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**IN THE MUNICIPAL COURT OF THE CITY OF BELLINGHAM  
IN AND FOR THE COUNTY OF WHATCOM**

CITY OF BELLINGHAM,

Plaintiff,

vs.

IAN ALEXANDER, BONNIE BARKER,  
ROBERT BURR, MICHAEL CRAGAN,  
ALEXIS-GARCIA-SILVA, HERBERT  
GOODWIN, ANDREW INGRAM,  
TAMARA LEE KING, JORDAN QUINN,  
ZACHARY ROBERTSON, JOSHUA  
SMITH, GERALD WARREN

Defendant.

Nos. CB0075354, CB0075352,  
CB0075353, CB0075362,  
CB0075361, CB0075356,  
CB0075359, CB0075357,  
CB0075355, CB0075360,  
CB0075351, CB0075358

**DEFENDANTS' NOTICE OF  
INTENDED DEFENSES**

20

21 Defendants hereby notify the court and the City Prosecutor of their intent to use the  
22 following Defenses:

23 1) The Defense of Necessity-that is that they reasonably believed that their actions  
24 were necessary to prevent the commission of a greater evil. This is an accepted trial

DEFENDANTS' NOTICE OF INTENDED DEFENSES  
Bellingham Municipal Court,  
CB0075354, CB0075352, CB0075362, CB0075361, CB0075356,  
CB0075359, CB0075357, CB0075355, CB0075360, CB0075358

Law Office of Lawrence A. Hildes  
P.O. Box 5405, Bellingham, WA 98227  
Phone: (360) 715-9788 Fax: (360) 714-1791  
email: lhildes@earthlink.net

1 Defense in every state and has been used in Thurston County Superior Court in the  
2 case of Washington v. Bass, et al. ##s 4750038, etc. in 1987, Pierce County Superior  
3 Court in the case of Washington v. Imani, Case # 8YC002926, was granted in  
4 Jefferson District Court in State v. Goldstein and Prescott, and in allowed in court in  
5 King and Kitsap Counties. There is limited case law in the area, and most of it is  
6 jurisdiction by jurisdiction. In general, trial courts are given the discretion as to  
7 whether or not to allow the Defense. There is no appellate caselaw in Washington on  
8 the use of the defense of Necessity in a civil disobedience case.

9 It has been argued that Washington caselaw holds that a trial court could deny the  
10 defense in cases not involving natural disaster when the Defendant can be argued to  
11 have brought the threat upon himself due to non-political criminal conduct, but this is  
12 not the case. In fact the holding is that: "The defense of necessity is available to a  
13 defendant when "the physical forces of nature or the pressure of circumstances cause  
14 the accused to take unlawful action to avoid a harm which social policy deems greater  
15 than the harm resulting from a violation of the law." [State v. Parker 127 Wn. App. 352,](#)  
16 [354, 110 P.3d 1152 \(2005\)](#) (quoting *State v. Gallegos*, 73 Wn. App. 644, 650, 871  
17 P.2d 621 (1994). The thrust of the law is to prevent a situation where the Defendant  
18 has brought the harm about due to malfeasance and then seeks to evade  
19 responsibility for their actions by claiming their subsequent actions were necessary  
20 because of the harm they themselves caused, not the case in cases of civil  
21 disobedience and other political protest.

1 None of the appellate caselaw in Washington that restricts the right to use the  
2 Necessity Defense in Washington, all of involving criminal acts not based on civil  
3 disobedience, restricts the right to argue the defense in trial, rather the cases restrict  
4 the right to receive jury instructions on necessity absent meeting the preponderance of  
5 evidence standard during the proof phase of the trial.

6 “Both parties are entitled to jury instructions embodying their theory of the case. [State](#)  
7 [v. Parker, 127 Wn. App. 352, 354, 110 P.3d 1152 \(2005\)](#). But to be entitled to an  
8 instruction, the evidence must support that theory. [Parker, 127 Wn. App. at 354](#).”

9 “To obtain a necessity instruction, “the Defendant must prove by a preponderance of  
10 the evidence that (1) he or she reasonably believed the commission of the crime was  
11 necessary to avoid or minimize a harm, (2) the harm sought to be avoided was greater  
12 than the harm resulting from a violation of the law, and (3) no legal alternative existed.”  
13 [State v. Gallegos, 73 Wn. App. 644, 651, 871 P.2d 621 \(1994\)](#). [State v. Boyles](#), 2006  
14 Wash. App. LEXIS 1949.”

15 “In order to be entitled to a necessity instruction, a defendant must show that (1) he  
16 believed it necessary to commit a crime in order to avoid or minimize harm; (2) the  
17 harm the defendant sought to avoid was greater than the harm resulting from the  
18 violation of the law; and (3) no legal alternative existed. [State v. Jeffrey, 77 Wn. App.](#)  
19 [222, 225, 889 P.2d 956 \(1995\)](#).”

20 The Defense appears and is allowed under the Model Penal Code, which also has a  
21 jury instruction for its use. It has been used in trial courts in at least 28 states including

1 Washington, New York, Illinois, California, Massachusetts, Vermont, New Hampshire,  
2 Pennsylvania, and Wisconsin. The original Federal case is U.S. v. Berrigan, which  
3 recognized the Defense and established the prongs for its use. The prongs are  
4 generally that: A Defendant is not guilty of an offense that they are otherwise guilty of  
5 if: 1) They reasonably believed that their actions were necessary; 2) to prevent the  
6 occurrence of a greater harm; and 3) They believed that no lawful action would  
7 produce the necessary results.

8 There is a question as to whether the third prong is objective or subjective. Note: it is  
9 not necessary that the action in question be successful in preventing the harm in  
10 question, only that there be a reasonable causal link between the action and the evil.

11 This is a doctrine going back to the earliest days of English Common Law, and before  
12 that to religious court that predated secular courts in Medieval Europe.

13 The elements that most are at issue are: 1) No legal alternatives, and 2) the link  
14 between the action of the Defendant(s) and the harm sought to be prevented. As to  
15 the first one, the law is clear that Defendants are not required to show that no legal  
16 alternative means of protesting exists, but rather that such means are ineffective,  
17 futile, or not rapid enough to prevent the harm, in other words, a futility argument  
18 applies like that applicable to any exhaustion of remedies issue:

19 "In order to show that a Defendant had no reasonable legal alternative, he must show  
20 that "he had actually tried the alternative or had no time to try it, or that a history of

1 futile attempts revealed the illusionary benefits of the alternative." *Parker*, 127 Wn.  
2 App. at 355 (quoting United States v. Harper, 802 F.2d 115, 118 (5th Cir. 1986).  
3 Here, numerous persons involved with these Demonstrations, including these  
4 Defendants had sought through peaceful protest, lobbying, electoral work, letters,  
5 petitions, and many other means to persuade the companies and railroads involved in  
6 strip mining and shipping of coal from the Powder River Basin to current and future  
7 ports to be shipped overseas where it will burned and greatly contribute to global  
8 climate change and cause lethal pollution back here.

9 Defendants will argue that climate change has progressed to a point where  
10 urgent action is needed immediately, and that the mining, shipment, and burning of  
11 coal is drastically and disproportionately responsible for global climate change, and  
12 that if immediate and repeated action is not taken to stop the mining, shipment, and  
13 processing of coal, irreversible and catastrophic harm will and is occurring and will  
14 accelerate geometrically in the immediate future, and that great loss of life, human and  
15 otherwise will result imminently and is already occurring. Defendants will present  
16 testimony to all of this as well as their sincerely held belief that the use of the railroad  
17 tracks running through Bellingham and to the present and future coal shipment ports  
18 and use of local resources to carry out these acts to be immensely immoral, a betrayal  
19 of public trust and responsibility and all far outweigh the minor harm, if any caused by  
20 standing and sitting on the tracks and blockage of any trains carrying such coal, or  
21 others.

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1 Defendants will testify that they and others took all reasonable lawful steps  
2 under the circumstances to stop the mining, shipment, and burning of coal and to  
3 persuade the United States government to cease allowing and drastically contributing  
4 to global climate change and have that such actions have been futile and, in fact, the  
5 U.S. has acted to delay and prevent reasonable restrictions from being enacted that  
6 would have curbed and reduced global climate change.

7  
8 2) Additionally, Defendants, intend to use a First Amendment Defense that their  
9 actions were protected by the First Amendment, which provides a defense to peaceful  
10 acts of dissent. "The First Amendment may make individual criminal Defendants  
11 immune from defending actions for having exercised their right to petition the  
12 government." Cate v. Oldham 707 F.2d 1176 (11<sup>th</sup> Circuit, 1983),

13 The U.S. Constitution outweighs and takes precedence over local traffic and  
14 other ordinances. Hague v. CIO, 307 U.S. 496, 515-16 (1939).  
15 Streets and parks are considered to be the pre-eminent public forum since time  
16 immemorial, and are to be held in trust for the use of the public, and for the purpose of  
17 assembly, communicating thoughts between citizens, and discussing public questions.  
18 These uses are given great priority and have rights significantly greater than that of  
19 public or private traffic or commerce. Such use of the streets and public places has,  
20 from ancient times, been a part of the privileges, immunities, rights, and liberties of

1 national citizenship, and is protected by and guaranteed by the United States.” Hague  
2 v. CIO, 307 U.S. 496, 515-16 (1939).

3 “Public places such as sidewalks, streets, and parks historically associated with  
4 the free exercise of expressive activity are considered to be “public forums”; in such  
5 places the government’s ability to permissibly restrict expressive conduct is very  
6 limited.” Cannon v. City and County of Denver 998 F.2d 867 (10<sup>th</sup> Circuit 1993).

7  
8 This act occurred in and adjoining a public street, and specifically involved  
9 petitioning the government for redress of grievances.

10 Defendants further notify this court and the prosecutor that they intend to call  
11 experts such are needed for Defenses 1-2 above.

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13 Respectfully Submitted:

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15 Dated this 6th Day of July, 2012,

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17 LAWRENCE A. HILDES WSBA #35035  
18 Attorney for Defendants  
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**PROOF OF SERVICE**

Lawrence A. Hildes certifies as follows:

I am over the age of 18 years, and not a party to this action. I am a citizen of the United States. My business address is P.O. Box 5405, Bellingham, WA 98227

On July 6, 2012 I served the following documents(s) described as follows:

DEFENDANTS' NOTICE OF INTENDED DEFENSES on the following persons(s) in this action at the following addresses:

Bellingham City Prosecutor  
Bellingham Municipal Courthouse  
2014 C Street  
Bellingham, WA 98225

☒ (BY MAIL) by placing a true copy of the above documents in a sealed envelope with postage fully prepaid in the mail at Bellingham, WA, addressed to the person(s) above at the above address

☐ (BY PERSONAL SERVICE) by personal delivery to the addresses listed above.

☐ BY FACSIMILE) by causing such document(s) to be faxed to the person(s) listed above by transmitting said document(s) from facsimile machine no. (360) 714-1791 to facsimile machine no. \_\_\_\_\_

☒ (STATE) I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct.

Executed on July 6, 2012 at Bellingham, WA.

\_\_\_\_\_  
Lawrence A. Hildes