NO. 100123-1

SUPREME COURT OF THE STATE OF WASHINGTON

KEENA BEAN, *et al.*,

Petitioners,

v.

CITY OF SEATTLE and STATE OF WASHINGTON,

Respondents.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Washington's Residential Inspection Act (RIA) protects tenants by giving municipalities the power to enforce meaningful inspection standards for rental units, while also creating safeguards to limit the intrusion in the private affairs of tenants and landlords. Petitioners contend the RIA *facially* violates article I, section 7 of the Washington Constitution by permitting warrantless inspections where tenants refuse consent. But the RIA does no such thing. Instead, the law specifically addresses the problem of warrantless searches that plagued previous rental inspection programs by authorizing municipalities to seek warrants when there is probable cause to believe that conditions in a unit represent a danger to the tenant's health or safety. The law further protects tenant privacy by requiring tenant notice of inspections, limiting the permissible frequency of inspections, and providing sampling requirements—all of which mean that municipalities can generally implement the RIA in a manner that accommodates non-consenting tenants. And the RIA ensures that

non-warrant inspections stay within Constitutional bounds by permitting landlords to hire private inspectors to assist in obtaining business licenses, thus eliminating any need for state action, and by bringing inspections within the scope of the landlord's preexisting right to enter their own property. Taken together, these features made it impossible for Petitioners to meet their burden of pleading that "there are no factual circumstances under which the [RIA] could be constitutional." *City of Pasco v. Shaw*, 161 Wn.2d 450, 458, 166 P.3d 1157 (2007). The superior court therefore dismissed Petitioners' suit against the State of Washington, and the Court of Appeals correctly affirmed.

Petitioners ask this Court to cast aside its 2007 decision in *City of Pasco v. Shaw*, a case brought by the same counsel currently representing Petitioners, raising the same policy arguments as this suit. Petitioners' long-delayed bid for reconsideration fails at the threshold, however, because the superior court's dismissal of their suit against the State did not even turn on *City of Pasco*. Rather, the court concluded that the

numerous provisions of the RIA enabling landlords to accommodate non-consenting tenants meant that Petitioners could not show Washington's RIA was unconstitutional under every conceivable set of circumstances. RP at 43–44 ("[T]here are a number of ways in which a city code could comply with the state law and also be constitutional."); *see also Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). Thus, even if this Court were to overturn *City of Pasco*, it would not change the result with respect to the RIA.

Even leaving this aside, Petitioners cannot make a convincing case for rejecting *stare decisis* and overturning *City of Pasco*. That case turns on two independent grounds—(1) the fact that private inspectors hired to pursue landlords' private business interests are not state actors, and (2) the fact that tenants do not have a constitutionally protected right to exclude inspectors hired by their landlords—but Petitioners only challenge the first of these holdings. Because either holding

provides sufficient grounds to dismiss their complaint, *see* A-10, their failure to address both is fatal to their argument.

Nor can Petitioners show this Court was clearly wrong in deciding the state action question in *City of Pasco*. Their Petition relies almost entirely on arguments this Court already considered and rejected 14 years ago. Although Petitioners are correct that our Constitution strictly protects the privacy of the home from government invasion, that does not answer the question raised in *City of Pasco* or here: whether private inspectors who contract with landlords are *necessarily* state actors such that the Pasco ordinance and the RIA are *facially* unconstitutional. Any violations by a municipality purporting—incorrectly—to be acting pursuant to *City of Pasco* or the RIA can be dealt with via as-applied challenges. But they are not bases for striking down *City of Pasco*—or the RIA—on a facial challenge.

This Court should deny review.

II. STATEMENT OF THE CASE

A. The Washington Legislature Passes the Rental Inspection Act to Improve Substandard Housing

The Washington Legislature passed the Rental Inspection Act to empower local governments to improve substandard housing throughout Washington. Laws of 2010, ch. 148, §§ 1–4; *see also* S.B. Rep. on S.S.B. 6459, 61st Leg., Reg. Sess. (Wash. 2010), http://lawfilesext.leg.wa.gov/biennium/2009-10/Pdf/Bill%20Reports/Senate/6459-S%20SBR%20HA%2010.pdf (Senate Report). The RIA reflects a careful balance between municipalities, landlords, and tenants. Working together with representatives of these three groups, legislators passed the RIA to improve the quality of rental housing while giving local governments flexibility to adopt their own ordinances, giving landlords predictability as to what might be required of them, and protecting the rights and privacy of tenants. H.B. Rep. on S.S.B. 6459, 61st Leg., Reg. Sess., at 4 (Wash. 2010), http://lawfilesext.leg.wa.gov/biennium/2009-10/Pdf/Bill%20

Reports/House/6459-S%20HBR%20APH%2010.pdf (House Report).

Prior to the RIA, Washington's Residential Landlord–Tenant Act relied on a complaint-based system to address substandard housing. Senate Report at 2. Under that system, a tenant could request a government inspection of their unit for defective conditions, but only after first raising complaints with their landlord and giving the landlord an opportunity to remedy the condition. *Id.* This complaint-based system, however, was inadequate to ensure the safety and habitability of rental properties. *See City of Seattle v. McCready*, 123 Wn.2d 260, 263, 868 P.2d 134 (1994) (*McCready I*) (noting Seattle finding that "housing code enforcement on a complaint basis frequently delays City intervention until structures have become seriously deteriorated") (quoting Seattle City Ordinance 113531 (July 30, 1987)). For example, in *City of Pasco*, this Court noted that when a tenant complained to her landlord of substandard conditions, including a lack of heat, leaking pipes, a collapsing wall, and

rotting floors, "the apartment manager told [the tenant] that if she continued to complain, he would have her deported." 161 Wn.2d at 454–55. "This," the Court said, "provides a good example of why some tenants may hesitate to report housing code violations." *Id.* at 455 n.1.

To address these problems, the RIA gives municipalities tools to proactively identify potentially substandard housing. The Act authorizes—but does not obligate—local governments to require landlords to "provide a certificate of inspection as a business license condition." RCW 59.18.125(1). These certificates, signed by public or private inspectors, confirm that a unit is free from defects that "endanger[] or impair[] the health or safety of a tenant[.]" RCW 59.18.030(2).

While permitting municipalities to adopt inspection regimes, the RIA also constrains that power in several important respects, including via provisions that limit the burdens municipalities may place on tenants and landlords. For example, the RIA provides that municipalities may only require a

certificate of inspection for a given property once every three years. RCW 59.18.125(3). Additionally, the RIA provides that, for multi-unit properties, a landlord may elect to provide certificates of inspection for only a sample of units, unless those inspections (or tenant complaints) reveal conditions "that endanger or impair the health or safety of a tenant." RCW 59.18.125(6). However, to prevent unscrupulous landlords from using this sampling provision to game the inspection system, the RIA provides that landlords who elect to inspect only a sample of their units must turn over any failing inspection reports to the municipality. RCW 59.18.125(6)(e). Alternatively, landlords may choose to inspect each unit in a property and provide only a single certificate for all units. RCW 59.18.125(5).

B. The Rental Inspection Act Incorporates Washington Supreme Court Guidance on Constitutional Requirements for Rental Inspections

The RIA also includes numerous safeguards for both landlords and tenants based on prior opinions of this Court. *See* Senate Report at 2, 4 (referencing Supreme Court rulings).

Most significantly, the Act incorporates guidance from this Court's *McCready* cases by including detailed provisions governing the issuance of warrants to conduct inspections, including a probable cause requirement and various procedural safeguards. *See McCready I*, 123 Wn.2d at 280 (quashing residential inspection warrants under article 1, section 7 because no law permitted the superior court to issue warrants to search for housing violations in the absence of probable cause); *City of Seattle v. McCready*, 124 Wn.2d 300, 877 P.2d 686 (1994) (*McCready II*) (holding that, in the absence of a statute or court rule authorizing such a warrant, a municipal court lacked the authority to issue administrative search warrants to identify housing code violations, even where the warrant was supported by probable cause).

Following the *McCready* cases, Section 4(a) of the RIA authorizes courts to issue search warrants to code enforcement officers "to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or

ordinance." RCW 59.18.150(4)(a). These warrants are subject to robust substantive and procedural provisions designed to protect the privacy interests of tenants as well as landlords. Warrants may only issue on a showing of probable cause that a code violation "exists and endangers the health or safety of the tenant or adjoining neighbors[,]" and only after landlords and tenants receive notice and an opportunity to be heard. RCW 59.18.150(4)(b), (d).

Additionally, the RIA incorporates this Court's holding in *City of Pasco* by requiring municipalities to give landlords the option to arrange for private residential inspections, thus eliminating any need for state action. RCW 59.18.030(26); *City of Pasco*, 161 Wn.2d at 460 (holding that local inspection ordinance did not facially violate article I, section 7 because it permitted landlords to hire "*private* inspectors in order to further the *private* objective of obtaining a certification needed to maintain a business license," and thus did not involve state action). This not only eliminates the need for state action, but

also ensures that inspections are within the scope of the landlord's preexisting right of entry into their own property. *Id.* at 461 ("[I]f the scope of a landlord's entrance does not exceed the legitimate purposes contemplated by the Residential Landlord–Tenant Act . . . no unreasonable search has occurred" in violation of article I, section 7.)

C. The Superior Court Dismisses Appellants' Suit Against the State

Although the RIA provides a mechanism for municipalities to obtain search warrants to carry out rental inspections, Petitioners nonetheless sued, alleging the RIA was facially unconstitutional because it "authorizes the City [of Seattle] to conduct warrantless rental inspections without the consent of tenants." CP at 16, ¶ 73.

The State moved to dismiss Petitioners' suit on three independent grounds.

First, the State argued Petitioners' facial challenge failed because they could not carry their burden of pleading that "there

exists *no set of circumstances* in which the [RIA] can constitutionally be applied." *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000) (internal quotation omitted). As the State explained, the RIA's warrant provision means unconstitutional searches are manifestly avoidable: by seeking a warrant. Moreover, many features of the RIA—including the sampling provisions and a limitation on inspections to once every three years—mean non-consenting tenants can generally be accommodated, except possibly in rare circumstance. RCW 59.18.125(3), (6); *see also City of Pasco*, 161 Wn.2d at 462 n.3 (noting plaintiffs' facial challenge failed because provisions permitting landlords to choose an inspection date within a six-month window meant "at least some landlords will be able to conduct inspections between tenancies, thereby eliminating any tenant involvement at all"). CP at 46–50.

Second, the State relied on *City of Pasco v. Shaw* to point out that rental inspection regimes which permit landlords to hire private inspectors do not require state action, and thus do not

facially violate article 1, section 7. *City of Pasco*, 161 Wn.2d at 458. Here, as in *City of Pasco*, because landlords hire private inspectors "first and foremost [to] further their *own* ends" of obtaining business licenses, the inspectors act as agents for the landlord, not any municipality. *Id.* at 461; CP at 50–54.

Finally, the State argued that Petitioners' claims were foreclosed by *City of Pasco*'s alternative holding that tenants did not have a constitutionally protected right to exclude inspectors hired by their landlords. *City of Pasco*, 161 Wn.2d. at 461. As this Court explained in *Kalmas v. Wagner*, and then reaffirmed in *City of Pasco*, because the Residential Landlord–Tenant Act (RLTA) "gives a landlord a limited right to invade the privacy of a tenant in his or her residence for limited purposes," the landlord's (or their contractor's) entrance into a tenant's apartment does not invade the tenant's reasonable expectation of privacy so long as "the scope of the entrance does not exceed [the RLTA's] purposes[.]" *Kalmas v. Wagner*, 133 Wn.2d 210, 219–20, 943 P.2d 1369 (1997). Because inspections for habitability

under the RIA do not exceed the scope of the landlord's right of entry under section 150 of the RLTA, RCW 59.18.150, the RIA does not invade tenants' reasonable expectations of privacy. CP at 54–56.

The superior court agreed as to the first of these three bases, and therefore dismissed Petitioners' claims against the State. CP 185–86. As the court explained in its ruling, "there are a number of ways in which a city code could comply with the state law and also be constitutional." RP at 43–44.

D. The Court of Appeals Upholds the Superior Court

Petitioners first sought review of the superior court's rulings via direct review to this Court. Suppl. App. at 1 (Statement of Grounds for Direct Review (filed Mar. 10, 2020)). Petitioners made many of the same arguments they do here, including that *City of Pasco* was "in tension with this Court's jurisprudence regarding article I, § 7" and "has proven to be unworkable in practice[and] lacking in sufficient boundaries[.]"

Suppl. App. at 9–10, 12. This Court declined to accept review. Suppl. App. at 41.

The Court of Appeals then affirmed the superior court in an unpublished order. Like the superior court, the Court of Appeals' affirmance did not turn on *City of Pasco*, but rather on Petitioners' failure to allege sufficient facts that could support a facial challenge to the statute. *See* A-12 ("As the authorizing statute, [RIA] is by nature more open to alternative means of constitutional compliance than a specific implementation of that authorization by a municipality[.]").

Petitioners once again seek review by this Court.

III. ARGUMENT

A. Petitioners Fail to Raise a Significant Issue of Law Concerning the Residential Inspection Act because its Constitutionality Does Not Turn on *City of Pasco*

Petitioners' claims against the State fail at the outset because even if this Court *did* overturn *City of Pasco*, that would not change the results below. Both the superior court and the Court of Appeals rejected Petitioners' facial challenge to the RIA

not because of *City of Pasco*'s holding regarding the state action doctrine, but because Petitioners could not carry their burden to "show that the [statute] is unconstitutional beyond a reasonable doubt and there are no factual circumstances under which the [statute] could be constitutional." *City of Pasco*, 161 Wn.2d at 458 (citing *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003) and *Bergeson*, 141 Wn.2d at 221); RP at 44–45; A-12.

This conclusion—which Petitioners do not dispute—stems from numerous provisions in the RIA that protect non-consenting tenants from inspections. For example, in most circumstances, the RIA only permits municipalities to require inspections of a maximum of 20% of units in any property, meaning that where one tenant refuses to consent to a search, the landlord can generally conduct an inspection of a different unit in the same building, either a vacant one or one occupied by a consenting tenant. RCW 59.18.125(6). Additionally, because "[a] local municipality may only require a certificate of

inspection on a rental property once every three years[,]" RCW 59.18.125(3), "at least some landlords will be able to conduct inspections between tenancies, thereby eliminating any tenant involvement at all." *City of Pasco*, 161 Wn.2d at 462 n.3. Further, in those rare cases in which tenant consent cannot be obtained, and where another unit in the same building cannot be sampled, municipalities may seek search warrants if they have probable cause to believe the unit is not fit for human occupancy. RCW 59.18.150(4). The warrant provision serves as a backstop to ensure that rental inspections under the RIA need not be conducted "without authority of law." Const. art. I, § 7; *see also State v. Gaines*, 154 Wn.2d 711, 718, 116 P.3d 993 (2005) (noting that searches conducted pursuant to a valid warrant do not violate article I, section 7); *Garris v. City of Los Angeles*, 798 F. App'x 155, 156 (9th Cir. 2020) ("Because entry upon obtaining a valid administrative warrant would not violate the Fourth Amendment, the Ordinance is not facially invalid, as it is not 'unconstitutional in all applications.'") (quoting

City of Los Angeles, Calif. v. Patel, 576 U.S. 409, 417, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015)).

Thus, even if Petitioners could show that *City of Pasco* were incorrectly decided—*but see infra*—there would still be no grounds for granting their petition as against the State.

B. Petitioners Fail to Raise a Significant Issue of Law Regarding the Continuing Vitality of *City of Pasco*

The petition should also be denied for the independent reason that Petitioners come nowhere near meeting their heavy burden to overcome *stare decisis*.

1. Standard for Overturning Precedent

"A party asking this court to reject its precedent faces a challenging task." *State v. Otton*, 185 Wn.2d 673, 690, 374 P.3d 1108, 1116 (2016). "Generally, under stare decisis, [the Court] will not overturn prior precedent unless there has been a clear showing that an established rule is incorrect and harmful." *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014) (quotation omitted). Under this standard, "[t]he question is not whether [the Court]

would make the same decision if the issue presented were a matter of first impression[,]" but rather "whether the prior decision is so problematic that it *must* be rejected, despite the many benefits of adhering to precedent—promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process." *Otton*, 185 Wn.2d at 678 (quotations omitted; emphasis in original).

Alternatively, "there are relatively rare occasions when a court should eschew prior precedent in deference to intervening authority." *W.G. Clark*, 180 Wn.2d at 66 (quotation omitted). To meet this standard, a party must show "the legal underpinnings of [this Court's] precedent have changed or disappeared altogether." *Id.*

2. Petitioners Ignore Half of *City of Pasco*

Petitioners' argument fails out of the gate because while *City of Pasco* turns on two critical determinations, either one of

which was sufficient to support the Court's ultimate disposition, Petitioners challenge only one. Petitioners ignore the Court's holding that the Pasco ordinance did not violate the tenants' reasonable expectation of privacy because the RLTA "already provides that a tenant cannot unreasonably withhold consent to the landlord to enter into the rental unit in order to inspect the premises, and the act allows some third parties to accompany the landlord upon entrance." *City of Pasco*, 161 Wn.2d at 461 (citing *Kalmas v. Wagner*, 133 Wn.2d 210, 219–220, 943 P.2d 1369 (1997)). As this Court concluded, "if the scope of a landlord's entrance does not exceed the legitimate purposes contemplated by the [RLTA], no unreasonable search has occurred." *Id.* Like the Pasco ordinance, the RIA relies on landlords pre-existing right of entry, and thus does not violate any tenant's reasonable expectation of privacy. *See* A-11 ("A tenant's right to privacy is no more invaded by an inspection pursuant to the RRIO authorized by their landlord than any other inspection or

authorized entry under the RLTA."). Petitioners' total failure to address this holding is fatal to their argument.

3. *City of Pasco* Was Neither Incorrectly Decided Nor Harmful

Even on the state action doctrine, Petitioners cannot satisfy either standard for overturning *City of Pasco*. Petitioners' argument that *City of Pasco* was wrongly decided is largely confined to reciting language from the two non-majority opinions and asserting that concerns raised in these minority opinions *prove* the majority was wrong. Pet. for Review at 13–14. But in reaching its holding in *City of Pasco*, this Court gave due weight to "article I, section 7['s] . . . strict privacy protections where invasion of a person's home is involved[,]" but nonetheless correctly pointed out that "unless the person conducting the inspection is a state actor, no violation of these constitutional provisions occurs." *City of Pasco*, 161 Wn.2d at 459. *City of Pasco* (like this case) concerned a facial challenge, and so the landlords there bore the burden to prove the ordinance

required state action under every conceivable set of circumstances. *Id.* at 458. But because, the Pasco ordinance (like the RIA) was structured so that "[l]andlords first and foremost further their *own* ends when they engage in the inspections contemplated by the ordinance" the Court concluded "petitioners have not met their burden of showing that landlords and their privately engaged inspectors are state actors." *Id.* at 461. Petitioners offer no meaningful response to this well-reasoned conclusion, and certainly nothing to suggest that the seven Justices who concurred in the majority were clearly wrong.

Petitioners also assert that *City of Pasco* was wrongly decided because it permits "any Washington city . . . [to] train inspectors to conduct warrantless searches and report back to the government" and to "vest inspectors with the discretion to call the police on tenants based on their subjective observations of criminal activity." Pet. for Review at 14. It doesn't.

To the contrary, the Court was clear that the Pasco ordinance did not facially implicate state action because it only

permitted "a landlord [to] engage *private* inspectors in order to further the *private* objective of obtaining a certification needed to maintain a business license." *City of Pasco*, 161 Wn.2d at 460. If a municipality in fact conscripted a private inspector to conduct an unauthorized criminal search under the guise of a rental inspection ordinance—which would violate the RIA, RCW 59.18.125(2)[1]—nothing in *City of Pasco* would prevent a tenant from raising an as-applied challenge to that search. But again, *City of Pasco* (and this case) concern *facial* challenges, meaning Petitioners must show state action occurs in *every* scenario, not merely under certain hypothetical conditions. *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). They cannot do so, and thus cannot show *City of Pasco* was incorrectly decided.

[1] "A qualified inspector who is conducting an inspection under this section may only investigate a rental property as needed to provide a certificate of inspection." RCW 59.18.125(2).

Nor can Petitioners show *City of Pasco* is harmful. They try to make this showing by lamenting that "the first, third, and sixth[-]largest Washington cities" have adopted rental inspection scheme in reliance on *City of Pasco.* Pet. for Review at 2. But protecting reliance interests is exactly why *stare decisis* is so important. *Otton*, 185 Wn.2d at 678. Wiping out *City of Pasco* would leave the first-, third-, and sixth-largest Washington cities' efforts to protect their residents on uncertain footing, and jeopardize the safety of tenants statewide.

Petitioners further speculate that harm will flow from their (as noted above, incorrect) suggestion that *City of Pasco* permits Washington municipalities to conscript private inspectors as roving criminal investigators. Pet for Review at 14. But they do not offer a whit of evidence to suggest this is happening. This is unsurprising because, again, the RIA specifically prohibits private inspectors from investigating any further than necessary to verify the habitability of a rental unit. RCW 59.18.125(2).

Petitioners' brief before the Court of Appeals fundamentally undermines their claim of harm. According to that brief, Petitioners Heiderich and Lee's tenants refused consent to a search under RRIO, but Seattle nonetheless demanded that Heiderich and Lee submit inspection reports to obtain a Certificate of Compliance. Suppl. App. at 43–44. This is the very situation that, according to Petitioners, leads to Constitutional violations. Except it didn't. Instead, as Petitioners admit, "this dispute ended with the search of a vacant unit." Suppl. App. at 44. This is precisely how the RIA is designed to work. The statute provides municipalities and landlords a menu of options to ensure residential inspections need not burden non-consenting tenants. These features of the RIA mean that Petitioners' speculations about widespread harm are entirely misplaced.

In short, Petitioners cannot demonstrate that *City of Pasco* "is so incorrect and harmful that it would be unreasonable to adhere to it." *Otton*, 185 Wn.2d at 690.

4. The Legal Underpinning of *City of Pasco*—the State Action Doctrine—Remains Sound

Nor can Petitioners succeed in their alternative argument that "the legal underpinnings of" *City of Pasco* "have changed or disappeared altogether." *W.G. Clark*, 180 Wn.2d at 66 (quotation omitted). Petitioners purport to make this showing by noting that Washington courts before and after *City of Pasco* have closely guarded the privacy of individuals' homes from State encroachment. Pet. for Review at 15–18. But the *City of Pasco* decision itself recognized that "article I, section 7 provide[s] strict privacy protections where invasion of a person's home is involved." *City of Pasco*, 161 Wn.2d at 459. As the Court explained, however, this did not answer the question before it because, "unless the person conducting the inspection is a state actor, no violation of these constitutional provisions occurs." *Id.* The "legal underpinnings" of this holding—that article I, section 7 only applies to state action, and/or that state action turns on "whether the party performing the search intended to assist law

enforcement efforts *or to further his [or her] own ends*[,]" *City of Pasco*, 161 Wn.2d at 460 (quotation omitted; emphasis and alterations in original)—have not changed at all. Petitioners appear to concede as much by their silence on this point. Accordingly, they cannot show that the bases for the Court's holding have disappeared or fundamentally altered such that this Court is compelled to revisit its prior holding. *See Deggs v. Asbestos Corp. Ltd.*, 186 Wn.2d 716, 732, 381 P.3d 32 (2016).

C. Overturning *City of Pasco* Is Not an Issue of Statewide Importance

Petitioners' "statewide importance" argument turns on their view that *City of Pasco* and the RIA permit municipalities to implement "unconstitutional rental inspection regime[s]." Pet. for Review at 18. This is simply not so, as the Court of Appeals correctly found. A-12 (rejecting argument that the RIA "makes municipal compliance with the state constitution optional" because "the statute does not require municipalities to violate the constitution, nor does it permit them to conduct

government searches without warrants.") (citing RCW 59.18.125, .150). Moreover, even assuming tenants had a constitutional right to exclude private inspectors hired by their landlords—again, *but see supra* at § III.B.2.—nothing in the RIA necessarily creates a burden, for the landlord or tenant, where a tenant withholds consent to a search. Instead, as detailed above, municipalities have any number of options to accommodate non-consenting tenants.

Petitioners contend there are "unresolved" questions regarding the applicability of the unconstitutional conditions doctrine, Pet. for Review at 18, but the Court of Appeals in fact squarely addressed their arguments—it simply found them lacking. Specifically, the Court of Appeals concluded Petitioners' argument failed at the threshold under *both* this Court's dual holdings in *City of Pasco* A-10–11. But for all the

reasons detailed above, Petitioners cannot show that *City of Pasco* was wrongly decided.[2]

IV. CONCLUSION

Petitioners obviously oppose residential rental inspections as a policy matter, but their policy arguments are better directed to the Legislature. They do not present a significant question of constitutional law nor an issue of substantial public interest that should be determined by this Court. *See* RAP 13.4(b)(3), (4). This Court should deny review.

[2]And again, Petitioners do not even challenge the second *City of Pasco* holding that residential inspections do not invade tenant privacy rights because they are within the scope of landlord access already permitted under the RLTA. As the Court of Appeals explained, this holding foreclosed Petitioners' unconstitutional conditions argument. A-10–11 (holding Petitioners "ha[d] not demonstrated that a privacy right has been violated" because "[a] tenant's right to privacy is no more invaded by an inspection pursuant to the RRIO authorized by their landlord than any other inspection or authorized entry under the RLTA").

V. CERTIFICATE OF COMPLIANCE

I certify that this Answer contains 4,714 words, in compliance with RAP 18.17(b).

RESPECTFULLY SUBMITTED this 24th day of September 2021.

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

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

DATED this 24th day of September 2021, at Seattle, Washington.

/s/ Andrew Hughes
ANDREW HUGHES, WSBA #49515
Assistant Attorney General

NO. 100123-1

SUPREME COURT OF THE STATE OF WASHINGTON

KEENA BEAN et al.,

Petitioners,

v.

CITY OF SEATTLE et ano.,

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SUPPLEMENTAL APPENDIX TO RESPONDENT STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

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Respondent State of Washington submits this Supplemental Appendix in support of their Answer to Petition for Review.

RESPECTFULLY SUBMITTED this 24th day of September, 2021.

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

DATED this 24th day of September, 2021, at Seattle, Washington.

/s/ Andrew Hughes
ANDREW HUGHES, WSBA #49515
Assistant Attorney General

KEENA BEAN et al.
v.
CITY OF SEATTLE et ano.

Supreme Court of the State of Washington; Case NO. 100123-1

SUPPLEMENTAL APPENDIX
TO RESPONDENT STATE OF WASHINGTON'S
ANSWER TO PETITION FOR REVIEW

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No. 98208-2

SUPREME COURT OF THE STATE OF WASHINGTON

KEENA BEAN, JOHN B. HEIDERICH, GWENDOLYN A. LEE, MATTHEW BENTLEY, JOSEPH BRIERE, SARAH PYNCHON, WILLIAM SHADBOLT, and BOAZ BROWN, as individuals and on behalf of all others similarly situated, Appellants, vs. CITY OF SEATTLE, a Washington municipal corporation, and the STATE OF WASHINGTON, Respondents.	STATEMENT OF GROUNDS FOR DIRECT REVIEW BY THE SUPREME COURT

INTRODUCTION

This is an appeal of orders dismissing a suit against both the state of Washington (the "State") and the city of Seattle (the "City" or "Seattle," and together, "Respondents"). It concerns whether residents of this state may be free from government-mandated, warrantless, nonconsensual inspections conducted by ostensibly private inspectors that nonetheless act as agents of the government. Exactly when these inspectors cease being independent and become government actors subject to article I, § 7 of the Washington Constitution is unclear, and this uncertainty threatens the

privacy rights of Washingtonians. The first, third, and sixth largest Washington cities have mandatory rental inspection regimes in which mandatory inspections may be conducted by private inspectors.[1] This Court should clarify what is permitted and what is not so that inspection protocols violating article I, § 7 of the Washington Constitution do not become established state-wide.

NATURE OF THE CASE AND DECISION

Appellants, Seattle tenants and landlords, filed a class-action lawsuit against Respondents because they were threatened with warrantless searches of their homes pursuant to Seattle's Rental Registration and Inspection Ordinance (the "RRIO," Seattle Municipal Code ("SMC") §§ 22.214 *et seq*.), which the City passed pursuant to the State's Residential Landlord Tenant Act (the "Act," RCW 59.18.125). [2]

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[1] *See*, *e.g*., Tacoma Municipal Code§ 6B.165.090(B)(3) ("If a rental property owner chooses to hire a qualified inspector other than a city code enforcement officer, and a selected unit of the rental property fails the initial inspection, both the results of the initial inspection and any certificate of inspection must be provided to the city."); Tukwila Municipal Code § 5.06.050(E) ("The code official shall audit Inspection Checklists submitted by private inspectors. . . ."); Kent Municipal Code, § 10.02.070 (requiring private inspectors turn over a "certificate of inspection" listing and showing inspection results "using the checklist provided by the city [which] shall contain such other information as determined by the director to carry out the intent of this chapter.") Bellingham Municipal Code § 6.15.050 (same).

[2] This case was decided on motions for dismiss, so the facts are assumed to be true. *See San Juan Cty. v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007) (motions to dismiss "should be granted 'sparingly and with care,' and only in the unusual case in which the plaintiff's allegations show on the face of the complaint an insuperable bar to relief.").

I. The City's Rental Inspection Program.

In 2013, Seattle enacted the RRIO inspection program. The RRIO applies "to all rental housing units." SMC §§ 22.214.030, .020.10. The RRIO inspections are invasive, wall-to-wall searches of "each habitable room in the unit." Am. Compl. ¶¶ 27–28. Inspectors search bedrooms shared by intimate partners and children's rooms without parental consent. *Id*. They can view religious, political, medical, and other personal tenant information. *Id*. ¶ 29.

The inspections are also non-consensual and warrantless. If the tenant denies consent, the Act authorizes Seattle to obtain a search warrant when it has probable cause to believe that there is a problem with the property. RCW 59.18.150. But Seattle has never obtained, nor sought, a warrant under RRIO. Am. Compl. ¶ 49. That is because, as Seattle conceded below, "a warrant requires probable cause of an actual violation and the City may not seek a warrant simply because a tenant refuses entry." Mot. Dismiss Am. Compl. 11, Dec. 24, 2019.

Rather than seeking warrants, Seattle makes landlords proxy RRIO enforcers. If the landlord honors a tenant's right to deny an inspection, he or she is liable for fines of up to $500 per day. SMC § 22.214.086.A.1.

Because the RRIO inspections are invasive, non-consensual, and warrantless—a combination forbidden by article I, § 7 when there is state

action[3]—the litigation below turned solely on whether privately employed RRIO inspectors are state actors under *City of Pasco v. Shaw*, 161 Wn.2d 450, 453, 166 P.3d 1157 (2007).

II. Seattle's Use of Privately Employed Inspectors Constitutes State Action.

RRIO's structure has been shaped by the decisions of this Court concerning rental inspection regimes.

In *City of Seattle v. McCready*, this Court examined Seattle's previous rental inspection regime, and held that mandatory, warrantless, nonconsensual government inspections of rental property violate article I, § 7. 123 Wn.2d 260, 271, 868 P.2d 134 (1994) ("Seattle does not claim, nor could it, that a non-consensual inspection of residential apartments is not a disturbance of 'private affairs' under Const. art. 1, § 7.").

In *City of Pasco v. Shaw*, this Court tested whether an inspector may be considered private based on (1) whether the government knew of and acquiesced in the intrusive conduct, and (2) whether the inspector intended to assist government efforts or to further his or her own ends. 161 Wn.2d at 460. A divided Court held that private inspectors who did not turn their results in to the city were not state actors. *Id*. at 462.

[3] *State v. Villela*, 194 Wn.2d 451, 456, 450 P.3d 170 (2019) ("Generally, officers of the State must obtain a warrant before intruding into the private affairs of others, and we presume that warrantless searches violate both constitutions.") (citation and quotation marks omitted).

Based on *City of Pasco*, the City restructured the RRIO to permit landlords to use city-employed inspectors or privately-employed inspectors. SMC § 22.214.050.C., D. Initially, the RRIO did not require private inspectors to provide the results of failed inspections to Seattle. Am. Compl. ¶ 31. However, in 2010, the Washington Legislature amended the Act to *require* municipalities to collect inspection information from private inspectors. *See* RCW 59.18.125(6)(e) ("If a rental property owner chooses to hire a qualified [private] inspector . . . and a selected unit of the rental property fails the initial inspection . . . . the results of the initial inspection . . . . must be provided to the local municipality"). In 2016, pursuant to the Act, Seattle amended the RRIO and forced private inspectors to provide inspection results to Seattle, which then audits the reports to select additional units for inspection. SMC § 22.214.050.J.

Seattle thus followed the Act and eliminated the crucial distinction between private and public inspectors—whether a failing report ends up in the hands of the government. Providing the government with failing reports was not the only way that Seattle blurred the line to the point of eliminating the distinction between private and public inspectors, however. Seattle conceded below that privately employed inspectors are authorized to call law enforcement on tenants without a search warrant:

> THE COURT: [L]et's suppose inspector shows up and finds a meth lab, okay? Big problem. Who finds out about the meth lab? Obviously the city does through this report, but . . . —does it go to law enforcement or do we just pretend we didn't see the meth lab?
>
> [SEATTLE]: Well, again it depends which option we're under, but I'm going to assume this is under a private inspector all units where only the report of compliance is given back to the city.
>
> THE COURT: Well, but if it's option C and the city sees the whole report and says, "Okay, we got a meth lab here, maybe we need to check the neighboring apartments for chemicals." But my question is: Would they contact law enforcement?
>
> [SEATTLE]: I would assume they would, Your Honor, yes.

Tr. 16:4–21, Jan 24, 2020. Seattle also trains privately employed inspectors to inform tenants about access to city services. Am. Compl. ¶ 42. Seattle recognized that privately employed inspectors will be perceived to be government agents and warns privately employed inspectors in its training materials that "immigrants and refugees may have a fear of government based on experiences in their home countries." *Id*. Seattle instructs privately employed inspectors to recruit children of immigrants to interpret and help conduct inspections of their parents. Am. Compl. ¶ 44.

III. Procedural History

On March 29, 2019, Judge Steven Rosen heard motions to dismiss by the State and the City. Judge Rosen acknowledged that the Act's mandate that inspection reports go to the government was constitutionally

problematic under *City of Pasco*:

> THE COURT: [RCW] 125 says if there's an inspection the failure reports have to go to the city, which is heavily discussed in *Pasco*. . . . . It's a very kind of unusual situation where the state is telling the city what has to be turned over, *which, at least in some reading, violates the State Supreme Court case*.

Tr. 13:14–25, Mar. 29, 2019 (emphasis added). Nevertheless, Judge Rosen dismissed the State as a party on the theory that a city could conceivably comply with the Act and the constitution by inspecting "when the unit is empty before it's been rented." *Id.* 43:9. Judge Rosen denied the City's motion to dismiss and litigation continued. *Id.* 44:4–6.

Based on Judge Rosen's decision, in June 2019, the City professed to amend the RRIO "to conform to the Pasco ordinance that was upheld as constitutional in *City of Pasco*." Mot. Dismiss Am. Compl. 2; Seattle, Wash., Ordinance No. CB 119546 (June 28, 2019). Instead of simply following *City of Pasco*, however, and contrary to the dictates of the Act, the City created burdensome, and ultimately unworkable, conditions to respecting a tenant's privacy. Under the 2019 RRIO, if a landlord chooses to hire a privately employed inspector, they must either obtain inspections of "100 percent of the rental housing units on the property" or else "both the results of the initial inspection and any certificate of compliance must be provided to the Department" in the event that a unit fails inspection. SMC

§ 22.214.050.J. [4] So, *all* tenants must now submit to a sweep of the entire apartment building—and landlords must pay multiple inspection fees—if they wish the inspection to be private. Am. Compl. ¶ 36. [5]

Appellants amended the complaint, adding a claim that Seattle's 2019 RRIO program runs afoul of the unconstitutional conditions doctrine by making the choice to exercise one's article I, § 7 rights subject to burdens imposed by the government. Am. Compl. ¶¶ 39, 87–92. On January 24, 2020, Judge Susan Craighead dismissed the City while noting the need for further review of *City of Pasco* by this Court:

> THE COURT: . . . I have some concerns about *Pasco*. But I am but a lowly trial judge. I am not the Supreme Court, and the Supreme Court is the one that drafted *Pasco*. And a lot of things have changed in society since the time it was drafted, but it is only about 12 years old so it's not like I'm looking at a 1950s case.
>
> I think that I am obligated to follow *Pasco*. And I think that fundamentally now that the city has redrafted the ordinance, it does comply with *Pasco*.

Tr. 16:4–21, Jan 24, 2020. The Court entered final judgment on February

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[4] It may very well be that it is not what Seattle is doing in practice because Seattle tells landlords on its website, as of March 2, 2020, that "Once your inspection is complete, *the private inspector will submit inspection results to the City through the Seattle Services Portal*." *See* https://www.seattle.gov/Documents/Departments/SDCI/SSRS/Production/RentalHousingInspectors.pdf (emphasis added).

[5] Hiring a privately employed inspector means not only paying that inspector, but also paying Seattle an additional $40 processing fee SDCI, RRIO Program Fees, http://www.seattle.gov/Documents/Departments/SDCI/Codes/RRIO/RRIOProgramFees.pdf (last visited March 2, 2020).

28, 2020.

ISSUES PRESENTED FOR REVIEW

A. Should this Court accept direct review to determine the scope of municipalities' ability to condition the exercise of article I, § 7 rights?

B. Should this Court accept direct review to determine whether *City of Pasco* is consistent with this Court's previous interpretations of article I, § 7?

GROUNDS FOR DIRECT REVIEW

Appellants seek direct review because this case involves (a) "a fundamental and urgent issue of broad public import which requires prompt and ultimate determination" and (b) "an issue in which there is . . . an inconsistency in decisions of the Supreme Court." RAP 4.2(a)(3), (4).

First, Seattle places burdensome conditions on anyone wishing to avoid inspectors—trained by the City, repeating the City's desired message, and vested with the authority to call law enforcement on tenants—entering their homes without consent or a warrant. This is an important issue with the potential to deprive hundreds of thousands of Washington residents of "spheres of autonomy" that the unconstitutional conditions doctrine is meant to protect. Second, the majority opinion in *City of Pasco v. Shaw* allows government actors—cloaked with the label "private"—to search homes without consent and without a warrant. This decision has proven to

be unworkable in practice, lacking in sufficient boundaries, and inconsistent with the analysis of article I, § 7 in *City of Seattle v. McCready*.

I. Whether Seattle Can Impose Burdensome Conditions to Prevent Inspectors From Acting as Government Agents is an Important Issue.

As stated above, municipalities across the state are increasingly relying on private inspectors to conduct housing inspections. *See* n.1, *supra*. The Act permits municipalities to implement rental inspection regimes that require government actors to conduct warrantless, nonconsensual searches of the most private areas of a person's life. Seattle has taken this authority and created a significant disincentive to the exercise of article I, § 7 rights by making private inspectors only truly private when 100% of the units in a building are inspected. Whether the Washington Constitution permits either of these things is a significant and immediate issue requiring this Court's resolution.

These issues are currently unresolved. Although *City of Pasco* would appear to foreclose the types of inspections contemplated by the Act, the Washington Legislature apparently believes differently.

Moreover, the City has created a severe disincentive for landlords and tenants to recognize and respect the privacy rights of nonconsenting tenants. For landlords, respecting a nonconsenting tenant's privacy rights means accepting an inspection that can be significantly more expensive,

intrusive, and burdensome. For tenants, if Tenant A objects to an inspection, Tenant A must convince or force their neighbor, Tenant B, to let strangers into her home so that Tenant A's rights can be protected under the 100% requirement—an impossibly challenging scenario, especially in large apartment buildings. This case thus squarely presents the issue of whether, under article I, § 7, the government may attach unconstitutional conditions to the exercise of article I, § 7 rights.

Under the unconstitutional conditions doctrine, which was not discussed in *City of Pasco,* "the government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, *even if the government may withhold that benefit altogether*." *Butler v. Kato*, 137 Wn. App. 515, 530, 154 P.3d 259 (2007) (emphasis added) (invaliding condition that defendant on release undergo alcohol evaluation and attend self-help meetings) (citing *United States v. Scott*, 450 F.3d 863 (9th Cir. 2006) (conditioning pre-trial release on home searches is unconstitutional)). *Butler* and *Scott* were concerned not only with searches of the home, but with "spheres of autonomy" threatened by the "risk that the government will abuse its power by attaching strings strategically, striking lopsided deals and gradually eroding constitutional protections." *Butler*, 137 Wn. App. at 530 (quoting *Scott*, 450 F.3d at 866).

In sum, the unconstitutional conditions doctrine is meant to curb piecemeal erosion of liberty, yet there is no Washington Supreme Court case specifically addressing the contours of article I, § 7 and the doctrine together. Whether the government may condition the exercise of one's privacy rights—as Seattle has done here—is therefore an issue of public importance this Court should decide.

II. This Court's decisions are inconsistent regarding the protections afforded to tenants under Article I, § 7.

The majority opinion in *City of Pasco* is in tension with this Court's jurisprudence regarding article I, § 7 of the Washington Constitution, which provides that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." *McCready* emphasized "the manifest disturbance of . . . private affairs" under article I, § 7 inherent in rental inspections,123 Wn.2d at 271, whereas *City of Pasco* permits government-required warrantless inspections.

From the outset, *City of Pasco* acknowledged that "[w]hether state action has occurred depends on the circumstances of a given case." *Id*. at 460. Four justices illuminated the need for further review by this Court today. Justice Sanders and Justice Johnson dissented on the ground that Pasco inspectors were "approved by the city" and were thus state actors. *Id*. at 467 (Sanders, J. dissenting). The dissent predicted that loss of liberty

would flow from warrantless rental inspections: "[I]f evidence is seen in plain view indicating a criminal violation by the tenant, this could also be used to support issuance of a criminal search warrant and subsequent prosecution of the tenant. Obviously this is state action." *Id*. at 469. This is precisely what the City admitted occurs before the trial court below.

Justice Chambers and Chief Justice Alexander "cautiously concurr[ed]." 161 Wn.2d at 464 (Chambers, J. concurring). The concurrence was based, however, on the understanding that cities would do something crucial that Seattle does not do here—get a search warrant for non-consensual inspections: "[A]ny inspection of an occupied unit performed pursuant to the ordinance should be done with the tenant's consent or by court order or arbitrator; anything less runs the risk of violating RCW 59.18.150 and article I, section 7 of our state constitution." *Id*. at 466. The concurrence predicted that *City of Pasco v. Shaw* would require further analysis by this Court "if and when inspections go beyond reasonable inspections for housing code violations." *Id*. The concurrence warned that if "inspectors function like the eyes and ears of the State, looking for suspicious activities, they will become government agents." *Id*. (citations omitted).

The decision below manifests these concurring justices' concerns. Under the Act, Seattle—and any Washington city—can now train a team of

inspectors to conduct warrantless searches and report back to the government. They can also vest inspectors with the discretion to call the police on tenants based on their subjective observations of criminal activity. This cannot stand under Article I, § 7.[6]

In *City of Seattle v. McCready*, this Court quashed rental-inspection warrants issued by the Superior Court to search apartment buildings. Such warrants did not contain "the authority of law necessary to justify Seattle's intrusion into appellants' private affairs." 123 Wn.2d at 271. The Court recognized that inspectors "possess the authority to intrude upon the privacy of the home regardless of the occupant's wishes." *Id*. at 278. "It is entirely appropriate" this Court reasoned, "that so powerful a tool of governmental authority be carefully circumscribed." *Id*. The Court thus held that "a superior court is not authorized either by the common law or by the state constitution to issue search warrants on less than probable cause in the absence of a statute or court rule." *Id*. at 273.

However, the RRIO that Seattle adopted in the years following *McCready* is not "circumscribed" at all by the guardrails of a warrant

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[6] Seattle's ordinance is more invasive than Pasco's and merits consideration even if this Court accepts *City of Pasco* as settled. Unlike the RRIO, Pasco's inspection ordinance allows landlords to select private inspectors that meet independent certification requirements. PMC § 5.60.030(3). Seattle, in contrast, trains inspectors and "views the relationship with Private Inspectors as a *partnership*" with "[s]hared investment in the success of the RRIO Program." Am. Compl. ¶ 41 (emphasis added).

procedure. *McCready* did not contemplate that a completely warrantless inspection regime would take the place of a warrant-based inspections regime with no legal authority.

Both the holding of *City of Pasco*—which contemplates judicial review depending on the circumstances of an inspection program—and the weight of authority from this Court as expressed in *McCready* merit new analysis of the state action doctrine presented in this case.

CONCLUSION

This Court should accept direct review and hold that privately employed inspectors need consent or a search warrant to enter a home without consent.

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2020, I filed the foregoing *Statement of Grounds for Direct Review by The Supreme Court* through the Court's electronic filing system which will send an email notification of such to the following:

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Appendix 1

RCW 59.18.125

RCW 59.18.125

Inspections by local municipalities—Frequency—Number of rental properties inspected—Notice—Appeals—Penalties.

(1) Local municipalities may require that landlords provide a certificate of inspection as a business license condition. A local municipality does not need to have a business license or registration program in order to require that landlords provide a certificate of inspection. A certificate of inspection does not preclude or limit inspections conducted pursuant to the tenant remedy as provided for in RCW **59.18.115**, at the request or consent of the tenant, or pursuant to a warrant.

(2) A qualified inspector who is conducting an inspection under this section may only investigate a rental property as needed to provide a certificate of inspection.

(3) A local municipality may only require a certificate of inspection on a rental property once every three years.

(4)(a) A rental property that has received a certificate of occupancy within the last four years and has had no code violations reported on the property during that period is exempt from inspection under this section.

(b) A rental property inspected by a government agency or other qualified inspector within the previous twenty-four months may provide proof of that inspection which the local municipality may accept in lieu of a certificate of inspection. If any additional inspections of the rental property are conducted, a copy of the findings of these inspections may also be required by the local municipality.

(5) A rental property owner may choose to inspect one hundred percent of the units on the rental property and provide only the certificate of inspection for all units to the local municipality. However, if a rental property owner chooses to inspect only a sampling of the units, the owner must send written notice of the inspection to all units at the property. The notice must advise tenants that some of the units at the property will be inspected and that the tenants whose units need repairs or maintenance should send written notification to the landlord as provided in RCW **59.18.070**. The notice must also advise tenants that if the landlord fails to adequately respond to the request for repairs or maintenance, the tenants may contact local municipality officials. A copy of the notice must be provided to the inspector upon request on the day of inspection.

(6)(a) If a rental property has twenty or fewer dwelling units, no more than four dwelling units at the rental property may be selected by the local municipality to provide a certificate of inspection as long as the initial inspection reveals that no conditions exist that endanger or impair the health or safety of a tenant.

(b) If a rental property has twenty-one or more units, no more than twenty percent of the units, rounded up to the next whole number, on the rental property, and up to a maximum of fifty units at any one property, may be selected by the local municipality to provide a certificate of inspection as long as the initial inspection reveals that no conditions exist that endanger or impair the health or safety of a tenant.

(c) If a rental property is asked to provide a certificate of inspection for a sample of units on the property and a selected unit fails the initial inspection, the local municipality may require up to one hundred percent of the units on the rental property to provide a certificate of inspection.

(d) If a rental property has had conditions that endanger or impair the health or safety of a tenant reported since the last required inspection, the local municipality may require one hundred percent of the units on the rental property to provide a certificate of inspection.

(e) If a rental property owner chooses to hire a qualified inspector other than a municipal housing code enforcement officer, and a selected unit of the rental property fails the initial inspection, both the results of the initial inspection and any certificate of inspection must be provided to the local municipality.

(7)(a) The landlord shall provide written notification of his or her intent to enter an individual unit for the purposes of providing a local municipality with a certificate of inspection in accordance with RCW **59.18.150**(6). The written notice must indicate the date and approximate time of the inspection and the

company or person performing the inspection, and that the tenant has the right to see the inspector's identification before the inspector enters the individual unit. A copy of this notice must be provided to the inspector upon request on the day of inspection.

(b) A tenant who continues to deny access to his or her unit is subject to RCW **59.18.150**(8).

(8) If a rental property owner does not agree with the findings of an inspection performed by a local municipality under this section, the local municipality shall offer an appeals process.

(9) A penalty for noncompliance under this section may be assessed by a local municipality. A local municipality may also notify the landlord that until a certificate of inspection is provided, it is unlawful to rent or to allow a tenant to continue to occupy the dwelling unit.

(10) Any person who knowingly submits or assists in the submission of a falsified certificate of inspection, or knowingly submits falsified information upon which a certificate of inspection is issued, is, in addition to the penalties provided for in subsection (9) of this section, guilty of a gross misdemeanor and must be punished by a fine of not more than five thousand dollars.

(11) As of June 10, 2010, a local municipality may not enact an ordinance requiring a certificate of inspection unless the ordinance complies with this section. This prohibition does not preclude any amendments made to ordinances adopted before June 10, 2010.

[**2010 c 148 § 2.**]

Appendix 2

SMC 22.214

Chapter 22.214 - RENTAL REGISTRATION AND INSPECTION ORDINANCE

22.214.010 - Declaration of purpose

The City Council finds that establishing a Rental Registration and Inspection Ordinance is necessary to protect the health, safety, and welfare of the public; and prevent deterioration and blight conditions that adversely impact the quality of life in the city. This shall be accomplished by requiring rental housing be registered and properly maintained, and that substandard housing conditions be identified and corrected.

(Ord. 124312, § 2, 2013 [renamed ordinance]; Ord. 124011, § 2, 2012 [renumbered from 6.440.010 and amended]; Ord. 123311, § 1, 2010.)

22.214.020 - Definitions

For purposes of this Chapter 22.214, the following words or phrases have the meaning prescribed below:

"Accessory dwelling unit" or "ADU" means an "Accessory dwelling unit" or a "Detached accessory dwelling unit" or "DADU" as defined under "Residential use" in Section 23.84A.032.

"Certificate of Compliance" means the document issued by a qualified rental housing inspector and submitted to the Department by a property owner or agent that certifies the rental housing units that were inspected by the qualified rental housing inspector comply with the requirements of this Chapter 22.214.

"Common areas" mean areas on a property that are accessible by all tenants of the property including but not limited to: hallways; lobbies; laundry rooms; and common kitchens, parking areas, or recreation areas.

"Department" means the Seattle Department of Construction and Inspections or successor Department.

"Director" means the Director of the Seattle Department of Construction and Inspections or the Director's designee.

"Housing Code" means the Housing and Building Maintenance Code in Chapters 22.200 through 22.208.

"Mobile home" means a " manufactured home" or a " mobile home" as defined in chapter 59.20 RCW.

"Owner" has the meaning as defined in RCW 59.18.030.

"Qualified rental housing inspector" means:

1. A City Housing and Zoning Inspector; or
2. A private inspector who is registered with the City as a qualified rental housing inspector under Section 22.214.060 and currently maintains and possesses at least one of the following credentials:
    a. American Association of Code Enforcement Property Maintenance and Housing Inspector certification;
    b. International Code Council Property Maintenance and Housing Inspector certification;
    c. International Code Council Residential Building Inspector certification;
    d. Washington State home inspector under chapter 18.280 RCW 18.280 ; or
    e. Other individuals with credentials acceptable to the Director as established by rule.

"Rental housing unit" means a housing unit that is or may be available for rent, or is occupied or rented by a tenant or subtenant in exchange for any form of consideration.

"Housing unit" means any structure or part of a structure that is used or may be used by one or more persons as a home, residence, dwelling, or sleeping place; including but not limited to single-family residences, duplexes, triplexes, and four-plexes; multi-family units, apartment units, condominium units, rooming-house units, micro dwelling units, housekeeping units, single-room occupancy units, and accessory-dwelling units; and any other structure having similar living accommodations.

"Rental housing registration" means a registration issued under this Chapter 22.214.

"Rooming house" means, for the purposes of this Chapter 22.214, a building arranged or used for housing and that may or may not have sanitation or kitchen facilities in each room that is used for sleeping purposes.

"Shelter" means a facility with overnight sleeping accommodations, owned, operated, or managed by a nonprofit organization or governmental entity, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

"Single-room occupancy unit" has the meaning in Section 22.204.200.

"Tenant" has the meaning given in Section 22.204.210.

"Transitional housing" means housing units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing within a period of not more than 24 months.

"Unit unavailable for rent" means a housing unit that is not offered or available for rent as a rental unit, and where prior to offering or making the unit available as a rental housing unit, the owner is required to obtain a rental housing registration for the property where the rental housing unit is located and comply with all rules adopted under this Chapter 22.214.

(Ord. 124919 , § 81, 2015 [department/department head name change]; Ord. 124312, § 3, 2013; Ord. 124011, § 3, 2012 [renumbered from 6.440.020 and amended]; Ord. 123311, § 1, 2010.)

22.214.030 - Applicability

A. The registration provisions of this Chapter 22.214 shall apply to all rental housing units with the exception of:

1. Housing units lawfully used as short-term rentals, if the housing unit is the primary residence of the short-term rental operator as defined in Section 23.84A.030;
2. Housing units rented for not more than 12 consecutive months as a result of the property owner, who previously occupied the unit as a primary residence, taking a work-related leave of absence or assignment such as an academic sabbatical or temporary transfer;
3. Housing units that are a unit unavailable for rent;
4. Housing units in hotels, motels, inns, bed and breakfasts, or similar accommodations that provide lodging for transient guests, but not including short-term rentals as defined in Section 23.84A.024 unless the short-term rental qualifies for an exemption under subsection 22.214.030.A.1;
5. Housing units in facilities licensed or required to be licensed under chapter 18.20, 70.128, or 72.36 RCW, or subject to another exemption under this Chapter 22.214;
6. Housing units in any state licensed hospital, hospice, community-care facility, intermediate-care facility, or nursing home;
7. Housing units in any convent, monastery, or other facility occupied exclusively by members of a religious order or congregation;
8. Emergency or temporary shelter or transitional housing accommodations;
9. Housing units owned, operated, or managed by a major educational or medical institution or by a third party

for the institution; and

10. Housing units that a government entity or housing authority owns, operates, or manages; or units exempted from municipal regulation by federal, state, or local law.

B. The inspection provisions of this Chapter 22.214 shall apply to rental housing units that are included in this Rental Registration and Inspection Ordinance, with the exception of:

1. Rental housing units that receive funding or subsidies from federal, state, or local government when the rental housing units are inspected by a federal, state, or local governmental entity at least once every five years as a funding or subsidy requirement; and the rental housing unit owner or agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic federal, state, or local government inspection is substantially equivalent to the inspection required by this Chapter; and

2. Rental housing units that receive conventional funding from private or government insured lenders when the rental housing unit is inspected by the lender or lender's agent at least once every five years as a requirement of the loan; and the lender or lender's agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic lender inspection is substantially equivalent to the inspection required by this Chapter 22.214; and

3. Accessory dwelling units and detached accessory dwelling units, provided the owner lives in one of the housing units on the property and an "immediate family" member as identified subsection 22.206.160.C.1.e lives in the other housing unit on the same property.

(Ord. 125483 , § 1, 2017; Ord. 124312, § 4, 2013; Ord. 124011, § 4, 2012 [renumbered from 6.440.030 and amended]; Ord. 123311, § 1, 2010.)

22.214.040 - Rental housing registration, compliance declaration, and renewals

A. With the exception of rental housing units identified in subsection 22.214.030.A, all properties containing rental housing units shall be registered with the Department according to the registration deadlines in this subsection 22.214.040.A. After the applicable registration deadline, no one shall rent, subrent, lease, sublease, let, or sublet to any person or entity a rental housing unit without first obtaining and holding a current rental housing registration for the property where the rental housing unit is located. The registration shall identify all rental housing units on the property and shall be the only registration required for the rental housing units on the property. For condominiums and cooperatives, the property required to be registered shall be the individual housing unit being rented and not the entire condominium building, cooperative building, or development. If a property owner owns more than one housing unit in a condominium or cooperative building, the owner may submit a single registration application for the units owned in the building. Properties with rental housing units shall be registered according to the following schedule:

1. By July 1, 2014 all properties with ten or more rental housing units, and any property that has been subject to two or more notices of violation or one or more emergency orders of the Director for violating the standards in Chapters 22.200 through 22.208 where enforced compliance was achieved by the Department or the violation upheld in a final court decision;

2. By January 1, 2015 all properties with five to nine rental housing units; and

3. Between January 1, 2015 and December 31, 2016, all properties with one to four rental housing units shall be registered according to a schedule established by Director's rule. The schedule shall include quarterly registration deadlines; and shall be based on dividing the city into registration areas that are, to the degree practicable, balanced geographically and by rough numbers of properties to be registered in each area.

B. All properties with rental housing units constructed or occupied after January 1, 2014 shall be registered prior to occupancy or according to the registration schedule established in subsection 22.214.040.A, whichever is later.

C. A rental housing registration shall be valid for two years from the date the Department issues the registration.

D. The rental housing registration shall be issued to the property owner identified on the registration application filed with the Department.

E. The fees for rental housing registration, renewal, or reinstatement, or other fees necessary to implement and administer the Rental Registration and Inspection Ordinance program, shall be adopted by amending Chapter 22.900.

F. The new owner of a registered property shall, within 60 days after the sale is closed on a registered property, update the current registration information and post or deliver the updated registration according to subsection 22.214.040.I. When property is held in common with multiple owners, the registration shall be updated when more than 50 percent of the ownership changes.

G. An application for a rental housing registration shall be made to the Department on forms provided by the Director. The application shall include, but is not limited to:

1. The address of the property;
2. The name, address, and telephone number of the property owners;
3. The name, address, and telephone number of the registration applicant if different from the property owners;
4. The name, address, and telephone number of the person or entity the tenant is to contact when requesting repairs be made to their rental housing unit, and the contact person's business relationship to the owner;
5. A list of all rental housing units on the property, identified by a means unique to each unit, that are or may be available for rent at any time;
6. A declaration of compliance from the owner or owner's agent, declaring that all housing units that are or may be available for rent are listed in the registration application and meet or will meet the standards in this Chapter 22.214 before the units are rented; and
7. A statement identifying whether the conditions of the housing units available for rent and listed on the application were established by declaration of the owner or owner's agent, or by physical inspection by a qualified rental housing inspector.

H. A rental housing registration must be renewed according to the following procedures:

1. A registration renewal application and the renewal fee shall be submitted at least 30 days before the current registration expires;
2. All information required by subsection 22.214.040.G shall be updated as needed; and,
3. A new declaration as required by subsection 22.214.040.G.6 shall be submitted.

I. Within 30 days after the Department issues a rental housing registration, a copy of the current registration shall be delivered by the property owner or owner's agent to the tenants in each rental housing unit or shall be posted by the property owner or owner's agent and remain posted in one or more places readily visible to all tenants. A copy of the current registration shall be provided by the property owner or owner's agent to all new tenants at or before the time they take possession of the rental housing unit.

J. If any of the information required by subsection 22.214.040.G changes during the term of a registration, the owner shall update the information within 60 days of the information changing, on a form provided by the Director.

(Ord. 125705 , § 1, 2018; Ord. 124312, § 5, 2013; Ord. 124011, § 5, 2012; [renumbered from 6.440.040 and replaced entire text]; Ord. 123311, § 1, 2010.)

22.214.045 - Registration denial or revocation

A. A rental housing registration may be denied or revoked by the Department as follows:

1. A registration or renewal registration application may be denied for:

a. Submitting an incomplete application; or

b. Submitting a declaration of compliance the owner knows or should have known is false; and

2. A rental housing registration may be revoked for:

a. Failing to comply with the minimum standards as required in this Chapter 22.214;

b. Submitting a declaration of compliance or certificate of compliance the owner knows or should have known is false;

c. Failing to use a qualified rental housing inspector;

d. Failing to update and deliver or post registration information as required by subsection 22.214.040.F; or

e. Failing to deliver or post the registration as required by subsection 22.214.040.I.

B. If the Department denies or revokes a rental housing registration it shall notify the owner in writing by mailing the denial or revocation notice by first-class mail to all owner and agent addresses identified in the registration application. The owner may appeal the denial or revocation by filing an appeal with the Office of the Hearing Examiner within 30 days of the revocation notice being mailed to the owner. Filing a timely appeal shall stay the revocation during the time the appeal is pending before the Hearing Examiner or a court. A decision of the Hearing Examiner shall be subject to review under chapter 36.70C RCW.

C. If a rental housing registration or renewal is denied or revoked, the registration or renewal shall not be considered by the Director until all application or housing deficiencies that were the basis for the denial or revocation are corrected.

(Ord. 124312, § 6, 2013; Ord. 124011, § 6, 2012.)

22.214.050 - Inspection and certificate of compliance required

A. The Department shall periodically select, from registered properties containing rental housing units, the properties that shall be inspected by a qualified rental housing inspector for certification of compliance. The property selection process shall be based on a random methodology adopted by rule, and shall include at least ten percent of all registered rental properties per year. Newly constructed or substantially altered properties that receive final inspections or a first certificate of occupancy and register after January 1, 2014, shall be included in the random property selection process after the date the property registration is required to be renewed for the first time. After a property is selected for inspection, the Department shall provide at least 60 days' advance written notice to the owner or owner's agent to notify them that an inspection of the property is required. If a rental property owner chooses to hire a private qualified rental housing inspector, and also chooses not to inspect 100 percent of the rental housing units, the property owner or owner's agent shall notify the Department a minimum of five and a maximum of ten calendar days prior to the scheduled inspection, at which time the Department shall inform the property owner or owner's agent of the units selected for inspection. If the rental property owner chooses to hire a Department inspector, the Department shall inform the property owner or owner's agent of the units selected for inspection no earlier than ten calendar days prior to the inspection.

B. The Department shall ensure that all properties registered under this Chapter 22.214 shall be inspected at least once every ten years, or as otherwise allowed or required by any federal, state, or city code. In addition, at least ten percent of properties whose prior inspections are more than five years old shall be reinspected each year. The Director shall by rule determine the method of selecting properties for reinspection.

C. If the Department receives a complaint regarding a rental housing unit regulated under this program, the Department shall request that an interior inspection of the rental housing unit identified in the complaint be conducted by a Department inspector using the general authority, process, and standards of Chapters 22.200 through 22.208. If, after inspecting the rental housing unit the Department received the complaint on, the Department determines the rental housing unit violates the standards in subsection 22.214.050.M and causes the

rental housing unit to fail inspection under this Chapter 22.214, the Director may require that any other rental housing units covered under the same registration on the property be inspected following the procedures of this Section 22.214.050 for inspection timing, giving notice to tenants, and submitting a certificate of compliance. The inspection of any other rental housing units may be conducted by a private qualified rental housing inspector.

D. If a property subject to this Chapter 22.214 has within two years preceding the adoption of this Chapter 22.214 been subject to two or more notices of violation or one or more emergency orders of the Director for violating the standards in Chapters 22.200 through 22.208 where enforced compliance was achieved by the Department or the violation upheld in a final court decision, the rental property shall be selected for inspection during 2015 or within the first year of required inspections, consistent with the provisions of subsections 22.214.050.E through 22.214.050.M.

E. A certificate of compliance shall be issued by a qualified rental housing inspector, based upon the inspector's physical inspection of the interior and exterior of the rental housing units, and the inspection shall be conducted not more than 60 days prior to the certificate of compliance date.

F. The certificate of compliance, which shall be submitted by the property owner or owner's agent within 60 days of receiving notice of a required inspection under this Section 22.214.050, shall:

1. Certify compliance with the standards as required by this Chapter 22.214 for each rental housing unit that was inspected;
2. State the date of the inspection and the name, address, and telephone number of the qualified rental housing inspector who performed the inspection;
3. State the name, address, and telephone number of the property owner or owner's agent; and
4. Contain a statement that the qualified rental housing inspector personally inspected all rental housing units listed on the certificate of compliance.

G. Inspection of rental housing units for a certificate of compliance according to subsections 22.214.050.A and 22.214.050.B shall be accomplished as follows:

1. A property owner may choose to inspect 100 percent of the units on the rental property and provide to the City only the certificate of compliance verifying that all units meet the required minimum standards. In the alternative, an owner may choose to have only a sample of the rental housing units inspected. If the applicant chooses to have a sample of the rental housing units inspected, 20 percent of the rental housing units, rounded up to the nearest whole number, are required to be inspected, up to a maximum of 50 rental housing units in each building. When fewer than 100 percent of the rental units on the property are inspected, the owner agrees to comply with subsection 22.214.050.J and submit copies of required inspection results in addition to the certificate of compliance.
2. For inspections of fewer than 100 percent of the rental housing units on a property, the Department shall select the rental housing units to be inspected under this Section 22.214.050 using a methodology adopted by rule.
3. If a rental housing unit selected by the Department fails the inspection, the Department may require that up to 100 percent of the rental housing units in the building where the unit that failed inspection is located be inspected for a certificate of compliance according to this Section 22.214.050. The Department shall use the following criteria to determine when additional units shall be inspected:
    a. If two or more rental housing units selected for inspection, or twenty percent or more of the inspected units, whichever is greater, fail the inspection due to not meeting the same checklist item(s) required by subsection 22.214.050.L, an additional 20 percent of the units on the property, rounded up to the nearest whole number, shall be inspected. If any of the additional rental housing units selected for inspection fail the inspection due to the same condition(s), 100 percent of the units in the building shall be inspected.
    b. If any single rental housing unit selected for inspection has five or more failures of different checklist

items required by subsection 22.214.050.L, an additional 20 percent of units on the property, rounded up to the nearest whole number, shall be inspected. If any of the additional rental housing units selected for inspection also contain five or more failures, 100 percent of the units in the building shall be inspected.

c. If the Director determines that an inspection failure in any rental housing unit selected for inspection indicates potential maintenance or safety issues in other units in the building, the Director may require that up to 100 percent of units be inspected. The Director may by rule determine additional criteria and methods for selecting additional units for inspection.

H. Notice of inspection to tenants

1. Whether inspecting 100 percent of the units or only a sample, the owner or owner's agent shall, prior to any scheduled inspection, provide at least two days' advance written notice to all tenants residing in all rental housing units on the property advising the tenants that:

a. Some, or all, of the rental housing units will be inspected. If only a sample of the units will be inspected, the notice shall identify the rental housing units to be inspected;

b. A qualified rental housing inspector will enter the rental housing unit for purposes of performing an inspection according to this Chapter 22.214;

c. The inspection will occur on a specifically identified date and at an approximate time, and the name of the company and person performing the inspection;

d. A tenant shall not unreasonably withhold consent for the owner or owner's agent to enter the property as provided in RCW 59.18.150;

e. The tenant has the right to see the inspector's identification before the inspector enters the rental housing unit;

f. At any time a tenant may request, in writing to the owner or owner's agent, that repairs or maintenance actions be undertaken in the tenant's unit; and

g. If the owner or owner's agent fails to adequately respond to the request for repairs or maintenance at any time, the tenant may contact the Department about the rental housing unit's conditions without fear of retaliation or reprisal.

2. The contact information for the Department as well as the right of a tenant to request repairs and maintenance shall be prominently displayed on the notice of inspections provided under this subsection 22.214.050.H.

3. The owner or owner's agent shall provide a copy of the notice of inspection to the qualified rental housing inspector on or before the day of the inspection.

I. A rental housing property shall not be selected for inspection under subsection 22.214.050.A within five years of completing the inspection requirement and obtaining a certificate of compliance, unless the Department determines that the certificate is no longer valid because one or more of the rental units listed in the certificate of compliance no longer meets the standards as required in this Chapter 22.214. When the Department determines a certificate of compliance is no longer valid, the owner may be required to have all rental housing units on the property inspected by a qualified rental housing inspector, obtain a new certificate of compliance, and pay a new registration fee.

J. If a rental property owner chooses to hire a private qualified rental housing inspector, the Department may charge a private inspection processing fee. If the property owner chooses to inspect fewer than 100 percent of the rental housing units on the property and a unit selected for inspection fails the initial inspection, both the results of the initial inspection and any certificate of compliance must be provided to the Department. The Department shall audit inspection results and certificates of compliance prepared by private qualified rental housing inspectors. Based on audit results, the Department may select additional units for inspection in accordance with subsection

22.214.050.G.3. If the Department determines that a violation of this Chapter 22.214 exists, the owner and qualified rental housing inspector shall be subject to all enforcement and remedial provisions provided for in this Chapter 22.214.

K. Nothing in this Section 22.214.050 precludes additional inspections conducted at the request or consent of a tenant, under the authority of a warrant, or as allowed by a tenant remedy provided for in chapter 59.18 RCW, as provided for under this Title 22, or as allowed by any other City code provision.

L. A checklist based on the standards identified in subsection 22.214.050.M shall be adopted by rule and used to determine whether a rental housing unit will pass or fail inspection.

M. The following requirements of Chapters 22.200 through 22.208 shall be included in the checklist required by subsection 22.214.050.L and used by a qualified rental housing inspector to determine whether a rental housing unit will pass or fail inspection:

1. The minimum floor area standards for a habitable room contained in Section 22.206.020. Subsection 22.206.020.A shall not apply to single room occupancy units;
2. The minimum sanitation standards contained in the following sections:
    a. Subsection 22.206.050.A. Subsection 22.206.050.A shall only apply to a single room occupancy unit if the unit has a bathroom as part of the unit;
    b. Subsection 22.206.050.D. Subsection 22.206.050.D shall only apply to a single room occupancy unit if the unit has a kitchen;
    c. Subsection 22.206.050.E;
    d. Subsection 22.206.050.F;
    e. Subsection 22.206.050.G; and
    f. If a housing unit shares a kitchen or bathroom, the shared kitchen or bathroom shall be inspected as part of the unit inspection.
3. The minimum structural standards contained in Section 22.206.060;
4. The minimum sheltering standards contained in Section 22.206.070;
5. The minimum maintenance standards contained in the following subsections:
    a. Subsection 22.206.080.A;
    b. Subsection 22.206.080.B;
    c. Subsection 22.206.080.C;
    d. Subsection 22.206.080.D.
6. The minimum heating standards contained in Section 22.206.090;
7. The minimum ventilation standards contained in Section 22.206.100;
8. The minimum electrical standards contained in Section 22.206.110;
9. The minimum standards for mechanical equipment contained in Section 22.206.120;
10. The minimum standards for fire and safety contained in Section 22.206.130;
11. The minimum standards for security contained in Section 22.206.140;
12. The requirements for garbage, rubbish, and debris removal contained in subsection 22.206.160.A.1;
13. The requirements for extermination contained in subsection 22.206.160.A.3;
14. The requirement to provide the required keys and locks contained in subsection 22.206.160.A.11;
15. The requirement to provide and test smoke detectors contained in subsection 22.206.160.B.4; and
16. The requirement to provide carbon monoxide alarms contained in subsection 22.206.160.B.5.

(Ord. 125851 , § 1, 2019; Ord. 125705 , § 2, 2018; Ord. 125343 , § 13, 2017; Ord. 124312, § 7, 2013; Ord. 124011, § 7, 2012 [renumbered from 6.440.050 and amended]; Ord. 123311, § 1, 2010.)

22.214.060 - Private qualified rental housing inspector registration

A. To register as a private qualified rental housing inspector, each registration applicant shall:
   1. Pay to the Director the registration fee as specified in Chapter 22.900;
   2. Successfully complete a rental housing inspector training program on the Seattle Housing and Building Maintenance Code, the Rental Registration and Inspection Ordinance, and program inspection protocols administered by the Director. Each applicant for the training program shall pay to the Director a training fee set by the Director that funds the cost of carrying out the training program; and
   3. Provide evidence to the Department that the applicant possesses a current City business license issued according to Chapter 6.208, and possesses current credentials as defined in Section 22.214.020.

B. All rental housing inspector registrations automatically expire two years after the registration was issued and must be renewed according to subsection 22.214.060.C.

C. In order to renew a registration, the qualified rental housing inspector shall:
   1. Pay the renewal fee specified in Chapter 22.900; and
   2. Provide proof of compliance with subsections 22.214.060.A.2 and 22.214.060.A.3.

D. A qualified rental housing inspector who fails to renew their registration is prohibited from inspecting and certifying rental housing under this Chapter 22.214 until the inspector registers or renews a registration according to Section 22.214.060.

E. The Department is authorized to revoke a qualified rental housing inspector's registration if it is determined that the inspector:
   1. Knows or should have known that information on a Certificate of Compliance issued under this Chapter 22.214 is false; or
   2. Is convicted of criminal activity that occurs during inspection of a property regulated under this Chapter 22.214.

F. The Director shall consider requests to reinstate a qualified rental housing inspector registration. The Director's determination following a request to reinstate a revoked registration shall be the Department's final decision.

G. The Director shall adopt rules to govern the administration of the qualified rental housing inspector provisions of this Chapter 22.214.

(Ord. 124963 , § 13, 2015 [cross-reference update]; Ord. 124312, § 8, 2013; Ord. 124011, § 8, 2012 [renumbered from 6.440.060 and amended]; Ord. 123311, § 1, 2010.)

22.214.070 - Enforcement authority and rules

A. The Director is the City Official designated to exercise all powers including the enforcement powers established in this Chapter 22.214.

B. The Director is authorized to adopt rules as necessary to carry out this Chapter 22.214 including the duties of the Director under this Chapter 22.214.

(Ord. 124011, § 9, 2012 [renumbered from 6.440.070 and amended; Ord. 123311, § 1, 2010.)

22.214.075 - Violations and enforcement

A. Failure to comply with any provision of this Chapter 22.214, or rule adopted according to this Chapter 22.214, is a violation of this Chapter 22.214 and subject to enforcement as provided for in this Chapter 22.214. In addition, and

as further provided by subsection 22.206.160.C, owners may not issue a notice to terminate tenancy to evict residential tenants from rental housing units if the units are not registered with the Seattle Department of Construction and Inspections as required by Section 22.214.040.

B. Upon presentation of proper credentials, the Director or duly authorized representative of the Director may, with the consent of the owner or occupant of a rental housing unit, or according to a lawfully-issued inspection warrant, enter at reasonable times any rental housing unit subject to the consent or warrant to perform activities authorized by this Chapter 22.214.

C. This Chapter 22.214 shall be enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this Chapter 22.214 to place the obligation of complying with its requirements upon the owners of the property and the rental housing units subject to this Chapter 22.214.

E. No provision of or term used in this Chapter 22.214 is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.

(Ord. 125954 , § 2, 2019; Ord. 124919 , § 82, 2015 [department name change and other cleanup]; Ord. 124738 , § 2, 2015; Ord. 124011, § 10, 2012.)

22.214.080 - Investigation and notice of violation

A. If after an investigation the Director determines that the standards or requirements of this Chapter 22.214 have been violated, the Director may issue a notice of violation to the owners. The notice of violation shall state separately each standard or requirement violated; shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance that shall generally not be longer than 30 days. The compliance period shall not be extended without a showing that the owner is working in good faith and making substantial progress towards compliance.

B. When enforcing provisions of this Chapter 22.214, the Director may issue warnings prior to issuing notices of violation.

C. The notice of violation shall be served upon the owner by personal service, or by first class mail to the owner's last known address. If the address of the owner is unknown and cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property.

D. A copy of the notice of violation may be filed with the King County Recorder's Office when the owner fails to correct the violation or the Director requests the City Attorney take appropriate enforcement action.

E. Nothing in this Section 22.214.080 shall be deemed to limit or preclude any action or proceeding to enforce this Chapter 22.214 nor does anything in this Section 22.214.080 obligate the Director to issue a notice of violation prior to initiating a civil enforcement action.

(Ord. 124312, § 9, 2013; Ord. 124011, § 11, 2012.)

22.214.085 - Civil enforcement

In addition to any other remedy authorized by law or equity, civil actions to enforce this Chapter 22.214 shall be brought exclusively in Seattle Municipal Court except as otherwise required by law or court rule. The Director shall request in writing that the City Attorney take enforcement action. The City Attorney shall, with the assistance of the Director, take appropriate action to enforce this Chapter 22.214. In any civil action filed according to this Chapter 22.214, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed. The issuance of the notice of violation is not itself evidence that a violation exists.

(Ord. 124312, § 10, 2013; Ord. 124011, § 12, 2012 [renumbered from 6.440.080 and replaced entire text]; Ord. 122311, § 1, 2010.)

22.214.086 - Penalties

A. In addition to the remedies available according to Sections 22.214.080 and 22.214.085, and any other remedy available at law or in equity, the following penalties shall be imposed for violating this Chapter 22.214:

1. Any person or entity violating or failing to comply with any requirement of this Chapter 22.214 or rule adopted under this Chapter 22.214 shall be subject to a cumulative civil penalty of $150 per day for the first ten days the violation or failure to comply exists and $500 per day for each day thereafter. A separate violation exists for each day there is a violation of or failure to comply with any requirement of this Chapter 22.214 or rule adopted under this Chapter 22.214.
2. Any person or entity that knowingly submits or assists in submitting a falsified certificate of compliance, or knowingly submits falsified information upon which a certificate of compliance is issued, shall be subject to a penalty of $5,000 in addition to the penalties provided for in subsection 22.214.086.A.1.

B. When the Director has issued a notice of violation according to Section 22.214.080, a property owner may appeal to the Director the notice of violation or the penalty imposed. The appeal shall be made in writing within ten days after service of the notice of violation. When the last day of the period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. of the next business day.

C. After receiving an appeal, the Director shall review applicable rental registration information in the Department's records, any additional information received from the property owner, and if needed request clarifying information from the property owner or gather additional information. After completing the review the Director may:

1. Sustain the notice of violation and penalty amount;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for action or receipt of additional information;
4. Modify or amend the notice of violation; or
5. Reduce the penalty amount.

D. Reductions in the penalty amount may be granted by the Director when compliance with the provisions of this Chapter 22.214 has been achieved and a property owner can show good cause or factors that mitigate the violation. Factors that may be considered in reducing the penalty include but are not limited to whether the violation was caused by the act or neglect of another; or whether correction of the violation was commenced promptly prior to citation but that full compliance was prevented by a condition or circumstance beyond the control of the person cited.

E. Penalties collected as a result of a notice of violation, civil action, or through any other remedy available at law or in equity shall be directed into the Rental Registration and Inspection Ordinance Enforcement Account.

(Ord. 125343 , § 14, 2017; Ord. 124312, § 11, 2013.)

22.214.087 - Rental Registration and Inspection Ordinance Enforcement Accounting unit

A restricted accounting unit designated as the "Rental Registration and Inspection Ordinance Enforcement Account" is established in the Construction and Inspections Fund from which account the Director is authorized to pay or reimburse the costs and expenses incurred for notices of violation and civil actions initiated according to Sections 22.214.080 and 22.214.085. Money from the following sources shall be paid into the Rental Registration and Inspection Ordinance Enforcement Account:

A. Penalties collected according to Section 22.214.086 for enforcing this Chapter 22.214 according to the notice of violation process described in Section 22.214.080;

B. Penalties collected according to Section 22.214.086 for enforcing this Chapter 22.214 when a civil action has been initiated according to Section 22.214.085;

C. Other sums that may by ordinance be appropriated to or designated as revenue the account; and

D. Other sums that may by gift, bequest, or grant be deposited in the account.

(Ord. 125492 , § 92, 2017 [fund name change]; Ord. 124919 , § 83, 2015 [fund name change]; Ord. 124312, § 12, 2013.)

22.214.090 - Appeal to superior court

Final decisions of the Seattle Municipal Court on enforcement actions authorized by this Chapter 22.214 may be appealed according to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

(Ord. 124011, § 14, 2012.)

Appendix 3

Order Granting Defendant State of Washington's Motion to Dismiss (Mar. 29, 2019)

The Honorable Steve Rosen
Hearing Date: March 29, 2019 at 10:00am
With Oral Argument

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

KEENA BEAN, JOHN B. HEIDERICH, GWENDOLYN A. LEE, MATTHEW BENTLEY, WESLEY WILLIAMS, JOSEPH BRIERE, SARAH PYNCHON, WILLIAM SHADBOLT, and BOAZ BROWN, as individuals and on behalf of all others similarly situated,

Plaintiffs,

v.

CITY OF SEATTLE, a Washington municipal corporation, and the STATE OF WASHINGTON,

Defendants.

NO. 18-2-56192-2 SEA

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT STATE OF WASHINGTON'S MOTION TO DISMISS

[CLERK'S ACTION REQUIRED]

THIS MATTER, having come before the Court on Defendant State of Washington's Motion to Dismiss, and the Court having reviewed the foregoing Motion, Plaintiffs' Opposition and supporting papers, and the State of Washington's Reply, and having heard argument on the Motion and being fully familiar with the records and files herein, the Court orders the following:

ORDER

Based on the foregoing, Defendant State of Washington's Motion to Dismiss is GRANTED.

IT IS SO ORDERED.

DATED this 29 day of March, 2019.

THE HONORABLE STEVE ROSEN
King County Superior Court Judge

Presented By:

ROBERT W. FERGUSON
Attorney General

By: /s/ *Andrew Hughes*
Andrew Hughes, WSBA #49515
Assistant Attorney General
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Seattle, WA 98104
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Andrewh2@atg.wa.gov

Attorneys for Defendant State of Washington

Appendix 4

Order Granting Defendant City of Seattle's Motion to Dismiss Plaintiffs' Amended Complaint (Jan. 24, 2020)

Hon. Susan Craighead
Hearing: January 24, 2020 @11:00 a.m.
With Oral Argument

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

KEENA BEAN, JOHN B. HEIDERICH, GWENDOLYN A. LEE, MATTHEW BENTLEY, JOSEPH BRIERE, SARAH PYNCHON, WILLIAM SHADBOLT, and BOAZ BROWN, as individuals and on behalf of all others similarly situated,

Plaintiffs,

vs.

CITY OF SEATTLE, a Washington municipal corporation, and the STATE OF WASHINGTON,

Defendants.

No. 18-2-56192-2 SEA

~~[PROPOSED]~~ **ORDER GRANTING DEFENDANT CITY OF SEATTLE'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

[CLERK'S ACTION REQUIRED]

THE COURT, having read and considered Defendant City of Seattle's Motion to Dismiss; Plaintiffs' response and supporting declarations, if any; and Defendant City of Seattle's reply and supporting declarations, if any; and having considered the exhibits offered, having heard the argument of the parties, and considered the records and files herein,

ORIGINAL

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Seattle, WA 98104-7097
(206) 684-8200

NOW, THEREFORE,

IT IS HEREBY ORDERED that Defendant City of Seattle's Motion to Dismiss is granted. The above-captioned matter is dismissed ~~with prejudice~~ without prejudice.

DATED this 24th day of January, 2020.

Susan J. Craighead

The Honorable Susan Craighead
King County Superior Court

Presented by:

PETER S. HOLMES
Seattle City Attorney

By: *s/ Brian G. Maxey*
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INSTITUTE FOR JUSTICE

March 10, 2020 - 1:06 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98208-2
Appellate Court Case Title:	Keena Bean, et al. v. City of Seattle et ano.

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THE SUPREME COURT OF WASHINGTON

KEENA BEAN, et al.,	)	No. 98208-2
	)	
Appellants,	)	**O R D E R**
	)	
v.	)	King County Superior Court
	)	No. 18-2-56192-2 SEA
CITY OF SEATTLE, et ano.,	)	
	)	
Respondents.	)	
	)	
_____	)	

Department II of the Court, composed of Chief Justice Stephens and Justices Madsen, González, Yu and Whitener, considered at its July 7, 2020, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this case is transferred to Division I of the Court of Appeals.

DATED at Olympia, Washington, this 8th day of July, 2020.

For the Court

Stephens, C. J.
CHIEF JUSTICE

No. 98208-2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

KEENA BEAN, JOHN B. HEIDERICH, GWENDOLYN A. LEE, MATTHEW BENTLEY, JOSEPH BRIERE, SARAH PYNCHON, WILLIAM SHADBOLT, and BOAZ BROWN, as individuals and on behalf of all others similarly situated,

Appellants,

v.

CITY OF SEATTLE, a Washington municipal corporation, and the STATE OF WASHINGTON,

Respondents.

BRIEF OF APPELLANTS

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Attorneys for Appellants

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**Admitted pro hac vice*

employed inspectors that immigrants' "past experience will affect the way they respond to government regulation and to you as an inspector." CP 275. Seattle also instructs privately employed inspectors entering immigrant households with limited English skills to "[a]sk for someone who speaks English," such as a "child" to translate the inspection process. CP 277. Privately employed inspectors must "[g]auge [their] language to the person translating (e.g. child) as well as the person needing the info[rmation.]" *Id*.

D. Seattle Threatens the Tenants and Landlords with RRIO Inspections.

Seattle threatened the Tenants and Landlords in this action with warrantless searches under RRIO.

1. Appellants Bean, Heiderich, and Lee.

Appellants Heiderich and Lee have owned and operated rental properties in Seattle for more than 40 years. CP 203. In 2016 and 2017, their tenants in a multi-unit building objected to warrantless inspections of their living space. CP 147–48, 203. Ms. Lee informed the Seattle Department of Construction & Inspections ("SDCI") that her tenants invoked their constitutional rights, and SDCI responded by refusing to grant a Certificate of Compliance for the building. CP 148. SDCI referred the inspection refusals to the City Attorney's office. *Id*.

On April 21, 2017, SDCI formally rejected the tenants' objections

in a Director's Order, stating that Ms. Lee, as a landlord, should have strong-armed her tenants into submitting to the inspections. According to the Order, "once [the] tenants did not allow access to the selected units by the City-employed inspectors," the City had no obligation to seek "a warrant . . . . to pursue entry." CP 149. Instead, the "owner is responsible for ensuring that the selected units are available for inspection." *Id*. The Order required Ms. Lee to "encourage cooperation from . . . tenants to facilitate the required inspections" requiring her to "establish[] that the failure to complete the inspections was beyond [her] control." *Id*. Although this dispute ended with the search of a vacant unit, Ms. Lee's other tenants have reason to fear the Order's requirements.

Appellant Keena Bean rents an apartment home from Heiderich and Lee, which is subject to RRIO and will eventually be inspected. CP 202–03. She is a young professional who cares deeply about her privacy. CP 203. Having strangers enter her home and inspect it, while she is present or not, is worrisome to her. *Id*. She has experienced unwanted intruders in previous living situations, heightening her interest in safety and security. CP 212. In addition to her general hesitation to let strangers into her home, she fears that an inspection could reveal personal details—including where she stores personal items and where she sleeps. CP 212–13.

Heiderich and Lee are unwilling to act as the vehicle by which

Appellants seek all expenses awardable as costs. Appellants request that this Court either grant fees and costs or remand for a determination as to the amount of costs and fees.

VII. CONCLUSION

Article I, § 7 of the Washington Constitution was specifically enacted to prevent invasion of private affairs. Seattle and the State passed legislation allowing the invasive, warrantless, non-consensual searches into peoples' private affairs—precisely what article I, § 7 forbids. Accordingly, this Court should reverse the trial court and hold that RRIO and the Act unconstitutionally violate article I, § 7.

Dated: July 10, 2020

Respectfully Submitted,

INSTITUTE FOR JUSTICE

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WA STATE ATTORNEY GENERAL'S OFFICE, COMPLEX LITIGATION DIVISION

September 24, 2021 - 2:13 PM

Transmittal Information

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