No. 100123-1

Court of Appeals No. 81661-6-I

SUPREME COURT
OF THE STATE OF WASHINGTON

KEENA BEAN et al.,

Petitioners,

v.

CITY OF SEATTLE et ano.,

Respondents.

PETITION FOR REVIEW

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I. INTRODUCTION

The COVID-19 pandemic has made Washingtonians spend more time at home than ever—work, leisure, and family combine in one personal space.[1] This case is about the privacy of that space—and asks 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.

Fourteen years ago, this Court held that local governments may force unwanted inspections on tenants without a warrant so long as the inspector invading a tenant's privacy was a private actor. *City of Pasco v. Shaw*, 161 Wn.2d 450, 166 P.3d 1157 (2007). The time has come to revisit that decision for two reasons. First, local governments, like Seattle, have exceeded *City of Pasco*'s boundaries to the point where ostensibly private actors are anything but. This leaves the privacy of millions of Washingtonians subject to nonconsensual, warrantless inspections in violation of the words and spirit of article I, § 7 of the Washington Constitution. Second, developments in Washington privacy jurisprudence

[1] Gene Falk, *Nearly half of Seattle-area adults working from home because of COVID—here's who is and isn't hitting the road*, The Seattle Times (Sept. 28, 2020), available at https://tinyurl.com/528r3m25 ("[T]elework has had a far greater impact on workers in some parts of the country than in others. Seattle is near the top among the nation's largest metro areas for the switch to remote work since the pandemic.").

since that time have strengthened and reinforced constitutional protections for home privacy, a development that directly contradicts the approach of *City of Pasco*. Deciding whether inspectors are government agents here will align the law with those developments.

In considering Petitioners' claims, the courts below were "bound to follow" *City of Pasco* to determine when privately employed inspectors cease being independent and become government actors subject to article I, § 7 of the Washington Constitution. *See Bean v. City of Seattle*, No. 81661-6-I, 2021 WL 3144946, at *1 (Wash. Ct. App. July 26, 2021).[2] This Court has no such restriction. It should reconsider *City of Pasco* because it erodes tenant privacy. It blurs the line between government agents reporting to the state and private parties dealing only with one another. As the city of Seattle's actions here show, the standards it set are ambiguous and easily capable of manipulation. This is not meaningless alarmism. *City of Pasco* opened the door for the first, third, and sixth largest Washington cities to have mandatory rental inspection regimes—applicable to more than 1.2 million people—conducted by inspectors who are private in name only.[3]

[2] Petitioners preserved their argument that *City of Pasco* was wrongly decided in the trial and appellate courts. *See* CP 259 n.7 ("*City of Pasco* was wrongly decided and should be overturned."); Br. of Appellants 24 ("*City of Pasco* was wrongly decided because it allowed trespass without consent and without a search warrant.").

[3] *See* Tacoma Municipal Code § 6B.165.090(B)(3) (stating that if a property owner uses a private inspector and a selected unit fails the initial inspection, both the

When this Court's jurisprudence leads to public policy that directly undermines a fundamental constitutional protection, only this Court can fix that error and reestablish clear constitutional boundaries for local governments. That is precisely what Petitioners ask for here.

II. IDENTITY OF PETITIONERS

Petitioners are a coalition of Seattle tenants and landlords who filed a class-action lawsuit against the state of Washington (the "State") and the city of Seattle (the "City" or "Seattle," and together, "Respondents")[4] when they were threatened with warrantless searches of their homes under Seattle's Rental Registration and Inspection Ordinance (the "RRIO," Seattle Municipal Code ("SMC") §§ 22.214 *et seq.*) and the enabling legislation, RCW 59.18.125, a portion of the State's Residential Landlord Tenant Act (the "Act").

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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 inspection results) Bellingham Municipal Code § 6.15.050 (same). *But see, e.g.*, Spokane Municipal Code § 17C.316 (limiting rental regulation to short-term rentals); Vancouver Municipal Code § 22.02.020 (spelling out code compliance, but not requiring proactive inspections).

[4] King County Superior Court Case No. 18-2-56192-2.

III. COURT OF APPEALS DECISION

Petitioners seek review of the Court of Appeals' unpublished decision in *Bean v. City of Seattle*, No. 81661-6-I, 2021 WL 3144946 (Wash. Ct. App. July 26, 2021), which affirmed the trial court's dismissal on the pleadings. This ruling terminated review. A copy of the decision is in the Appendix at pages A-2 through A-13.

IV. ISSUES PRESENTED FOR REVIEW

A. Should this Court accept review to determine whether *City of Pasco* follows this Court's interpretation of article I, § 7?

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

V. STATEMENT OF THE CASE

Article I, § 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." "In contrast to the Fourth Amendment, article I, section 7 emphasizes protecting personal rights rather than curbing governmental actions." *State v. Afana,* 169 Wn.2d 169, 180, 233 P.3d 879 (2010) (cleaned up).

With this principle in mind, Petitioners describe below: (A) Seattle's prior, unconstitutional, inspection program; (B) the genesis of Seattle's RRIO program and its relationship to this Court's decisions; (C) the

mechanics of RRIO's warrantless inspections; (D) how the City relies on privately employed inspectors; (E) the procedural history of the litigation below; and (F) the decisions below regarding article I, § 7.

Because the trial court granted motions to dismiss, facts drawn from the allegations in Petitioners' complaint are presumed to be true.

A. This Court Strikes Down Seattle's 1990s Inspection Program in *McCready*.

This Court invalidated Seattle's pre-RRIO inspection regime in *City of Seattle v. McCready* 123 Wn.2d 260, 271, 868 P.2d 134 (1994). The Court held that warrantless, nonconsensual, government rental inspections always violate article I, § 7. 123 Wn.2d at 271 ("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.").

Seattle implemented a complaint-based system after *McCready*. *See* Tom Byers & Claire Powers, *Improving Rental Housing Conditions in Seattle: Issues and Options* 6 (2008). In 2007, however, *City of Pasco* gave Seattle, and every other Washington municipality, the ability to mandate warrantless, nonconsensual searches of tenants' homes by permitting "private" inspectors to conduct such an invasion.

B. *City of Pasco* Opened the Door for Seattle to Pass RRIO.

City of Pasco introduced the idea that if the search was not done by state actors, it was not subject to constitutional limitation. 161 Wn.2d at 460–61. In Pasco, private—rather than City-employed—inspectors conducted the warrantless, nonconsensual, mandatory inspections. The Court asked (1) whether the government knew of and acquiesced in the private inspections, and (2) whether landlords hiring private inspectors intended to assist government efforts or to further their own ends. *Id*. at 460. A narrowly divided Court held that private inspectors who did not turn their results in to the city were not state actors. *Id*. at 462.

Armed with *City of Paco's* public/private distinction, Seattle passed RRIO in 2013, requiring landlords to submit their properties to inspection by city or private inspectors. SMC § 22.214.040, .050.C.

C. RRIO Inspections Are Invasive, Non-consensual, and Warrantless.

RRIO inspections are mandatory for both tenants and landlords. SMC § 22.214.050.H.1.d. Seattle instructs tenants that they cannot deny access for the inspection. CP 126, 131, 209–10. RRIO inspections by their very nature invade "private affairs." Inspectors enter intimate partners' bedrooms and children's rooms without parental consent. CP 205.

Inspectors can also view religious, political, medical, and other personal tenant information. CP 205–06.

Although the Act permits Seattle to obtain a search warrant if it wants to, Seattle has never sought a warrant since adopting RRIO. CP 210. Instead, Seattle requires landlords to coercively obtain tenant consent. SMC § 22.214.075.D. The property owner is fined up to $500 a day if they honor a tenant's right to deny an inspection. SMC § 22.214.086.A.

D. **RRIO's Use of Privately Employed Inspectors**.

At first, RRIO did not require privately employed inspectors to provide failed inspections results to Seattle. But in 2010, the Legislature—contradicting *City of Pasco*—amended the Act to *require* municipalities to collect private inspection reports. *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 the city, which then audits the reports to select additional units for inspection. SMC § 22.214.050.J.

This is a problem because Seattle treats private inspectors as an arm of city government. The City "views the relationship with Private Inspectors as a *partnership*" with "[s]hared investment in the success of the RRIO

Program." CP 208, 271 (emphasis added). Seattle coaches privately employed inspectors how to communicate government information to tenants—including access to city services. CP 208, 273. "Private" inspectors should expect to "get questions about access to City services." *Id*. In other words, Seattle claims that these inspectors are private, even though the City tells them what to do, say, and report.

E. Procedural Summary.

On December 4, 2018, faced with imminent inspections under this program, Petitioners sued, challenging the constitutionality of the portion of the Act requiring inspection reporting and RRIO's warrantless inspection requirements. Petitioners alleged that the challenged portions of the Act and RRIO were unconstitutional—both on their face and as applied. CP 9–11, 66–69, 77. The trial court dismissed the State in 2019 and dismissed the amended complaint against the City in 2020, entering final judgment on February 28, 2020.

Petitioners filed a Statement of Grounds for Direct Review in this Court on March 10, 2010. On July 8, 2020, this Court transferred the case to the Court of Appeals. The Court of Appeals issued an unpublished decision affirming the judgment on July 26, 2021.

F. The Rulings Below.

Both the City and the State moved to dismiss. The trial courts recognized the tension between *City of Pasco* and article I, § 7. The Court of Appeals, on the other hand, assumed that merely calling something "private" means it is private. Petitioners discuss these decisions next.

1. The State's Motion.

The trial court acknowledged that actual implementation of the State's Act was problematic—but that constitutional application was possible. At a March 29, 2019 motion to dismiss hearing, the trial court noted that the Act "tell[ing] the city what [reports] to be turned over," is inconsistent with *City of Pasco*. RP 14:14–25. Nevertheless, the trial court dismissed the State, reasoning a hypothetical city could limit inspections to instances "when the unit is empty before it's been rented." *Id*. 43:11–44:16.

The Court of Appeals affirmed, describing that Act as "open to alternative means of constitutional compliance than a specific implementation of that authorization by a municipality such as the City." *Bean*, 2021 WL 3144946, at *5. The court also rejected Petitioners' argument that the challenged portion of the Act, on its face, "authorizes" warrantless searches in violation of *City of Los Angeles v. Patel*, 576 U.S. 409, 418, 135 S. Ct. 2443, 192 L. Ed.2d 435 (2015). *Id.* at *4, n.1.

2. **Seattle Amends RRIO in Response to this Lawsuit**.

Following dismissal of the State and the denial of its own motion to dismiss, the City amended RRIO in June 2019 purportedly "to conform to the Pasco ordinance that was upheld as constitutional in" *City of Pasco*. CP 224. 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" if a unit fails inspection. SMC § 22.214.050.J. So, all tenants must submit to a sweep of the entire apartment building—and landlords must pay multiple fees—if they wish the inspection to be what *City of Pasco* deemed private. CP 207.

In response to this encroachment on their privacy, Petitioners added a claim that Seattle's 2019 RRIO violates the "unconstitutional conditions" doctrine by making the choice to exercise their article I, § 7 rights subject to government burdens. Petitioners also alleged that Seattle trains its privately employed inspectors to be government representatives in a hands-on way that Pasco did not.

3. The Trial Court Dismisses Seattle, and the Court of Appeals Affirms.

Seattle contended that its program was indistinguishable from Pasco's in a Second Motion to Dismiss. On January 24, 2020, the trial court reluctantly dismissed the City, but noted "concerns about *Pasco*." RP 91:4–20. The Court of Appeals affirmed, rejecting Petitioners' claim that "Pasco's inspection ordinance preserved the independence of private inspectors to a far greater degree than RRIO." *Bean*, 2021 WL 3144946, at *4. The court reasoned that "Justice Sanders's dissent in *Pasco* noted the need for approval of private inspectors . . . . This shows that that the same argument was made to the *Pasco* court and was rejected." *Id*.

The Court did not discuss the contours of unconstitutional conditions because it found no underlying constitutional violation. *Id*.

VI. ARGUMENT

City of Pasco is an anomaly in this Court's privacy jurisprudence. Cases both before and after *City of Pasco* afford much more protection for home privacy. This anomaly has left the privacy rights of more than a million Washingtonians at the mercy of how creative municipalities can get in fashioning inspection regimes using "private" inspections. The application of article I, § 7 to warrantless, nonconsensual home inspections

by so-called private inspectors needs to be reexamined and brought in line with other privacy jurisprudence.

Petitioners will show that this case satisfies two grounds for review. First, *City of Pasco* conflicts with this Court's robust interpretation of article I, § 7, creating a significant question of law under the Washington Constitution. RAP 13.4(b)(3). Second, and relatedly, it "involves an issue of substantial public interest"—warrantless inspection regimes with burdensome conditions supposedly sanctioned by *City of Pasco* that are becoming commonplace in this state. RAP 13.4(b)(4).

A. The Standard for Overturning Precedent.

This Court "can reconsider [its] precedent not only when it has been shown to be incorrect and harmful but also when the legal underpinnings of our precedent have changed or disappeared altogether." *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 668, 451 P.3d 675 (2019) (citation omitted) (overruling prior cases). The record here shows that *City of Pasco* is harmful and that later cases compromise its legal underpinnings.

B. *City of Pasco's* Unworkable Framework is a Significant Question of Law Under the Washington Constitution.

Plaintiffs will show that (1) *City of Pasco* contemplates further judicial review on its face; and (2) the weight of authority from this Court merits new analysis of *City of Pasco's* state action doctrine.

1. *City of Pasco* Was Sharply Divided and Contemplated Further Consideration.

City of Pasco deviated from article I, § 7 even when it was decided. Many justices indicated the need for cautious application and for further judicial review. That has never occurred—and needs to.

From the outset, *City of Pasco* acknowledged that "[w]hether state action has occurred depends on the circumstances of a given case." *City of Pasco*, 161 Wn.2d at 460. Four justices illuminated the need for further review by this Court. Justice Sanders and Justice James Johnson dissented because 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 below. RP 61:15–21.

Justice Chambers and Chief Justice Alexander "cautiously concur[red]," noting that "we should always be skeptical when any government seeks to invade any person's home, no matter how well meaning." 161 Wn.2d at 464 (Chambers, J. concurring). They presumed, however, that cities would do something crucial that Seattle does not do—

get a search warrant for non-consensual inspections: "[I]nspection of an occupied unit . . . should be done with the tenant's consent or by court order or arbitrator; anything less runs the risk of violating . . . article I, section 7." *Id*. at 466. *City of Pasco* would require further analysis "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*. (citation omitted).

The decisions below manifest these concurring justices' concerns. Under the Act, Seattle—and any Washington city—can now train 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. Under *City of Pasco*, this self-evident governmental action is considered "private." This cannot stand under article I, § 7.[5]

[5] At the very least, even if this Court does not overturn *City of Pasco*, it should clearly define the boundaries of what a private actor is, per Justice Chambers's concurrence. Again, Seattle's ordinance is more invasive than Pasco's and merits independent consideration even if *City of Pasco* is settled. Pasco's inspection ordinance allows landlords to select private inspectors that meet independent certification requirements. Pasco Municipal Code § 5.60.030(3). Seattle, in contrast, trains inspectors and "views the relationship with Private Inspectors as a *partnership*." CP 208, 271; (emphasis added).

2. *City of Pasco* Conflicts with Both Long Settled and More Recent Article I, § 7 Cases and Scholarship.

City of Pasco is not on solid jurisprudential footing with predecessor home privacy cases. In *McCready*, this Court quashed rental-inspection search warrants because they did not contain "the authority of law necessary to justify Seattle's intrusion into appellants' private affairs." 123 Wn.2d at 271. Inspectors "possess the authority to intrude upon the privacy of the home regardless of the occupant's wishes." *Id*. at 278 (citation omitted). "It is entirely appropriate" this Court reasoned, "that so powerful a tool of governmental authority be carefully circumscribed." *Id*. The Court found no authorization "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.

The RRIO that Seattle adopted following *McCready* is not "circumscribed" by the guardrails of a warrant procedure. *McCready* did not contemplate that a completely warrantless inspection regime would take the place of a warrant-based inspections with no legal authority.

This is an object lesson in how *City of Pasco* undermined *McCready*. *City of Pasco* purported to preserve Washington's ban on warrantless inspections—but carved out a constitutional dead zone when the people doing the inspections could be classified as private inspectors. The government seized on the ambiguous, shifting boundaries of this dead

zone in two ways—pushing what is private further and further under government control; and defending these programs in court because they feature ostensibly private inspectors, thus fitting within *City of Pasco*. This was not what *City of Pasco* said municipalities could do. It is, however, what the concurrence and dissent said would happen. The lack of clear lines allows the government to incrementally encroach on privacy protections with each new inspection regime so long as they can waive the talisman of "private inspector" in enacting and defending them.

Unlike the erosion of privacy in inspection programs, every Washington case since *City of Pasco* reflects this Court's strong, independent interpretation of Washingtonians' home privacy.[6] This Court rejected the federal "private search" doctrine—specifically, reports of suspected drug activity by a repairman—because "article I, § 7 . . . requires a warrant before any search, reasonable or not." *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008). In *State v. Winterstein*, 167 Wn.2d 620, 220 P.3d 1226 (2009), the Court held that even a convicted meth dealer on probation had more home privacy under article I, § 7 than the Fourth

[6] As do article I, § 7 cases that did not involve home searches. *See, e.g.*, *Afana*, 169 Wn.2d at 180–84 (rejecting the federal "good faith" exception when an officer's belief that the automobile search was reasonable); *State v. Snapp*, 174 Wn.2d 177, 192, 275 P.3d 289 (2012) ("[A]lthough the automobile exception is recognized for purposes of the Fourth Amendment, it is not recognized under article I, section 7.").

Amendment. *Id*. at 636 (rejecting *Terry* analysis to determine whether a probationer lives at a residence to be searched—"Probable cause is the appropriate standard.")[7] *see also State v. Boisselle*, 194 Wn.2d 1, 18, 448 P.3d 19 (2019) (rejecting federal "expans[ion] [of] the carefully drawn community caretaking exception to encompass a law enforcement officer's . . . well-founded concern that a decomposing body may be found in a home").

Most dramatically, in *State v. Pippin*, 200 Wn. App. 826, 839, 403 P.3d 907 (2017), the Court extended article I, § 7, beyond the confines of a traditional home to a tent occupied by a person experiencing homelessness. Given subsequent treatment of article I, § 7, *City of Pasco* deserves a second look by this Court.

Finally, scholarship published after *City of Pasco* also confirms that "the portion of article 1, section 7 prohibiting the invasion of one's home without authority of law was likely meant to emphasize the 'sanctity of a man's home,' and the prohibition against *any physical intrusion* into the home and its surrounding areas as opposed to merely search or seizure."

[7] Indeed, even when officers are searching for evidence as scabrous as child pornography, they must tell a suspect that they can "refuse consent to search the home without a warrant, withdraw consent, and limit the scope of the search" *State v. Budd*, 185 Wn.2d 566, 569 n.1, 374 P.3d 137 (2016) (holding home search invalid)*; accord State v. Schultz*, 170 Wn.2d 746, 759–61, 248 P.3d 484 (2011) (holding there was insufficient evidence of domestic violence for warrantless home entry).

Associate Chief Justice Charles W. Johnson & Scott P. Beetham, *The Origin of Article I, Section 7 of the Washington State Constitution*, 31 Seattle U. L. Rev. 431, 443 (2008) (emphasis added).

C. Placing Conditions on Privacy Rights is an Issue of Statewide Importance.

This case has state-wide consequences for privacy rights. Because of *City of Pasco*, the state authorized municipalities to violate article I, § 7, and the state's largest city followed that authorization with an unconstitutional rental inspection regime.

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 "private" under *City of Pasco* 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, and the decision below did not clarify them. Although *City of Pasco* would appear to foreclose the types

of inspections contemplated by the Act, the Legislature apparently believes differently—an inconsistency neither lower court reconciled. Moreover, the City has created a severe disincentive for landlords and tenants to respect the privacy of nonconsenting tenants.

For landlords, respecting a nonconsenting tenant's privacy rights means accepting far more expensive, intrusive, and burdensome inspections. 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—an impossibly challenging scenario, especially in large apartment buildings.

This case 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*, nor analyzed in the Court of Appeals' decision here, "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) (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 pretrial release on home searches is unconstitutional)).

Butler and *Scott*—both unaddressed by the Court of Appeals—concerned not only searches of the home, but "spheres of autonomy" threatened by the government "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.

VII. CONCLUSION

City of Pasco was a deviation from this Court's article I, § 7 jurisprudence, both before and after it was decided. This deviation threatens the privacy rights of every renter in Seattle and renters across the state. This Court should accept review, allow Petitioners to file a supplemental brief, and hold that inspectors under RRIO need consent or a search warrant to enter a home without consent.

Dated: August 25, 2021

Respectfully Submitted,

INSTITUTE FOR JUSTICE

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CERTIFICATE OF SERVICE

I certify that on this day, I filed this document via the Washington State Appellate Courts' Portal, which will send notification to all counsel of record.

Dated:August 25, 2021 s/William R. Maurer

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Appendix 1

Unpublished Opinion,
Bean v. City of Seattle,
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IN THE COURT OF APPEALS 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.	No. 81661-6-I DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — Bean appeals from two orders dismissing her claims against the City and the State. Bean argues the City's rental registration and inspection ordinance is unconstitutional under article I, § 7 of the Washington State Constitution. She argues that it and the statute authorizing the City to enact it are both unconstitutional. Finally, she requests attorney fees and costs on appeal. We affirm.

FACTS

In 2010, Washington passed RCW 59.18.125. LAWS OF 2010, ch. 148, § 2. The statute authorizes municipalities to require landlords to provide a certificate of inspection as a business license condition. RCW 59.18.125(1).

In 2012, the City of Seattle (City) passed the rental registration and inspection ordinance (RRIO). Ch. 22.214 Seattle Municipal Code (SMC). RRIO requires the periodic inspections of property owners' rental units by a public or private qualified rental housing inspector. SMC 22.214.050(A), .020(9).

The appellants in this case are Seattle tenants and landlords. Appellant Keena Bean rents an apartment subject to RRIO and expressed concerns with a potential future inspection of habitability. Appellant Boaz Brown is also a Seattle renter who considers the potential inspections invasive.

Appellants John Heiderich and Gwendolyn Lee own and operate Seattle rental properties. In 2016, Lee informed the Seattle Department of Construction and Inspections (SDCI) that some of their tenants objected to the inspection. Appellants concede that ultimately, a vacant unit was inspected in place of the disputed units.

Appellants Sarah Pynchon and William Shadbolt received an inspection notice for their rental home. In 2018, its tenants Matthew Bentley and Joseph Briere wrote to SDCI to decline access to the apartment for the inspection. Pynchon wrote separately to confirm that she had notice that the tenants were declining to voluntarily allow an inspection. SDCI responded to Pynchon acknowledging receipt of the letters and later reiterated her obligation to complete the inspection.

The appellants (collectively "Bean"), filed a class action suit against the City and the State. Bean requested the court enter an order permanently enjoining the City from conducting warrantless rental inspections under RRIO and RCW

59.18.125. She further sought declaratory judgment that both laws violate article I, § 7 of the Washington State Constitution. On March 29, 2019, the trial court heard CR 12(b)(6) motions to dismiss by the State and the City on the grounds that RRIO and the authorizing statute were not facially unconstitutional and did not constitute state action. The court granted the State's motion. It denied the City's motion, citing City of Pasco v. Shaw, 161 Wn.2d 450, 166 P.3d 1157 (2007). It interpreted the case to say that "you[are] a state actor if you must turn over failed reports to the state, the government."

In June 2019, the City amended RRIO to conform to the ordinance in Pasco. Under the amended ordinance, landlords may hire a privately employed inspector. SMC 22.214.050(J). If the landlords choose to inspect less than 100 percent of the rental housing units on the property, they must provide the SDCI with any failing unit's inspection results. Id.

Bean then filed an amended complaint alleging the amended ordinance is unconstitutional. The City again moved to dismiss. The court granted the motion, finding the new ordinance complied with Pasco.

Bean appeals.

DISCUSSION

First, Bean argues RRIO is unconstitutional under article I, § 7 of the Washington State Constitution. She argues Pasco was wrongly decided. In the alternative, she argues the City's ordinance is distinguishable from the ordinance in Pasco. Next, she argues RCW 59.18.125 is unconstitutional on its face. Finally, she requests attorney fees and costs on appeal.

We review a trial court's ruling to dismiss a claim under CR 12(b)(6) de novo. Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). Dismissal is warranted only if we conclude, beyond a reasonable doubt, the plaintiff cannot prove any set of facts that would justify recovery. Id. We presume all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. Id.

I. *City of Pasco*

Bean argues the RRIO is unconstitutional under article I, § 7 of the Washington State Constitution. She also argues Pasco was wrongly decided. Despite this case law, she argues, privately employed inspectors are state actors, even where results are not given to the city.

Under the RRIO, all registered rental properties must be inspected for habitability at least once every 10 years, and the properties to be inspected at a particular time are selected by the City at random from the registered properties. SMC 22.214.050(A)-(B). It requires the City to provide 60 days' notice to property owners that the property must be inspected. SMC 22.214.050(A). The owner must give any tenants at least 2 days' notice prior to the inspection. SMC 22.214.050(H)(1). The owner must use a "qualified rental housing inspector" to conduct the inspection. SMC 22.214.050(A). A "qualified rental housing inspector" is either: (a) a city housing and zoning inspector; or (b) a private inspector who is registered with the City and who maintains certain credentials. SMC 22.214.020. The inspector must physically inspect the property, and if the property meets RRIO's habitability standards, the inspector issues a certificate of compliance so

stating, which the owner submits to the City. SMC 22.214.050(E)-(F), .020 (definition of "Certificate of Compliance").

The City describes RRIO as providing three "paths" to completing the mandatory inspections under SMC 22.214.050(G). 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. SMC 22.214.050(G)(1). Alternatively, the property owner may choose to have only a sample of the rental housing units inspected and comply with and submit copies of required inspection results in addition to the certificate of compliance. SMC 22.214.050(G)(1). In properties with more than one rental unit, property owners may choose to have a sample of 20 percent of the units inspected. SMC 22.214.050(G)(1). If a sampled unit fails the inspection, RRIO provides a process for additional units to be inspected. SMC 22.214.050(G)(3). Finally, a property owner may also choose to hire a City inspector under SMC 22.214.050(A).

Article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." These protections are "qualitatively different from, and in some cases broader than, those provided by the Fourth Amendment [of the United States Constitution]." City of Seattle v. McCready, 123 Wn.2d 260, 267, 868 P.2d 134 (1994) (McCready I).

The ordinance at issue was passed following a line of cases concerning the constitutionality of municipal rental inspection ordinances. Ch. 22.214 SMC (Ord.

124011, § 2 passed in 2012); see McCready I, 123 Wn.2d at 271, 280-81 (nonconsensual inspection of rental units by government invaded the tenants' private affairs and no authority of law supported warrants to search for housing code violations absent probable cause); City of Seattle v. McCready, 124 Wn.2d 300, 309, 877 P.2d 686 (1994) (McCready II) (municipal courts have no inherent authority to issue administrative search warrants and require statutory authorization); Bosteder v. City of Renton, 155 Wn.2d 18, 23-24, 29, 117 P.3d 316 (2005) (result in McCready II also required under the Fourth Amendment). Following these cases, in 2007, the court considered a municipal rental inspection ordinance similar to RRIO. Pasco, 161 Wn.2d at 460. The ordinance at issue in Pasco required landlords to provide a certificate of inspection every two years certifying that the rental units met certain standards of habitability. Id. at 455. Landlords could choose to have the certificate certified by a qualified public or a private inspector, with private inspectors reporting only compliance. Id. at 455-56. A group of landlords and tenants brought a similar challenge to Bean's, alleging it violated tenant privacy rights under article I, § 7 of the Washington State Constitution. Id. at 456-57. The court reviewed McCready I and its progeny, opining that

> the McCready cases and Bosteder involved searches conducted by city inspectors, these cases do not answer the question presented here, whether the Fourth Amendment or article I, section 7 is violated where a landlord and a privately engaged inspector inspect a rental property for code violations that impact health and safety.

Id. at 459.

Ultimately, the court rejected the challenge now brought forth by Bean, holding rental inspection ordinances that permit landlords to hire private inspectors do not require state action, and as such, do not facially violate article I, § 7. Id. at 462. The court noted Pasco's ordinance permitted a landlord to hire a private inspector to further the landlord's private aim of maintaining a business license. Id. at 460. Because the landlords furthered their own ends by hiring a private inspector, the inspections were not state action. Id. at 461.

The ordinance and challenge here are not distinguishable from those in Pasco. Under the amended ordinance, if a landlord chooses to hire a privately employed inspector, they can obtain inspections of 100 percent of the rental housing units on the property to avoid failing reports being provided to the city. SMC § 22.214.050(J). The trial court then granted the City's motion to dismiss, finding the new ordinance complied with Pasco.

While Bean claims Pasco was wrongly decided for a number of reasons, it is still good law. Decisions by the Washington State Supreme Court are binding on all lower courts. 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006). Where the Court of Appeals fails to follow binding precedent of the Washington State Supreme Court, it errs. Id. This court is bound to follow Pasco.

In the alternative, Bean argues that RRIO is distinguishable from Pasco's ordinance. Her attempts to distinguish the cases are unpersuasive. She claims Pasco's inspection ordinance preserved the independence of private inspectors to a far greater degree than RRIO, which requires such inspectors to undergo City

training. Justice Sanders's dissent in Pasco noted the need for approval of private inspectors by the city could be seen as "extensive government involvement." Pasco, 161 Wn.2d at 468. This shows that that the same argument was made to the Pasco court and was rejected.

We hold that RRIO complies with Pasco.

II. Unconstitutional Conditions

Next, Bean argues RRIO unconstitutionally "conditions the preservation of tenant privacy rights on the tenant and landlord shouldering special, expensive burdens."

Bean points to the alternative method requiring inspection of 100 percent of units to avoid reporting failing results to the City as an unconstitutional condition. But, in Pasco, all units were to be inspected by landlords every two years. Id. at 455. Though Bean presents this argument as applying even if Pasco controls, here too the case forecloses her reasoning.

Further, Bean has not demonstrated that a privacy right has been violated. In Pasco, the court found that the ordinance did not exceed what is already allowed by the Residential Landlord-Tenant Act of 1973 (RLTA), chapter 59.18 RCW. Id. at 461. Under the RLTA, landlords have limited rights to enter tenants' residences. See RCW 59.18.150(1). A tenant must not unreasonably withhold consent to a landlord to enter into the dwelling unit in order to inspect the premises. Id. RRIO similarly requires that 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." SMC § 22.214.050(H)(1)(d). Both laws require two days' written notice to the tenant

prior to inspection. SMC § 22.214.050(H)(1); RCW 59.18.150(6). If notice requirements are met, a tenant does not have a reasonable expectation of privacy that such an entry will not occur. See Kalmas v. Wagner, 133 Wn.2d 210, 219-20, 943 P.2d 1369 (1997) (no reasonable expectation landlord would not show premises to potential renters with adequate notice). 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. Bean has not demonstrated that the RRIO is facially unconstitutional.

III. Constitutionality of the Authorizing Statute

Bean next argues the authorizing statute, RCW 59.18.125, is facially unconstitutional.

The statute provides that local municipalities may require landlords to obtain certificates confirming that a given unit is free from defects that endanger or impair the health or safety of a tenant. RCW 59.18.030(2); .125(1).

We review the constitutionality of a statute de novo. Schroeder v. Weighall, 179 Wn.2d 566, 571, 316 P.3d 482 (2014). A statute is presumed to be constitutional unless its unconstitutionality appears beyond a reasonable doubt." City of Seattle v. Eze, 111 Wn.2d 22, 26, 759 P.2d 366 (1988). So, in order to prevail on her facial challenge, Bean must show that the statute is unconstitutional beyond a reasonable doubt and there are no factual circumstances under which the ordinance could be constitutional.[1] Pasco, 161 Wn.2d at 458.

[1] Bean argues the trial court erroneously applied this legal test. She relies on a United States Supreme Court case that provided, "[W]hen addressing a facial challenge to a statute authorizing warrantless searches, the proper focus of the

As the superior court concluded, "there are a number of ways in which a city code could comply with the state law and also be constitutional." The statute does not require municipalities to violate the Washington State Constitution. Private inspectors are not state actors under at least one path to certification authorized by the RRIO, and therefore authorized under the statute. As the authorizing statute, it is by nature more open to alternative means of constitutional compliance than a specific implementation of that authorization by a municipality such as the City. It is permissive, and does not require municipalities to conduct rental inspections.

Still, Bean argues that by not affirmatively requiring a warrant for nonconsensual rental inspections, the State makes municipal compliance with the state constitution optional. But, the statute does not require municipalities to violate the constitution, nor does it permit them to conduct government searches without warrants. See RCW 59.18.125, .150. Further, RCW 59.18.150(4) provides a detailed warrant requirement bestowing municipalities and courts with the statutory authority they lacked in McCready I. 123 Wn.2d at 280-81. Applications for inspection warrants must be "supported by an affidavit or declaration . . . establishing probable cause that a violation of a state or local law, regulation, or ordinance regarding rental housing exists and endangers the health

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constitutional inquiry is searches that the law actually authorizes, not those for which it is irrelevant." City of Los Angeles v. Patel, 576 U.S. 409, 418, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015). So, she argues hypothetical applications are irrelevant. But, the Patel Court did not hold that hypothetical applications were irrelevant where they address searches the law authorizes. Bean provides no support for the belief that the trial court's focus involved irrelevant inspections.

or safety of the tenant or adjoining neighbors." RCW 59.18.150(4)(b). Absent a justifiable excuse, code enforcement officials are permitted to seek warrants only after first seeking consent from both landlord and tenant. Id.

Finally, Bean alleges landlords must provide results of failed inspections to the local municipality. But, the statute requires only that failed inspections be turned over to the municipality if a landlord chooses to utilize the statute's sampling provisions to obtain certification. RCW 59.18.125(5). As with the amended RRIO, under the statute, landlords "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." RCW 59.18.125(5).

We hold that RCW 59.18.125 is not facially unconstitutional.

IV. Attorney Fees and Costs

Bean requests attorney fees and costs on appeal. In Washington, a prevailing party may recover attorney fees authorized by statute, equitable principles, or agreement between the parties. Landberg v. Carlson, 108 Wn. App. 749, 758, 33 P.3d 406 (2001). As Bean is not the prevailing party, we decline to award attorney fees and costs.

We affirm.

Appelwick, J.

WE CONCUR:

Cox, J.

Dwyer, J.

Appendix 2

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 3

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 4

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
Tel: (206) 332-7096
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Attorneys for Defendant State of Washington

Appendix 5

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

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
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

August 25, 2021 - 9:53 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	81661-6
Appellate Court Case Title:	Keena Bean, et al. v. City of Seattle et ano.

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