16 of the notice~~((offer))~~ and disclosures the developer shall deliver the documents in the
17 manner prescribed in subsection A of this section.

18
19 **Section 6.** SMC Section 22.902.220, which Section was enacted by
20 Ordinance 107707, is repealed in its entirety.

21





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

June 28, 2002

Honorable Peter Steinbrueck
President, Seattle City Council
Municipal Building, 11th Floor

Dear Council President Steinbrueck:

I am transmitting the attached ordinance for Council consideration.

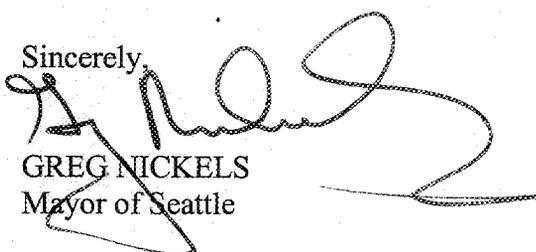
This ordinance, along with two companion ordinances, will bring the Seattle Municipal Code into compliance with state law as expressed by the Washington Supreme Court in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347 (2000). The proposed amendments to Chapter 22.902 SMC remove language granting tenants a right of first refusal to purchase when rental units are converted to cooperatives. This code language is analogous to a provision of state law that the court found to be in violation of Article I, Section 16 of the state constitution.

The two companion ordinances propose amendments eliminating the right of first refusal granted to floating home owners for the purchase of their rented moorage, and the right of first refusal granted to tenants for rental of units that have been substantially renovated. In order to offer greater flexibility in protecting Seattle's citizens' lawful rights underlying the existing code, a separate ordinance has been prepared for each proposed amendment.

The proposed legislation is categorically exempt, pursuant to SMC 25.05.800 T, from threshold environmental determinations and EIS requirements.

Thank you for your consideration of this legislation. Should you have questions, please contact Mark Troxel at 206-615-1739 or via email at mark.troxel@ci.seattle.wa.us.

Sincerely,


GREG NICKELS
Mayor of Seattle

Attachments:

Director's Report and Recommendation
Proposed Ordinance Amending the Land Use Code



ATTACHMENT 1 -- EXCERPT FROM THE WASHINGTON STATE CONSTITUTION

Article I of the Washington Constitution Section 16: Eminent Domain.

Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. **Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public:** Provided, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

(Emphasis added.)



ATTACHMENT 2 -- SUMMARY OF THE MOBILE HOME PARKS RESIDENT OWNERSHIP ACT

In 1993, the legislature adopted Chapter 59.23 RCW seeking to protect the availability of mobile home park housing. To exercise a right of first refusal under Chapter 59.23 RCW, the tenants were required to organize into a "qualified tenant organization" and give the park owner written notice of their willingness to purchase the mobile home park. RCW 59.23.015. Once the park owner received such notice, the park owner was required to notify the tenants of any agreement to sell the park to a third party, as well as disclose the terms of that agreement. If the park owner failed to properly notify the qualified tenant organization, any sale to a third party would have been voidable. RCW 59.23.030. Upon receiving proper notice, tenants had 30 days in which to pay the park owner two percent of the third party's agreed purchase price and to tender a purchase and sale agreement as financially favorable as the agreement between the park owner and the third party. If the tenants met this requirement within the 30-day period, the park owner was required to sell them the park. If tenants failed to meet these requirements or if, in the case of seller financing, the park owner determined that selling to the tenants created a greater financial risk than selling to the third party, the park owner was allowed to sell to the third party. RCW 59.23.025.



**ATTACHMENT 3 -- PERTINENT SEATTLE MUNICIPAL CODE SECTIONS AFFECTED
BY SUPREME COURT RULING**

I. Code Excerpt Regarding Moorage Purchase Right

Chapter 7.20 FLOATING HOME MOORAGES

SMC 7.20.115 Sale of moorage or moorage site -- Prerequisites -- Penalty for violations.

A. No owner of a floating home moorage or moorage site may sell that moorage or moorage site without first offering to sell the property for the same price, terms, and conditions, with the two (2) exceptions noted in subsection 4B below, to the floating home owner or owners, respectively, who have leasehold interests at the moorage site or moorage, respectively, being sold. The offer which is sent to the floating home owners must be a bona fide offer, in writing, and must have been made in good faith. The offer must describe fully the price, terms, and conditions of the purchase offer being considered by the moorage or moorage site owner, and the eligible floating home owner must be provided with a copy of any pending purchase and sale agreement or other document containing the offer which is to be matched. As to any particular moorage site being sold, only the floating home owner whose floating home occupies that site shall be entitled to notice and opportunity to purchase as provided in this section. The offer shall be deemed received by the floating home owner either upon actual receipt of the offer by the floating home owner or three (3) days after notice of the offer has been mailed by certified mail to the floating home address and to such other address as has been provided in writing by the floating home owner to the moorage or moorage site owner.

B. Upon receipt of the owner's offer, the floating home owner or owners shall have thirty (30) calendar days in which to offer to enter into a real estate purchase and sales agreement containing, with the two (2) exceptions provided for below, the same price, terms, and conditions described in the offer. Irrespective of the terms included in the moorage or moorage site owner's original offer, (1) the floating home owner or owners shall be required to make an earnest money payment of three percent (3%) of the purchase price; and (2) the floating home owner or owners shall close the sale within sixty (60) days after a qualifying offer has been timely submitted in writing with the requisite earnest money payment to the moorage or moorage site owner, unless the failure to close is the fault of the moorage or moorage site owner. Any floating home owner or owners who have exercised this right to purchase a moorage or moorage site but have failed to close the sale as required under this section shall not again be eligible for the opportunity to purchase under this section, and no further notice need be provided to such floating home owner or owners,



for a period of one (1) year from the date on which the floating home owner or owners received notice of the pending offer.

C. In the event that the owner of a moorage containing more than one (1) site receives more than one (1) offer from eligible floating home owners to enter into a purchase and sale agreement pursuant to the provisions of subsections 4A and 4B above, the moorage owner may choose between or among such floating home owners by allowing them the opportunity to increase the amounts of their offers or by any other reasonable means. This section shall not be construed to create a right in eligible tenants to purchase their individual moorage sites when a moorage owner is selling an entire moorage containing more than one (1) site.

D. In addition to the other enforcement provisions of this chapter, any person who violates any provision of this section shall be liable for all damages to public or private property arising from such violation. Private persons shall have the right to bring suit for damages, equitable relief, or both, under this section and on their own behalf and on the behalf of all persons similarly situated. In addition, the court, in its discretion, may award attorney's fees and costs of the suit to the prevailing party.

II. Code Excerpt Regarding Post-rehabilitation Reoccupation Right

Chapter 22.206 HABITABLE BUILDINGS

SMC 22.206.160 Duties of owners.

C. Just Cause Eviction.

h. The owner seeks to do substantial rehabilitation in the building; provided that, the owner must obtain a tenant relocation license if required by SMC Chapter 22.210 and at least one (1) permit necessary for the rehabilitation, other than a Master Use Permit, before terminating the tenancy. **Any tenants dispossessed pursuant to this provision shall be notified in writing by the owner at the time of vacating the unit that the tenant has a right of first refusal for the rehabilitated unit. The owner shall notify the tenant in writing, mailed by regular mail to the last address provided by the tenant, when the unit is ready to be reoccupied, and the tenant shall exercise such right of first refusal within thirty (30) days of the owner's notice;**

(Emphasis added to indicate language to be removed.)



III. Code Excerpts Regarding Conversion Purchase Right

Chapter 22.902 COOPERATIVE CONVERSION

SMC 22.902.070 Purchase rights of tenant in possession.

With the notice provided in Section 22.902.060, the developer shall deliver to each tenant whose unit is to be offered for sale, a firm offer of sale of the unit that the tenant occupies. In the event that more than one (1) tenant occupies a single unit, the developer shall deliver the offer to all tenants jointly or separately. For sixty (60) days from the date of delivery of the offer the tenant shall have the exclusive right to purchase his or her unit. For a period of one (1) year following the rejection of an offer by the tenant in possession, the developer shall not offer the unit for sale to any other person on terms in any respect more favorable than those offered the tenant.

SMC 22.902.090 Subtenants' purchase rights.

Should a tenant reject an offer of sale, the subtenant in possession at the time the notice provided in Section 22.902.060 is delivered, shall be offered the unit on the same terms as those offered the tenant. For thirty (30) days following the offer or until the expiration of the tenants' sixty (60) day purchase period as provided in Section 22.902.070, whichever occurs later, the subtenant shall have the exclusive right to purchase the unit.

SMC 22.902.100 Rights of tenants in converted buildings to purchase other units in the building.

Should both the tenant and subtenant reject the offer of sale or vacate, the unit shall be made available to other tenants and subtenants in the building. The tenants' and subtenants' right to purchase another unit in the building shall extend to the end of the one-hundred-twenty (120) day notice period provided the tenant in possession of that unit; provided, that tenants and subtenants shall not have the right to purchase more than one (1) unit in the building. Whenever all tenants and subtenants in a building have indicated in writing their intention not to purchase a unit and that unit is or becomes vacant then the developer may offer for sale and sell the unit to the public.

SMC 22.902.220 Acceptance of offers.

Acceptance by tenants or other beneficiaries of offers provided pursuant to this chapter, shall be in writing and delivered to the developer by registered or certified mail postmarked on or before the expiration date of the offer.



Director's Report and Recommendation

AMENDMENT TO REMOVE REFERENCES TO RIGHT OF FIRST REFUSAL IN RESPONSE TO WASHINGTON SUPREME COURT RULING

June 11, 2002

I. SUMMARY

The Director of DCLU proposes the following amendments that will bring the Seattle Municipal Code (SMC) into compliance with state law as expressed by the Washington Supreme Court in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347 (2000). Three sections of the SMC granting private parties a right of first refusal are analogous to a provision of state law that the court found to be a violation of article I, section 16 of the state constitution. A separate ordinance has been prepared for each of the SMC sections to be amended.

II. ANALYSIS

Chapter 59.23 of the Revised Code of Washington, the Mobile Home Parks Resident Ownership Act (the Act), gave qualified tenants a right of first refusal to purchase a mobile home park (*see* summary in Attachment 2). It is similar in this regard to the following sections of the SMC (*see* Attachment 3):

- SMC Sections 7.20.115 and 7.20.150, which grants a floating home owner a right of first refusal to purchase the floating home moorage that the owner currently rents for the floating home (a moorage purchase right);
- the Just Cause Eviction Ordinance, SMC Section 22.206.160 C, which grants tenants a right of first refusal to re-rent their rental unit when the owner rehabilitates the unit (a post-rehabilitation re-rental right); and
- the Cooperative Conversion Ordinance, at SMC Sections 22.902.070, 22.902.090, 22.902.100 and 22.902.220, grants a tenant a right of first refusal when units are converted to a cooperative (a conversion purchase right).

The intended purpose of Seattle's moorage purchase right, post-rehabilitation re-rental right, and conversion purchase right is to give residents of floating homes and apartment buildings an opportunity to remain in their homes when the rental units are either sold or vacated subject to re-renting. The owners of the mobile home park in *Manufactured Housing Communities* argued that the mere existence of the Act destroyed their right to (1) freely dispose of their property, (2) exclude others, and (3) immediately close the sale of their property. The court held that taking the right of first refusal from the owners and granting it to the tenants for their private use violates article I, section 16 of the Washington State Constitution, which states "No private property shall be taken . . . for



public or private use without just compensation having first been made" (See Attachment 1.)

II. RECOMMENDATION

The Director recommends repeal or amendment of the pertinent sections of the SMC shown on Attachment 3 to this report in order to comply with the state constitution as expressed by the Washington Supreme Court in *Manufactured Housing Communities of Washington v. State*.



STATE OF WASHINGTON – KING COUNTY

--SS.

169368
City of Seattle, Clerk's Office

No. ORDINANCE TITLE ONLY

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:121409 TITLE ONLY

was published on

3/9/2004

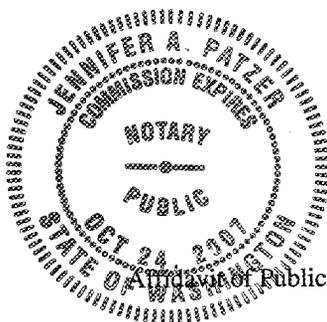
Melinda

Subscribed and sworn to before me on

3/9/2004

Jennifer A. Patzer

Notary public for the State of Washington,
residing in Seattle



Publication

State of Washington, King County

City of Seattle

ORDINANCE 121458

AN ORDINANCE deleting a tenant's right of first refusal to purchase when rental units are converted to cooperatives by amending SMC Sections 22.902.080 and 22.902.210 and repealing SMC Sections 22.902.070, 22.902.090, 22.902.100, and 22.902.220.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. SMC Section 22.902.070, which Section was enacted by Ordinance 107707, is repealed in its entirety.

Section 2. SMC Section 22.902.080, which Section was last amended by Ordinance 115105, is amended as follows:

22.902.080 Purchase rights of tenants whose units are offered for sale prior to effective date.

Tenants of rental units which were offered for sale as cooperative units prior to the effective date of the ordinance codified in this chapter but for which offers there have been no acceptances, shall be entitled to the rights and benefits of this chapter ~~(except that these rights shall terminate sixty (60) days from the offer of sale of the unit to the tenant).~~

Section 3. SMC Section 22.902.090, which Section was enacted by Ordinance 107707, is repealed in its entirety.

Section 4. SMC Section 22.902.100, which Section was enacted by Ordinance 107707, is repealed in its entirety.

Section 5. Subsection B of SMC Section 22.902.210, which Section was enacted by Ordinance 107707, is amended as follows:

22.902.210 Delivery of notice and other documents.

B. The one-hundred-twenty (120) day notice of intention to sell required by Section 22.902.060, ~~(the developer offer to sell)~~ and all disclosure documents shall be delivered to the tenants in a converted building at a meeting between the developer and the tenants. The meeting shall be arranged by the developer at a time and place convenient to the tenants. At the meeting the developer shall discuss with the tenants the effect that the conversion will have upon the tenants. Should any tenant refuse to acknowledge acceptance of the notice ~~(offer)~~ and disclosures the developer shall deliver the documents in the manner prescribed in subsection A of this section.

Section 6. SMC Section 22.902.220, which Section was enacted by Ordinance 107707, is repealed in its entirety.

Section 7. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 8. 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.

Page

Passed by the City Council the 1st day of March, 2004, and signed by me in open session in authentication of its passage this 1st day of March, 2004.

Jan Drago

President of the City Council

Approved by me this 5th day of March, 2004.

Gregory J. Nickels, Mayor

Filed by me this 5th day of March, 2004.

(SEAL) Judith Pippin