The Hon. Jason Poydras
Noted for Hearing: Feb. 14, 2025, at 10 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GRE DOWNTOWNER LLC, a Washington limited liability company, d/b/a ADDISON ON FOURTH,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 24-2-24318-6 SEA

GRE DOWNTOWNER'S OPPOSITION TO THE CITY OF SEATTLE'S MOTION TO DISMISS

I. INTRODUCTION AND RELIEF REQUESTED

This action concerns the economic devastation wrought upon GRE Downtowner LLC's low-income housing property (the "Addison") by six of the City of Seattle's (the "City") ordinances (the "Ordinances"). These Ordinances did not simply regulate the landlord-tenant relationship. Rather, they collectively went "too far," destroyed the value of the Addison, and rendered it unsaleable. Further, the Ordinances that grant occupancy rights to "immediate family members" (which include even *former* dating partners) of the Addison's existing tenants have affected a physical invasion of the Addison. GRE Downtowner has pleaded more than enough facts to support its inverse condemnation claims. That is, the Complaint sufficiently alleges (1) a partial regulatory taking claim under *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978), and (2) a per se physical taking claim.

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

Given the detailed allegations of the Verified Complaint (the "Complaint"), which must be accepted as true, the City's Motion to Dismiss ("Motion") should be denied.

First, GRE Downtowner's regulatory taking claim is timely. Washington Supreme Court precedent directly contradicts the City's argument otherwise. It has been the law for decades that the "mere passage of time alone does not bar" a plaintiff's inverse condemnation claim. *Petersen v. Port of Seattle*, 94 Wn.2d 479, 483, 618 P.2d 67 (1980). The three-year statute of limitations does not apply here. But even if it did, the *Penn Central* claim did not accrue until 2022 at the earliest.

Second, GRE Downtowner pled facts to sufficiently allege its *Penn Central* claim. Even a brief review of the 38-page Complaint makes this obvious. The Complaint contains a wealth of allegations demonstrating the economic devastation on GRE Downtowner attributable to the Ordinances. Regulatory takings claims are "essentially ad hoc, factual inquiries" that require courts and juries to undertake "careful examination and weighing of all the relevant circumstances." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322, 122 S. Ct. 1465, 1478, 152 L. Ed. 2d 517 (2002) (citation omitted). Accordingly, courts are loathe to grant motions to dismiss in this context, even where plaintiffs provide far *less* factual material than GRE Downtowner has here. One cannot both accept GRE Downtowner's factual allegations (as is required) and grant the City's Motion.

Third, GRE Downtowner has pleaded that the Roommate Ordinance—whose effect is exacerbated by other Ordinances—resulted in a physical taking of the Addison. A regulation constitutes a physical taking when it requires a landowner to submit to the physical invasion of their property by a third party that the landlord did not invite onto the land. *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149, 141 S. Ct. 2063, 2072, 210 L. Ed. 2d 369 (2021). This is precisely the effect the Roommate Ordinance has had on the Addison. It forces GRE Downtowner to allow third parties it did not rent to or invite—even including tenants' former dating partners—to occupy the Addison. That is a physical taking.

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

At this stage in the proceedings, given the multitude of factual allegations GRE Downtowner has pleaded, and given the CR 12(b)(6) standard—under which the allegations in the Complaint are presumed true and all reasonable inferences are drawn in GRE Downtowner's favor—the City's Motion should be denied. A Proposed Order is submitted herewith.

II. STATEMENT OF FACTS

A. The Addison

The Addison began as the New Richmond Hotel in 1911, and was first converted into low-income housing in 1970. (Compl. ¶ 29.) In 2012, GRE Downtowner purchased the property for $12.5 million and invested an additional $26.5 million to make it a comfortable living space for people with limited means. (*Id.* ¶ 93.) GRE Downtowner is an affiliate of Goodman Real Estate, Inc. ("Goodman Real Estate"), which is located in and has served Seattle for over 30 years. (*Id.* ¶¶ 28–29). Goodman Real Estate was founded by John Goodman, a Seattle native and active philanthropist. Goodman Real Estate is and has been deeply committed to Seattle—as well as low-income housing and other forms of housing in Washington—for decades. (*Id.* ¶ 2.) Additionally, for many years, Goodman Real Estate has invested in commercial real estate to serve local businesses. (*Id.*)

The Addison was placed in service in the federal Low Income Housing Tax Credit ("LIHTC")[1] program in 2013, and in two short years, was fully renovated and operational. (*Id.* ¶ 30.) From the beginning, a direct affiliate or former affiliate of Goodman Real Estate has served as the Addison's property manager. (*Id.* ¶¶ 28–29.) The Addison provides Seattle with 254 apartments at a rent limit of 60% of the area median income, 46 artist studios, and four commercial spaces. (*Id.* ¶ 30.)

[1] The LIHTC program exists because Congress recognized that low-income housing is difficult to operate profitably, meaning that rational developers are hesitant to develop low-income housing. (Compl. ¶ 58.) Due to both (1) the low profit margins of low-income housing and (2) the acute shortage of affordable housing, LIHTC is crucial in providing developers the incentives to develop low-income housing. (*Id.* ¶¶ 52, 58). According to the federal government, the LIHTC program "is the most important resource for creating affordable housing in the United States today." HUD Office of Policy Development & Research, *Low-Income Housing Tax Credit (LIHTC)*, *available at* https://www.huduser.gov/portal/datasets/lihtc.html (last visited Feb. 2, 2025).

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

Prior to purchasing the Addison, GRE Downtowner projected it would be able to maintain and operate the complex at a small profit margin. (*Id.* ¶ 4.) GRE Downtowner's expectations were informed by then-existing landlord-tenant laws and Goodman Real Estate's own projections. (*Id.* ¶¶ 4, 31.) These investment-backed expectations are alleged to be reasonable. (*See, e.g.*, *id.* ¶ 31.) No fewer than five distinct, reputable, and experienced groups reviewed and were comfortable with these financial projections at the time of financing.[2] (*Id.* ¶ 32.) They were, in fact, spot on. (*See id.* ¶ 88.) For four years (2015–2018), GRE Downtowner's projections proved accurate as the adjusted net cash flow of the Addison performed as expected. (*Id.* ¶¶ 34, 86, 103.)

B. The Ordinances

Starting in 2017, the Seattle City Council began the process of passing six Ordinances. (*Id.* ¶ 35.) The cumulative impact of these Ordinances has transformed the Addison from a sustainable and profitable low-income property into a money pit that hemorrhaged $2.7 million in 2023 alone. (*Id.* ¶ 20.) These six Ordinances are as follows—

The Fair Chance Housing Ordinance (SMC 14.09.025). This ordinance, first enforced in February 2018, prevents landlords from denying a prospective tenant residency based on their criminal record. (*Id.* ¶ 48.) The Complaint alleges that the cumulative effect of this and the other Ordinances has been to destroy, not merely damage, the economic viability of the Addison. (*Id.* ¶¶ 36–38, 48.)

The Roommate Ordinance (SMC 7.24.030). This ordinance, passed in late 2019, bestows tenancy rights to a rented unit on a broad variety of people who are not existing tenants, for instance, tenants' former dating partners and family members—however tangential. (*Id.* ¶¶ 39, 48.) More specifically, the Roommate Ordinance requires GRE Downtowner to allow tenants'

[2] These included the Washington State Housing Finance Commission, Freddie Mac, Citigroup, East West Bank, and GRE Downtowner's investor member, Stratford Downtowner Investors Limited Partnership. (*Id.* ¶¶ 31–32.) These parties all approved the investment forecast that supports the investment decisions of all the capital stack stakeholders. The investment-backed expectations relied, in part, on the stability of the relevant landlord-tenant laws in Washington State and Seattle. (*Id.* ¶ 33.)

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

"immediate family members" to reside at the Addison, but defines that phrase broadly as: "spouses, domestic partners, former spouses, former domestic partners, adult persons related by marriage, siblings, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, and persons who have a parent-child relationship, including parents, stepparents, grandparents, adoptive parents, guardians, foster parents, or custodians of minors." (Mot., App'x at 034.) The City's characterization of the Roommate Ordinance as allowing "a tenant [to] invite a family member or a roommate . . . to live in an already-occupied unit" is euphemistic, as this "invitation" grants these individuals not the ability to just "live in" the unit, but occupancy rights. (*Id.* at 16.)

The Roommate Ordinance also prevents landlords from denying occupancy to any non-tenant within the broadly defined group. (Compl. ¶ 48.) This means that, for example, any tenant's ex-dating partner, no matter how destructive to others at the Addison, cannot be refused occupancy or removed for trespass. Instead, GRE Downtowner is forced to *evict* these new "tenants" using the typical (lengthy and costly) eviction process. Then-Mayor of Seattle Jenny Durkan refused to sign this bill, for good reason, a matter that is the subject of focused discovery. (*Id.*)

The Winter Eviction Ban (SMC 22.205.080). On February 10, 2020, the City passed the Winter Eviction Ban, which precludes nearly all evictions from every December 1 through March 1—even those based on failure to pay rent. (*Id.* ¶ 42.) Mayor Durkan also refused to sign this bill, yet another focus of discovery. (*Id.* ¶ 48.)

The COVID-19 Eviction Moratorium (Executive Order 2020-03 *et seq.*). Throughout the height of the COVID-19 pandemic (March 2020 through February 28, 2022), the City also maintained another eviction moratorium that provided a nearly complete defense to eviction. (*Id.* ¶¶ 43, 48.) This moratorium applied to ***all instances of non-payment of rent*** without requiring a showing of inability to pay, predictably forcing landlords to house non-paying tenants for years. (*Id.* ¶ 43.)

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

180-Day Notice Requirement (SMC 7.24.030). This ordinance requires that landlords provide their tenants with 180 days of notice before imposing any rent increase. (*Id.* ¶ 45.) Mayor Durkan refused to sign this bill as well. (*Id.* ¶ 48.) This, too, is a focus of discovery.

Economic Displacement Relocation Assistance ("EDRA") (SMC ch. 22.212). Finally, the EDRA program requires landlords to pay their former tenants if those tenants move due to a rent increase of 10% or more. (*Id.* ¶ 45.) If any such tenant moves due to a rent increase of more than 10%, EDRA requires GRE Downtowner to pay that tenant's *entire* ***new rent for three months***, regardless of whether the tenant suffered any increased costs. Mayor Durkan (who also refused to sign this bill) was so concerned about its implications that she noted that it "requires landlords . . . to pay essentially three months' rent to the tenant as relocation fees . . . regardless of whether the property owner faces increased costs, including property taxes." (*Id.*)

C. The Cumulative Impact of the Ordinances

The cumulative impact of all six Ordinances has been economically catastrophic. The Roommate Ordinance and the Fair Chance Housing Ordinance combine to force GRE Downtowner, for instance, to let apartments to third parties, some of whom are dangerous people, who in turn can then unilaterally bestow the legal right of occupancy on their former dating partners, who may then create additional dangers for other tenants or damage to property.

The loss of control over who occupies the property, predictably, has led to various forms of criminal behavior, which causes harm to other tenants and, of course, to the occupancy and value of the Addison. (*Id.* ¶¶ 18, 115.) The Seattle Police Department now requires a ***minimum of three officers*** to respond to any call at the Addison. (*Id.* ¶ 18.) Violent and destructive tenants have necessitated massive increases to security, insurance premiums and other costs, necessitating hundreds of thousands, and sometimes ***millions*** of dollars per year, in extra expenses. *(Id.* ¶¶ 78–84, 99.) And due to this violence and disruption, law-abiding residents of the Addison have been moving out for years, causing ***vacancy rates to skyrocket to 44.85% in 2023***. (*Id.* ¶ 63.)

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

With this many empty units at the Addison, GRE Downtowner must reliably collect rents from the tenants who remain—and evict those who refuse to pay. (*Id.* ¶¶ 65–69, 75.) But the City has made this virtually impossible, too. Between March 2020 and February 28, 2022, the COVID-19 Moratorium took away the last resort of eviction from GRE Downtowner, forcing GRE Downtowner to house tenants who could pay their agreed upon rent but refused to do so. (*Id.* ¶ 43.) This dynamic survives three months of every year now, through the Winter Eviction Ban. (*Id.* ¶ 42.) And because GRE Downtowner cannot deny tenancy based on criminal history, GRE Downtowner was and is forced to let apartments at the Addison to those most likely to abuse the eviction moratoria. (*Id.* ¶ 14.) GRE Downtowner cannot reliably collect rents from those who remain in an already half-empty Addison, and these Ordinances make it extremely difficult to evict serial non-payers in favor of tenants who will pay rent. (*Id.* ¶¶ 12–15.) After collecting roughly 93% of "gross potential rents" each year from 2015 through 2018, that amount has steadily ***decreased each year to a nadir of 44.1% in 2023***. (*Id.* ¶¶ 66–68.)

The only other option to keep the Addison afloat is to raise rents. (*Id.* ¶ 44.) The City has also made this impossible. (*Id.* ¶ 71.) The effect of the 180-Day Notice Requirement and EDRA is to (1) prevent GRE Downtowner from raising rents until six months in the future (no matter what cost increases it suffers in the meantime), and (2) force GRE Downtowner to only raise rents by less than 10%. (*Id.* ¶¶ 46, 71.) If GRE Downtowner were to raise rents by more than 10%, it would run the risk of being forced to ***pay for three months of rent*** for any tenant who moved due to the increase. (*Id.* ¶ 17.)

The Addison has gone from success to financial catastrophe. It now hemorrhages millions of dollars each year, peaking at $2.7 million in just 2023, with total operational losses of nearly $6 million through 2023. (*Id.* ¶¶ 86–87.) Worse yet, this property in which GRE Downtowner invested $39 million dollars is now functionally valueless. (*Id.* ¶¶ 22, 93.)

The City does not address the detailed allegations in the Complaint, instead characterizing them as "vague and conclusory." (Mot. at 20.) There is nothing vague or

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

conclusory about them. While the City may disagree, the allegations are detailed on each element of GRE Downtowner's *Penn Central* claim and physical taking claim. The cumulative effect of the City's Ordinances, including those the Mayor refused to sign, is devastating.

III. EVIDENCE RELIED UPON

This opposition relies on the allegations contained in the Complaint filed in this action, and on all reasonable inferences drawn therefrom in favor of GRE Downtowner.

IV. ARGUMENT AND AUTHORITY

A. Legal Standards

Under CR 12(b)(6), dismissal is appropriate "only if it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief." *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995) (internal quotation marks and citation omitted). Such motions should be granted "sparingly and with care," and "only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (citation omitted). When considering a motion to dismiss, all facts alleged in the complaint are presumed to be true, all reasonable inferences are to be drawn in the plaintiff's favor, and the court "may even consider hypothetical facts." *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 830, 355 P.3d 1100 (2015).

The City's Motion repeatedly, and incorrectly, treats GRE Downtowner's claims as facial challenges, even suggesting that the statute of limitations should begin to run upon the passage of the Ordinances. The City largely ignores or refuses to deal with the actual allegations of the Complaint. "The plaintiff is 'the master of the complaint,' and therefore controls much about her suit." *Royal Canin U. S. A., Inc. v. Wullschleger*, No. 23-677, 604 U.S. __, __ S. Ct. __, 2025 WL 96212, at *7 (Jan. 15, 2025) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398–399, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987)). The takings claims here are based on the ***cumulative***

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

impact of the challenged Ordinances, as applied to the Addison. The City has gone too far, and the impact of the Ordinances, combined, has been severely damaging to GRE Downtowner.[3]

The Washington State Constitution prohibits the taking of private property for public use without just compensation. Wash. Const. art. I, § 16. Washington courts apply federal takings law to the merits of takings claims brought pursuant to the Washington State Constitution. *See Gonzales v. Inslee*, 21 Wn. App. 2d 110, 134, 504 P.3d 890 (2022), *aff'd*, 535 P.3d 864 (Wash. 2023).

GRE Downtowner alleges both a partial regulatory taking and a physical taking of the Addison. Courts analyze partial regulatory takings under the framework established by the Supreme Court in *Penn Central*. Courts determine whether regulatory action amounts to a taking by analyzing three factors: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Central*, 438 U.S. at 124. Such "factual inquiries" are "essentially ad hoc" and "designed to allow careful examination and weighing of all the relevant circumstances." *Tahoe-Sierra*, 535 U.S. at 322 (citation omitted).

There is no set formula for determining when a taking has occurred under *Penn Central*—rather, "[t]he outcome [of the *Penn Central* inquiry] . . . depends largely upon the particular circumstances [in the] case at hand." *Bridge Aina Le'a, LLC v. Land Use Comm'n*, 950 F.3d 610, 630 (9th Cir. 2020) (last set of brackets in original; citation omitted).

[3] A government action that "impose[s] a severe enough burden on private property" can constitute a regulatory taking. *United States v. King Mountain Tobacco Co.*, 131 F. Supp. 3d 1088, 1092 (E.D. Wash. 2015), *aff'd*, 745 F. App'x 700 (9th Cir. 2018); *see also FFV Coyote LLC v. City of San Jose*, 637 F. Supp. 3d 761, 770 (N.D. Cal. 2022) (holding that the plaintiffs "plausibly alleged that the economic impact of the regulatory change may be so severe as to constitute a taking," and explaining that "the extent of the economic impact on plaintiffs caused by the City's actions remains a question of fact that cannot be resolved at the pleadings"). Put another way, a regulation that is otherwise a valid exercise of police power may go "'"too far"' in its impact on a property owner as to constitute a taking, requiring compensation." *Wash. Food Indus. Ass'n & Maplebear, Inc. v. City of Seattle*, 1 Wn.3d 1, 30, 524 P.3d 181 (Wash. 2023) (quoting *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 658–59, 451 P.3d 675 (2019)); *see Tahoe-Sierra*, 535 U.S. at 322–23 (explaining that the analysis of whether a regulation imposes a "severe" enough restriction is "complex").

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

A physical taking is effected when the government "has physically taken property for itself or someone else[,] by whatever means." *Cedar Point*, 594 U.S. at 149. Regulations that allow third parties on to an owner's property "appropriate[] . . . the owners' right to exclude" and thus constitute per se physical takings. *Id.*

B. GRE Downtowner Brings Only As Applied Takings Claims for Just Compensation

GRE Downtowner brings only "as applied" takings claims—those based on and limited to the Ordinances' effects on GRE Downtowner—there is no claim that the mere enactment of the Ordinances effected a taking. Specifically, GRE Downtowner alleges that the ***cumulative impact*** of the Ordinances has resulted in (1) a regulatory taking of the Addison and (2) a per se physical taking of the Addison, in violation of Article I, section 16 of the Washington State Constitution. The nature and extent of this cumulative impact is, by definition, a question of fact as alleged in the Complaint.

C. GRE Downtowner's Regulatory Taking Claim Is Not Time-Barred

The City argues that GRE Downtowner's "regulatory takings challenge . . . is untimely" because federal courts apply underlying state personal injury statutes of limitation to claims brought under 42 U.S.C. § 1983 ("Section 1983") to vindicate federal rights, and thus Washington's three-year statute of limitations for personal injuries "should" apply here. (Mot. at 11.) The City is wrong.

1. The Three-Year Personal Injury Statute Does Not Apply.

The Supreme Court of Washington has held that inverse condemnation claims brought under state law are of "constitutional magnitude," and, therefore, the "mere passage of time alone does not bar" a plaintiff's "cause of action." *Petersen*, 94 Wn.2d at 483. The City's request that the court instead impose a ***three***-year statute of limitations on GRE Downtowner's constitutional claim is entirely inconsistent with Washington law.

In an attempt to support their argument that a three-year statute of limitations should apply, the City claims that "[b]orrowing the ten-year limitations period applicable to inverse

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

condemnation claims would be inappropriate." (Mot. at 12.) The City is referring to the limitation on a plaintiff's ability to seek damages for inverse condemnation, which usually requires the government to show "uninterrupted hostile use for 10 years which has been open and notorious." *Petersen*, 94 Wn.2d at 485; *see also Robinson v. City of Seattle*, 119 Wn.2d 34, 84, 830 P.2d 318 (1992), *abrogated on other grounds by Chong Yim*, 194 Wn.2d 651, *and by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). But the City's argument that the statute of limitations cannot be 10 years, so, therefore, it should be three years, ignores the Washington Supreme Court's holding that the "mere passage of time alone does not bar" claims of "constitutional magnitude." *Petersen*, 94 Wn.2d at 483. Under Washington law, the City cannot impose a three-year statute of limitations.

The City also contends that Washington's three-year personal injury statute of limitations should apply to GRE Downtowner's claims to align with the limitations periods of Section 1983 claims. (*See* Mot. at 11–12.) But this is not a Section 1983 claim. No such claim is brought. The City's suggestion again ignores Washington law and the Washington Supreme Court's reasoning in *Petersen*. And the City does not explain what would be intolerable about "identical" claims brought under state and federal constitutions having different statutes of limitation. Various, substantively identical, state and federal causes of action have different statutes of limitation, and there is no obligation for states to cede to federal statutes of limitation. *See, e.g.*, *Nissalke v. Benson*, No. 16-cv-00102, 2016 WL 4467889, at *1 (D. Minn. Aug. 22, 2016) ("But a different statute of limitations for state and federal remedies does not implicate any constitutional right—if this were true, then states would be obligated to adopt federal statutes of limitations for similar claims. This contention is without merit."). Accordingly, the Court should reject the City's suggestion to import Section 1983 statutory jurisprudence to this state constitutional claim.

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

2. GRE Downtowner's Taking Claim Is Still Timely

That all said, GRE Downtowner's claim is timely even under the three-year statute of limitations suggested by the City. The City erroneously asserts that GRE Downtowner's claim accrued "upon the law's passage," because that is "when there is no question about how the challenged law applies to the property." (Mot. at 13.) But the City's own precedent does not actually address when GRE Downtowner's *Penn Central* claim accrued. *See Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 731, 117 S. Ct. 1659, 1663, 137 L. Ed. 2d 980 (1997) (discussing ripeness on a motion for summary judgment); *Nat'l Advertising Co. v. City of Raleigh*, 947 F.2d 1165, (4th Cir. 1991) (affirming district court's grant of summary judgment, stating, in part: "Because the ordinance applied in clear, specific ways to National's thirty-six signs when enacted, and because any injury to National was real and could be calculated in terms of reduced present value on October 23, 1983, National's cause of action arose on that date."). Here, GRE Downtowner alleges that the cumulative effects of the six ordinances effected an "as-applied" partial regulatory taking under *Penn Central*.

The question, then, is when did GRE Downtowner's claim accrue? The answer is that it accrued, at the earliest, in 2022. At this stage, one must look to the allegations of the Complaint and "all reasonable inferences" drawn therefrom. *State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 295, 404 P.3d 618 (2017), *aff'd,* 192 Wn.2d 782, 432 P.3d 805 (2019). "A cause of action accrues on the occurrence of the last element essential to the action." *Highline Sch. Dist. No. 401, King Cnty. v. Port of Seattle*, 87 Wn.2d 6, 14, 548 P.2d 1085 (1976). Thus, GRE Downtowner's claim did not accrue until the impacts of the Ordinances on the Addison manifested to the point that there existed a taking under *Penn Central*. The following, non-comprehensive list of allegations in the Complaint support an accrual date of 2022 at the earliest.

- "The economic impact of the City's ordinances on the Addison have been so severe that GRE Downtowner is unable to pay its mortgage and is in default as of ***November 2023***."

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

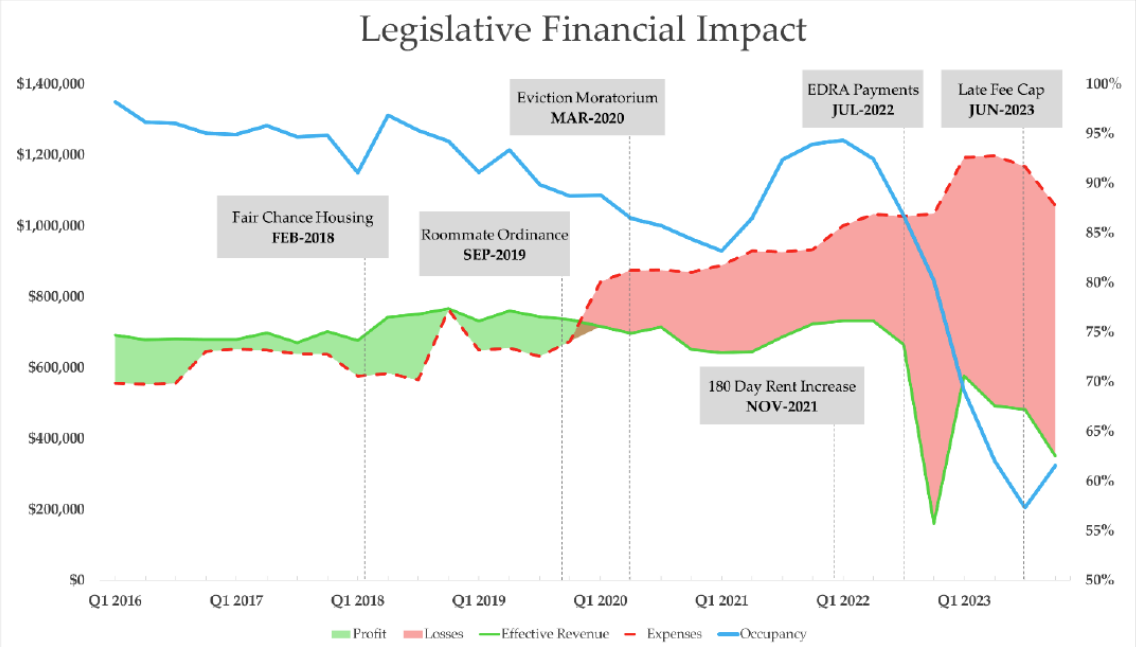
- "As a result of the City's ordinances, rent collections have plummeted from roughly 93% between 2015 and 2018 to below 45% ***in 2023***."

- "GRE Downtowner's bad debt has become unmanageable as a result of the City's ordinances. After hovering around $42,000 between 2015 and 2018, bad debt . . . reached ***$515,846 in 2022***. Despite GRE Downtowner's best efforts, bad debt remained at $258,053 in 2023."

- "Between 2015 and 2018, GRE Downtowner paid, on average, $115,830 per year for security and maintenance . . . . But since and including 2019, these costs have almost quintupled, rising to an average of $486,926 per year, including an astonishing ***$833,353 in 2022***."

- The Addison experienced many millions of dollars in unavoidable operational losses in 2022, 2023 and 2024—another form of "economic impact" under *Penn Central*—that had, of course, not materialized in 2021.

- "The overall impact, based on various metrics discussed above, is also visually represented through the following graph:"



(Compl. ¶¶ 59, 68, 70, 80, 87, 94 (emphasis added).)

Penn Central claims rely, in part, on diminution in value of the relevant property attributable to the offending regulation. *See Colony Cove Props., LLC v. City of Carson*, 888

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

F.3d 445, 450 (9th Cir. 2018). In late 2021, the value of the Addison had begun to decline. In 2022, the Addison's value cratered as expenses and losses rose and occupancy plummeted. As shown above, rent collections fell and paying tenants moved out. (*See* Compl. ¶¶ 86–87.)

To hold that GRE Downtowner's claim accrued in 2019—as the City wishes—would be to hold that GRE Downtowner's claim accrued ***before the Ordinances destroyed the value*** of the Addison and therefore before the essential elements of *Penn Central* could have possibly been met. Under the allegations of the Complaint, the claim did not accrue until 2022 at the earliest. Even where it is unclear when a claim accrued, a court cannot dismiss on that basis. *See Deegan v. Windermere Real Est./Ctr.-Isle, Inc.*, 197 Wn. App. 875, 880, 893–94, 391 P.3d 582 (2017) (reversing trial court's dismissal on the pleadings, and explaining that because the "complaint does not resolve when [plaintiff] knew or reasonably should have known the basis for his cause of action, the trial court erred when it concluded [plaintiff's] claim is barred by the statute of limitations").

The Complaint and all reasonable inferences establish that GRE Downtowner's *Penn Central* claim accrued in 2022, at the earliest. Thus, even *if* a three-year statute of limitations is applied, the claims are timely.

D. <u>The Cumulative Impact of the Ordinances Have Effected a Taking</u>

1. <u>The Complaint Alleges a Regulatory Taking as Applied to the Addison</u>

The *Penn Central* factors are analyzed by engaging in the "essentially ad hoc, factual inquiries" necessary to determine whether a regulatory taking has occurred. *Tahoe-Sierra*, 535 U.S. at 322 (citation omitted). Given the fact-intensive nature of the *Penn Central* analysis, courts are hesitant to decide regulatory takings claims at the motion to dismiss stage. As the Ninth Circuit has observed, the "admonition [against 12(b)(6) dismissal] is perhaps nowhere so apt as in cases involving claims of inverse condemnation where the Supreme Court itself has admitted its inability to develop any set formula for determining when compensation should be paid." *McDougal v. County of Imperial*, 942 F.2d 668, 676 (9th Cir. 1991) (internal quotation

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

marks and citation omitted). Likewise, Washington courts recognize this "admonition." For instance, in *Maplebear*, the Washington Supreme Court affirmed the trial court's refusal to dismiss a regulatory taking claim, stating that "the economic impact, extent of interference with investment-backed expectations, and character of the regulation are highly factual inquiries" that cannot be answered "[a]bsent more factual development." *Wash. Food Indus. Ass'n & Maplebear, Inc. v. City of Seattle*, 1 Wn.3d 1, 34–35, 524 P.3d 181 (Wash. 2023).[4] Washington appellate courts even *overturn* CR 12(b)(6) dismissals of regulatory takings claims due to the lack of factual development possible at the motion to dismiss stage. *See Berst v. Snohomish County*, 114 Wn. App. 245, 257–58, 57 P.3d 273 (2002) (reversing CR 12(b)(6) dismissal of *Penn Central* claim, stating: "It is not clear, beyond a reasonable doubt, that no facts justifying recovery exist. The County argues that the Bersts alleged no economic impact or interference with investment-backed expectations. This is incorrect. The Bersts alleged in their amended complaint that the moratorium prevented them 'from making reasonable use of their property by prohibiting any sort of development on it for a six-year period.' They also stated in their complaint that the County denied their application for a permit to replace their single-wide mobile home with a triple-wide mobile home.").

Here, the facts alleged state a claim for relief under each factor of *Penn Central*.

a. <u>The Value of the Addison Has Been Destroyed</u>

When evaluating the first *Penn Central* factor, courts consider numerous forms of "economic impact," including the damage done to the value of the property in question and separate economic harms wrought on the plaintiff attributable to the offending regulatory

[4] *See also Becker v. City of Hillsboro*, 667 F. Supp. 3d 996, 1001 (E.D. Mo. 2023) ("Plaintiffs have pled that the combination of Defendant's ordinances . . . has deprived them of all economically beneficial use of their property . . . . At this stage, these allegations are sufficient."); *ABC Sand & Rock Co., Inc. v. County of Maricopa*, No. CV-21-01875-PHX-DGC, 2022 WL 1619019, at *7 (D. Ariz. May 23, 2022) (explaining that the court will not "undertake a *Penn Central* analysis on a motion to dismiss"); *DoorDash, Inc. v. City & Cnty. of San Francisco*, No. 21-cv-05502, 2022 WL 867254, at *19 (N.D. Cal. Mar. 23, 2022) (denying dismissal of takings claim where factual questions existed as to two out of three *Penn Central* factors).

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

activity. *See, e.g.*, *Colony Cove*, 888 F.3d at 450 ("[W]e compare the value that has been taken from the property with the value that remains in the property." (citation omitted)).

The City contends that the Complaint contains "vague" allegations regarding the economic impact of the Ordinances and lacks facts specific to the property value of the Addison after the Ordinances were enacted. The City could not be more wrong.[5] The Complaint contains over ***35 paragraphs*** of factual allegations that the Ordinances have destroyed the property value of the Addison, including this non-comprehensive list:

- "In addition to causing safety and severe quality-of-life issues for tenants, the economic effect of the City's various ordinances on GRE Downtowner has been catastrophic."
- "The Addison now hemorrhages money—more than $2.7 ***million*** in just 2023 alone. As a result . . . the Addison's overall value has been destroyed."
- "The City, through its functional commandeering of low-income housing properties in Seattle, has destroyed the value of GRE Downtowner's property so significantly as to make the Addison unsaleable."
- "GRE Downtowner has invested approximately $39 million into the property, plus nearly $5.8 million in additional losses between 2019 and 2023. There is no chance of recouping these outlays through a sale of the property given the further diminution to value and operations caused by the City's ordinances."
- "The Addison must be operated as a low-income housing development for the next 23 years, due to its LIHTC structure. But the City's ordinances have so severely hampered the Addison's income that it is impossible to run the Addison at anything other than a significant operational loss—making the Addison functionally valueless on an income approach valuation basis."
- "The long-term restrictions placed on properties by the LIHTC program also significantly limit the market for the Addison. The Washington State Department of Revenue has itself acknowledged that 'due to the difficulty of transferring these properties because of the program requirements, the conventional "willing seller/willing buyer" concept is altered.'"

[5] Notably, many of the cases the City cites in support of its argument were not decided at the motion to dismiss stage. *See, e.g.*, *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993) (motion to confirm an arbitration award); *Colony Cove*, 888 F.3d at 451 (motion for a judgment as a matter of law/directed verdict); *MHC Financing Ltd. Partnership v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (on appeal after a jury verdict).

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

- A property that required $39 million of investment is now unsaleable, meaning that it has no value as an income producing property.

(Compl. ¶¶ 20, 22, 92–93).

Because the *Penn Central* test is an intensely factual inquiry, courts cannot make findings as to the specific diminution in property value at the pleadings stage, and therefore cannot grant motions to dismiss on this basis. *See, e.g.*, *Colony Cove Props., LLC v. City of Carson*, No. 14-cv-3242, 2014 WL 12629951, at *9–11 (C.D. Cal. Dec. 18, 2014) (denying defendant's motion to dismiss regulatory taking claim where the owner had "pled that the [Ordinance] had at least a small economic impact and interfered with its distinct investment-backed expectations," even though the character of the government action did not weigh in favor of a *Penn Central* violation). Nonetheless, GRE Downtowner's Complaint includes numerous allegations that the Addison suffered a near-100% diminution in property value (*see, e.g.*, Compl. ¶¶ 59–88), especially given that "discounted future cash flows produced by an income-producing property can provide an appropriate valuation methodology" for *Penn Central* purposes. *Colony Cove*, 888 F.3d at 451.

The Complaint further alleges that the Ordinances have caused multiple economic losses in addition to destruction of property value:

- "The City's ordinances have also systematically destroyed GRE Downtowner's ability to keep the Addison occupied at sustainable levels. Combined, they have had two destructive effects on GRE Downtowner's revenue from the Addison."
- "First, they have caused the Addison's long-term residents to move out, causing vacancy rates to skyrocket to a peak of ***44.85%*** in 2023."
- "Second, GRE Downtowner cannot realize any rents owed from a large portion of its involuntary tenant base, meaning that even renting an apartment to a resident frequently results in little or no revenue from that resident."
- "As a result of the City's ordinances, rent collections have plummeted from roughly 93% between 2015 and 2018 to ***below 45% in 2023.***"

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

- "Between 2015 and 2018, GRE Downtowner paid, on average, $115,830 per year for security and maintenance—that is, to keep the Addison's residents safe and apartments habitable. But since and including 2019, these costs have almost ***quintupled***, rising to an average of $486,926 per year, including an astonishing $833,353 in 2022."

- "After hovering around $41,000 per year between 2015 and 2017, primary property insurance on the Addison has increased between 19.5% and 29.5% each year, culminating in a ***$151,377*** premium for 2023."

- "Further, the City's ordinances have resulted in damages to GRE Downtowner's financing as well. . . . GRE Downtowner has been unable to pay either the 'developer fee' or 'deferred developer fee' it owes. . . . GRE Downtowner's inability to pay has resulted in GRE Downtowner owing not just $4,735,209 in principal on the two fees, but also an additional ***$5 million*** in interest."

(Compl. ¶¶ 63, 68, 80, 84, 89, 92 (emphasis in original).) Notably, the Ordinances caused GRE Downtowner to lose nearly (a) $6 million in operational costs, and (b) interest accrued on developer fees that GRE Downtowner cannot pay, totaling ***$13.5 million (and counting) in out-of-pocket losses***. (Compl. ¶¶ 88–89.) These are cash losses ***on top of the diminution of value***. It is not one or the other that has devastated the Addison—it is both.

The City argues that "business impacts are not enough to state a *Penn Central* takings claim." (Mot. at 21.) But mere business losses are not what this case is about. As described above, the Complaint alleges that the property value of the Addison was destroyed, not just damaged. These allegations, which demonstrate a severe economic impact under *Penn Central*, must be accepted as true at this stage of the case.

b. <u>GRE Downtowner's Investment-Backed Expectations Have Been Destroyed</u>

GRE Downtowner has also pleaded the second *Penn Central* factor—that the City's Ordinances have destroyed GRE Downtowner's "investment-backed expectations." Regarding this factor, courts "use[] an objective analysis to evaluate interference with the reasonable investment-backed expectations of the property owner." *Honchariw v. County of Stanislaus*,

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

No. 21-cv-00801, 2022 WL 16748699, at *6 (E.D. Cal. Nov. 7, 2022) (citing *Bridge Aina Le'a*, 950 F.3d at 633). Thus, "'[d]istinct investment-backed expectations' implies reasonable probability, like expecting rent to be paid, not starry eyed hope of winning the jackpot if the law changes." *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120 (9th Cir. 2010). The status of the "regulatory environment at the time of the acquisition of the property" is also a relevant consideration in judging reasonable expectations. *Bridge Aina Le'a*, 950 F.3d at 634 (citation omitted).

Here, the allegations of the Complaint strongly support the *Penn Central* claim, including this non-comprehensive list:

- "GRE Downtowner developed informed expectations on how to sustainably manage and operate the property over the long term. These expectations were based on GRE Downtowner's own projections (which were themselves based on the performance of numerous past projects and the current state of the low-income housing market) . . . ."
- "No fewer than five other stakeholders reviewed and were comfortable with these financial projections at the time of financing. This includes Freddie Mac, the [Washington State Housing Finance] Commission, Citigroup (as bond underwriter), East West Bank (as provider of a letter of credit), and Stratford (as the tax credit investor)."
- "Also informing GRE Downtowner's expectations and projections was the stability of the relevant landlord-tenant laws in Washington state and Seattle, which at that point had not changed in significant respects for many years."
- "Between 2015 and 2018, when the Addison was redeveloped and fully operational and stable, the Stakeholders and GRE Downtowner's 2012 projections and expectations were met in all material respects."
- "During the Addison's redevelopment, two sets of detailed financial projections were made to track many financial metrics associated with the operation of the Addison through the Compliance Period. Both sets of projections considered LIHTC regulations and restrictions, as well as state and local housing regulations as they existed at the time."
- "Between 2015 and 2018, the projections largely held as an accurate reflection of actual returns."
- "GRE Downtowner's financial data demonstrates that vacancy loss, bad debt, and other concessions were materially congruent in the 2015–2018 timeframe, ranging from 5 to 7 percent. The same was true for total

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

> economic rent, administrative expenses, maintenance and repair expenses, insurance premiums, and capital expenses. Overall, net cash flow remained positive and did not materially depart from the projections."
>
> - "Starting in 2019, when the effects of the Fair Chance Housing Ordinance became manifest, everything changed."

(Compl. ¶¶ 31–34, 97–99.) Accordingly, GRE Downtowner's investment-backed expectations for the Addison are alleged to be objectively reasonable. (*See, e.g.*, *id.* ¶¶ 5, 34, 98.) Moreover, they were ***correct***. (*Id.* ¶ 5.) It was only after the enactment of the Ordinances that GRE Downtowner's projections were thwarted. GRE Downtowner was able to realize 72% of its expected profits between 2014 and 2018. (*Id.* ¶ 88.) Had GRE Downtowner continued at that pace, the Addison would have turned $1,553,984 in profit between 2019 and 2023. (*Id.*) Instead, the Ordinances caused GRE Downtowner to ***lose*** $5,816,245 over that period. (*Id.*)

The City, however, contends that GRE Downtowner should have reasonably expected changes in Seattle's landlord-tenant laws. (Mot. at 22–23.) Of course it did. But the Mayor would not sign numerous of the Ordinances out of concern that they went too far. She was right. And that is exactly what courts following *Penn Central* have said constitutes a takings claim—when regulations go too far. They have gone so far in this case that the Addison's value and GRE Downtowner's reasonable investment-backed expectations have not only been harmed, but destroyed. The City may seek to argue to the contrary on the merits. That, of course, is a different matter that requires weighing the evidence. But it is no good suggesting that the Complaint fails to state a claim for relief.

c. <u>The Complaint Alleges That the Ordinances Permit a Physical Invasion</u>

Finally, GRE Downtowner has pleaded that the "character of the governmental action" is consistent with a physical invasion of the Addison. The character of a regulation is a "highly factual inquir[y]." *Maplebear*, 1 Wn.3d at 34. Under the third *Penn Central* factor, a "'taking' may more readily be found when the interference with property can be characterized as a

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1128 (9th Cir. 2013) (quoting *Penn Central*, 438 U.S. at 124). Here, "[a]ccepting all of Plaintiff's factual allegations as true, as the Court must at this stage of the proceedings, the character of Defendant's actions could [] be construed as [a] 'physical invasion' of [GRE Downtowner's] property." *Honchariw v. Cnty. of Stanislaus*, No. 21-cv-00801, 2023 WL 2938404, at *8 (E.D. Cal. Apr. 13, 2023) (internal quotations omitted).

With the Roommate Ordinance, the City required GRE Downtowner to submit the Addison to the physical occupation of individuals who GRE Downtowner ***never invited*** there in the first place—e.g., even including a tenant's former dating partners. Such individuals can occupy the property without GRE Downtowner's knowledge or consent and then: (a) cannot be removed for trespassing; (b) cannot be removed during the COVID-19 Eviction Moratorium; and (c) cannot be evicted for three months out of the year (the Winter Eviction Ban). (*See, e.g.*, Compl. ¶¶ 42, 49, 105–126.) This constitutes a physical invasion of the property, as alleged in the Complaint. (*See id.*) Below is an illustrative list of some allegations in the Complaint that support the third *Penn Central* factor:

- Before the City passed its ordinances, GRE Downtowner had the right to utilize trespass laws to expel unwanted individuals from the Addison. This was an indispensable method through which GRE Downtowner could ensure the safety of the Addison's tenants.

- This is no longer the case. Through the Fair Chance Housing Ordinance and Roommate Ordinance, the City grants the right of occupancy to any tenant's "immediate family" (which is so broadly defined as to include both ex-dating partners or anyone "presently residing" with the tenant) or "an additional resident who is not a member of the tenant's immediate family."

- There is no minimum time for a person to "reside" in an apartment before gaining occupancy rights to that apartment—as long as that person "presently resides" in an apartment, they are entitled to occupy it.

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

- These individuals now have a ***legal right*** to occupy the Addison . . . .
- The only way GRE Downtowner can remove these individuals is through the eviction process, formerly reserved for actual tenants.
- "The City has granted a right of occupancy to individuals whom GRE Downtowner never contracted with and whom GRE Downtowner wants to expel from its property."

(Compl. ¶¶ 123–26 (emphasis in original).) Overall, the facts alleged in the Complaint demonstrate that all the *Penn Central* factors weigh in GRE Downtowner's favor and, therefore, the Complaint pleads a regulatory taking claim.

2. <u>The Complaint Alleges a Per Se Physical Taking Resulting from the Roommate Ordinance as Exacerbated by the Other Ordinances</u>

GRE Downtowner has also sufficiently pleaded a per se physical taking claim. The Roommate Ordinance—exacerbated by the Fair Chance Housing Ordinance and the two eviction moratoria—gives third parties "a right to invade" the Addison and, therefore, effects a per se physical taking on GRE Downtowner. *See Cedar Point*, 594 U.S. at 149. These third parties are individuals to whom GRE Downtowner has never rented nor ever agreed to rent, such as tenants' former dating partners and their family members. Thus, the City has imposed a landlord-tenant relationship with these individuals on GRE Downtowner. (*See, e.g.*, Compl. ¶¶ 39–40, 105–126.)

The Roommate Ordinance (again, exacerbated by the Fair Chance Housing Ordinance and the two eviction moratoria) is analogous to the regulation at issue in *Cedar Point*, which the Supreme Court ruled constituted a per se physical taking. In *Cedar Point*, the relevant regulation permitted labor organization members to access the plaintiffs' property for up to three hours a day, 120 days a year. 594 U.S. at 143–45. The Supreme Court found that the regulation constituted a physical taking because it amounted to a physical appropriation of the owners' property that impaired the owners' "right to exclude"—even if only for a limited time. *Id*. at

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

149. This is exactly what is, and has been, happening at the Addison. Just like the regulation in *Cedar Point*, the City has infringed upon GRE Downtowner's right to exclude third parties from the Addison and forced GRE Downtowner to submit to the physical occupation of the Addison by, for instance, tenants' former dating partners and family members.

The City contends that the landlord-tenant regulations challenged here cannot affect physical takings. (Mot. 14–15.) This argument crosses the line to deal with the merits of the claims, not the allegations of the Complaint. It is also flat wrong. *See Darby Dev. Co. v. United States*, 112 F.4th 1017, 1035 (Fed. Cir. 2024) ("[W]e see nothing . . . that immunizes—as a categorical matter—government action implicating the landlord-tenant relationship from being treated as a physical taking."); *see also Cedar Point*, 594 U.S. at 149 ("Government action that physically appropriates property is no less a physical taking because it arises from a regulation."). The City bases this faulty argument on the Supreme Court's decision in *Yee*. But the relevant laws in *Yee* merely regulated agreements between tenants and landlords that were entered into voluntarily. In *Yee v. City of Escondido*, the Court even acknowledged this distinction, noting that government did not "require[] any physical invasion of . . . property," because the "tenants were invited by [the owners], not forced upon them by the government," and that a "different case would be presented were the statute . . . to compel a landowner over objection to rent his property . . . ." 503 U.S. 519, 528, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992). Far from showing that the Ordinances cannot constitute a physical taking, *Yee* explains why they do.

Although the City cites to cases in which courts have found that the eviction moratoria, alone, do not constitute a physical taking, *see, e.g.*, *Rental Housing Association ("RHA") v. City of Seattle*, 22 Wn. App. 2d 426, 512 P.3d 545 (2022), GRE Downtowner is not challenging an eviction moratorium alone. That is simply not the claim alleged in this case. Again, the City is arguing the merits of the case rather than facing the allegations in the Complaint and the cumulative impact claim. And, like the *Yee* Court, the *RHA* court explained that "there is a

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

critical difference between tenants invited to live on a landlord's property in exchange for rent and union organizers with whom the landowners had no contractual relationship and who never had permission to enter the land in the first place." *RHA*, 22 Wn. App. 2d at 446. Here, the City has forced GRE Downtowner to allow individuals with whom it had no contractual relationship with in the first place, and who never had permission to live at the Addison in the first place, to reside at the Addison. This is the "different case" that, under *Yee* and *RHA*, constitutes a physical taking.

V. CONCLUSION

For the foregoing reasons, the City's Motion to Dismiss should be denied.

I certify that this memorandum contains 8,151 words, in compliance with the Local Civil Rules.

Dated this 3rd day of February, 2025.

STOEL RIVES LLP

s/ David R. Goodnight

David R. Goodnight, WSBA No. 20286
david.goodnight@stoel.com
J. Scott Pritchard, WSBA No. 50761
scott.pritchard@stoel.com
Michael P. Rubin, WSBA No. 59598
michael.rubin@stoel.com
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500

Attorneys for Plaintiff GRE Downtowner, LLC d/b/a Addison on Fourth, LLC

DECLARATION OF SERVICE

I, Malaika R. Thompson, declare that I am a Practice Assistant employed by the law firm Stoel Rives LLP, a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On February 3, 2025, I caused a copy of the foregoing document to be served upon the following individual(s) in the manner indicated below:

Roger Wynne, WSBA No. 23399 Maxwell Burke, WSBA No. 49806 SEATTLE CITY ATTORNEY'S OFFICE 701 Fifth Ave., Ste. 2050 Seattle, WA 98104 roger.wynne@seattle.gov maxwell.burke@seattle.gov	☐ hand delivery ☐ facsimile transmission ☐ overnight delivery ☐ first class mail ☒ efiling/email delivery
Tyler L. Farmer, WSBA No. 39912 Shane P. Cramer, WSBA No. 35099 Erica R. Iverson, WSBA No. 59627 BRYAN CAVE LEIGHTON PAISNER LLP 999 Third Avenue, Suite 4400 Seattle, WA 98104 tyler.farmer@bclplaw.com shane.cramer@bclplaw.com erica.iverson@bclplaw.com *Attorneys for Defendant City of Seattle*	☐ hand delivery ☐ facsimile transmission ☐ overnight delivery ☐ first class mail ☒ efiling/email delivery

DATED this 3rd day of February at Kent, Washington.

Malaika R. Thompson, Practice Assistant
Stoel Rives LLP