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No. 53920-5

(King County Superior Court No. 03-2-25260-3 SEA)

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JOSEF VENTENBERGS, KENDALL TRUCKING, INC., a Washington Corporation, RONALD HAIDER, and HAIDER CONSTRUCTION, INC., a Washington Corporation,

Petitioners,

v.

THE CITY OF SEATTLE, a municipal corporation, SEATTLE PUBLIC UTILITIES, and CHUCK CLARKE, in his official capacity as Director of Seattle Public Utilities,

WASTE MANAGEMENT OF WASHINGTON, INC., d/b/a Waste Management of Seattle, a Delaware Corporation,

RABANCO, LTD., a Washington corporation,

Respondents.

PETITION FOR REVIEW

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DIVISION I

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I. IDENTITY OF PETITIONERS

Petitioners Josef Ventenbergs, Kendall Trucking, Inc. (“Ventenbergs”), Ronald Haider, and Haider Construction, Inc. (“Haider”) petition the Supreme Court to accept review of the Court of Appeals decision terminating review designated in Part II. Petitioners were plaintiffs in the trial court and appellants before the Court of Appeals.

II. THE COURT OF APPEALS DECISION

Petitioners request review of the Court of Appeals’ February 14, 2005, decision affirming the trial court’s grant of summary judgment in favor of Respondents City of Seattle, Seattle Public Utilities, and Chuck Clarke (together, the “City”), Rabanco, Ltd. (“Rabanco”), and Waste Management of Washington, Inc. (“Waste Management”). A copy of the Court of Appeals’ decision is attached as Appendix A. The opinion is unpublished.¹

III. ISSUES PRESENTED FOR REVIEW

Petitioners request that the Supreme Court review whether the Court of Appeals erred by:

A. Holding that the City’s ordinances restricting the collection of construction, demolition, and landclearing waste (“CDL”) to only Rabanco and Waste Management did not violate article I, section 12 of the

¹ On March 7, 2005, Rabanco and Waste Management submitted motions to publish, of which the Court of Appeals has yet to rule.

Washington Constitution and were a legitimate exercise of the police power when the evidence demonstrated that none of the City's public health and safety rationales were dependent on restricting the CDL market and that the only reason the City restricted the CDL market to these two companies was to avoid a lawsuit from the two favored companies;

B. Holding that Haider does not have a right to freely alienate his property when the property in question does not have a monetary value, even though Haider's ability to freely alienate his property is very valuable to him;

C. Holding that the court could not grant relief to Petitioners if the City failed to follow the procedural mandates of RCW 35.21.156 because requiring the City to conform to a statutorily mandated process for issuing contracts would interfere with the public interest;

D. Failing to address whether the City's grant of two monopolies exceeded its authority; and

E. Refusing to impose sanctions against the City for violating court rules regarding submission of unauthenticated material stricken by the trial court.

IV. STATEMENT OF THE CASE

This case centers on whether the City may restrict the market in hauling CDL – a specific and unique type of solid waste hauling that

shares none of the attributes of a traditional utility – to only two companies when the evidence demonstrated that no public health and safety justifications were dependent on restricting the market and when the City chose these two companies solely to avoid a lawsuit from them.

A. The Petitioners

Joe Ventenbergs is the founder and owner of Kendall Trucking, Inc. Ventenbergs began working as a CDL hauler in 1993 and started his own CDL-hauling business in 1994. (CP 537.) Over the next decade, Ventenbergs built Kendall Trucking into a successful business by offering timely and efficient service and by catering specifically to other small businesses. (CP 538.) Ventenbergs wishes to earn a living conducting a useful and necessary business hauling CDL in the City while conforming to environmental and safety requirements. (CP 539.) If the challenged ordinances are upheld, his business will not survive. (CP 539.)

One of Ventenbergs' best customers is Ron Haider. (CP 541.) Haider prefers using Ventenbergs because the service he receives from Ventenbergs is less expensive, more efficient, and more responsive than Rabanco's or Waste Management's. (CP 541.) Haider wants to continue his relationship with a service provider who has helped to make his business successful. (CP 541-42.)

B. CDL

Petitioners only challenge the City’s restriction of the market in hauling CDL – they do not challenge the City’s regulation of commercial waste (excluding CDL) or residential waste. CDL has certain attributes that make its collection distinguishable from the regularly scheduled, utility-type collection of residential and commercial waste.²

CDL is comprised of waste produced at construction and demolition sites, as well as waste from efforts to clear land of vegetation.³ (CP 497-98.) CDL is produced at specific sites for limited periods of time. (CP 499-500.) When a contractor or homeowner anticipates producing CDL, a hauler is called and asked to drop off a container at the site. (CP 500.) The customer fills the container with CDL and the hauler later returns to remove the container. CDL hauling typically involves

² Residential solid waste is solid waste picked up from a residence. Seattle Municipal Code (“SMC”) 21.36.016(4). In the City, residential waste is collected by companies with which the City contracts. (CP 485.) These companies retrieve waste on a regular, weekly schedule over set routes in the City. (CP 486.) Commercial waste is defined as Municipal Solid Waste (“MSW”) and includes CDL collected from commercial establishments in the City. Although defined to include CDL, commercial waste that excludes CDL is collected, treated, and disposed of differently than CDL (for ease of reference, Petitioners refer to commercial waste that excludes CDL as “Commercial Waste”). In the City, Waste Management and Rabanco collect Commercial Waste pursuant to contracts with the City. (CP 491.) Like residential waste, Commercial Waste is collected on a regular schedule and on set routes throughout the City. (CP 492-93.)

³ Construction Waste consists of scraps of wood, concrete, masonry, roofing, siding, structural metal, wire, fiberglass insulation, building materials, plastics, Styrofoam, twine, bailing and strapping materials, cans and buckets, and other packaging materials and containers. SMC 21.36.012(13)(a). Demolition Waste consists of largely inert waste that results from the demolition or razing of buildings, roads, and other manmade structures. SMC 21.36.012(13)(b). It includes concrete, brick, wood and masonry, composition roofing and roofing paper, steel, and copper. *Id.* Landclearing Waste is natural vegetation and minerals from clearing and grubbing land for development, such as stumps, brush, vines, tree branches and bark, mud, dirt, sod, and rocks. SMC 21.36.012(13)(c). CDL does not include asbestos or hazardous or dangerous wastes.

heavy demand for containers over short periods of time. (CP 501.) CDL is collected irregularly and is dependent on construction and demolition site schedules and CDL haulers typically are not given or assigned designated routes. (CP 501-02.) Because CDL hauling is project specific, the traffic and noise impact of CDL collection typically does not vary based on the number of haulers available to service customers. (CP 503.) Regardless of the number of haulers, one truck must drop off a container and one truck must collect the container. (CP 503.) None of these attributes apply to residential or commercial waste. (CP 485-96.)

C. Regulation of CDL Hauling

Since 1961, the Washington Utilities and Transportation Commission (“WUTC”) has held the authority to regulate Washington waste companies. (CP 506-07.) In exchange for providing adequate service in their service territories, the state granted existing companies certificates to operate within such territories in 1961. (CP 507.) Companies already providing services were “grandfathered in” and allowed to continue providing services for an indefinite period of time. *See* RCW 81.77.040. WUTC jurisdiction is preempted when a solid waste collection company operates “under a contract of solid waste disposal with any city or town” RCW 81.77.020.

According to the City, the WUTC has not vigorously enforced its restrictions on CDL hauling and an industry of independent CDL haulers developed, including Ventenbergs. (CP 511-12.)

D. The City's Regulation of CDL

In the early 1990's, the City chose to contract with private companies to provide commercial solid waste hauling. (CP 514.) The City offered the opportunity to negotiate only to Waste Management and Rabanco, did not follow the procedures for issuing such contracts set out in RCW 35.21.156, and did not otherwise offer the contracts to any other company. (CP 516-17.) The City entered into separate contracts with Rabanco and Waste Management to haul commercial solid waste in the City, with such contracts effective April 1, 2001. (CP 515.) Under the regulatory scheme devised by the state legislature, the City's exercise of jurisdiction preempted the WUTC's exercise of jurisdiction – thus, the issue in this case involves the City's regulation of CDL, not the WUTC's.

Under the contracts, CDL is dealt with differently than is Commercial Waste. Although the City has a right to direct the disposal of CDL, the City has not exercised that right and does not exert any control over (or even monitor) where CDL is ultimately disposed. (CP 530-31.) In contrast, the City mandates where Commercial Waste must be disposed. (CP 526-27.) Self-hauling of CDL is permitted and the City exercises no

control over where self-hauled CDL is taken or ultimately disposed. (CP 531-32.) Under the contracts, the City takes title to CDL collected from commercial establishments, meaning that the CDL produced by such establishments becomes the City's property when it is picked up by one of the contracted haulers. (CP 533.) The City does not, however, take title to CDL collected from residences; thus, residential CDL becomes the property of the hauler collecting the CDL, and not the City. (CP 533-34.)

After the contracts became effective, Rabanco lost approximately forty percent of its market share in CDL hauling to companies that did not have contracts with the City. (CP 537.) Because no City ordinance actually made it illegal to haul CDL in Seattle, the City then modified the Seattle Municipal Code to make it illegal for any company to haul CDL except Rabanco and Waste Management.

E. Proceedings Below

On May 13, 2003, Petitioners commenced this action against the City in King County Superior Court. (CP 1-9.) On October 21, 2003, Petitioners amended their Complaint to add Waste Management and Rabanco as defendants. (CP 21-30.) On November 10, 2003, the City filed an Amended Answer and counterclaim. (CP 58.) The Amended Answer and Counterclaim sought injunctive relief, judgment in the City's favor, and dismissal of Petitioners' Complaint. (CP 62.) The parties filed

cross-motions for summary judgment. (CP 63-85, 440-443, 449-478.) On February 23, 2004, the trial court granted the Respondents' motions, denied Petitioners' motion, and denied the City's request for injunctive relief. (CP 1321-24.) This appeal followed. (CP 1315-24.) On February 14, 2005, the Court of Appeals affirmed the trial court.

V. ARGUMENT

RAP 13.4(b) provides that a petition for review will be accepted if the decision below, among other things, (i) is in conflict with a decision of this Court, (ii) involves a significant question of law under the Washington Constitution, or (iii) involves an issue of substantial public interest. These criteria are satisfied in this case and review is appropriate.

A. The Ruling Below Conflicts With *Grant County II*

The Court of Appeals' decision is inconsistent with this Court's decision in *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 83 P.3d 419 (2004) ("*Grant County II*"). Indeed, the Court of Appeals' decision ignores *Grant County II* altogether.

1. This Court's Decision in *Grant County II* Controls the Outcome of this Case

Review is appropriate because the Court of Appeals failed to even mention this Court's most recent decision on the scope and application of article I, section 12, a decision that controls the outcome of this case.

Last year, this Court decided *Grant County II*. In that case, this Court held that the Washington Constitution’s privileges or immunities clause, article I, section 12, provides independent protections from those contained in the federal equal protection clause when the issue concerned the government’s grant of special privileges to a minority at the expense of the majority. *Id.* at 809. This Court cited with favor an analysis providing that article I, section 12 should have a harder “bite” where a small class is given a special benefit with the burden spread among the majority. *Id.* at 807 (citing Jonathon Thompson, *The Washington Constitution’s Prohibition on Special Privileges and Immunities: Real Bite for “Equal Protection” Review of Regulatory Legislation?*, 69 Temp. L.Rev. 1247, 1251 (1996)). This Court also noted that early decisions of the Washington Supreme Court invalidated laws granting special advantages to certain people or classes of people. *Id.* at 809 n.12 (citing cases). Specifically, in the earlier case of *Grant County Fire Protection District Number 5 v. City of Moses Lake*, 145 Wn.2d 702, 732, 42 P.3d 394 (2002) (“*Grant County I*”) (in a portion of the decision not affected by the grant of reconsideration that led to *Grant County II*), this Court noted that these early decisions applied article I, section 12 to regulatory statutes that granted an economic benefit and required that acceptable regulatory distinctions must rest on ““real and substantial differences bearing a

natural, reasonable, and just relation to the subject matter of the act.” *Id.* (quoting *State ex rel. Bacich v. Huse*, 187 Wash. 75, 84, 59 P.2d 1101 (1936)).

Grant County II held further that the protections of article I, section 12 apply to those rights that are fundamental attributes to an individual’s national or state citizenship. 150 Wn.2d at 812-13 (quoting *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902)). In the briefing to the Court of Appeals, Petitioners demonstrated that the right at issue here met this test because the First Amended Complaint sought to vindicate Ventenbergs’ right “to pursue [his] livelihood[] free from the interference of unreasonable and illegal governmental favoritism.” (CP 22.) In Washington, “The right to hold specific private employment and follow a chosen profession free from *unreasonable* government interference is a fundamental right which comes within the liberty and property concepts of the Fifth Amendment.” *Plumbers & Steamfitters Union Local 598 v. Washington Pub. Power Supply Sys.*, 44 Wn. App. 906, 915, 724 P.2d 1030 (1986) (underline emphasis added). Thus, Petitioners were entitled to an analysis – and one with “bite” – of whether the City’s actions here violated the independent protections of article I, section 12. It was this analysis the Court of Appeals failed to conduct.

2. Had the Court of Appeals Followed *Grant County II*, the City's Actions Would Fail

Perhaps realizing that if it were to apply this Court's decision in *Grant County II* to the facts of this case the City's actions would fail, the Court of Appeals bypassed this analytical problem by failing to even mention *Grant County II*. Instead, the court simply "defer[red] to [the City's] decision to contract exclusively with Rabanco and Waste Management." Appendix A at 7. This is no review at all, and certainly not the "biting" review required by *Grant County II* – an analysis especially appropriate here because Petitioners have demonstrated governmental favoritism, precisely the evil article I, section 12 was designed to prevent. *See Grant County II*, 150 Wn.2d at 808.

Instead of conducting the analysis dictated by *Grant County II*, the court accepted at face value the City's *ex post facto* public health and safety justifications for its grant of favoritism. Appendix A at 6. The evidence in this case, however, demonstrates that none of the goals listed by the court were at all dependent on restricting the market in CDL hauling to two companies:

Q: Of the goals you listed under your public health and safety justifications, which ones can only be achieved through limiting competition to the two entities?

A: I don't know that any of them are dependent on that.

(CP 543.) (Deposition of Ray Hoffman, Director of Strategic Policy, Seattle Public Utilities, p. 182, ll. 9-13.) Indeed, all the goals listed by the court can be achieved with more than two haulers operating in the City. (CP 543.) (RP 79.)

The court also ignored the fact that, in actuality, the City restricted the market in CDL hauling to Rabanco and Waste Management for one reason – to avoid a lawsuit by the two companies against the City. (CP 518-19.) “The negotiations [between the City and the two companies] focused on minimizing legal risk associated with takings by focusing on those companies that had the certificates, so those were the companies we focused on.” (CP 516.) (Deposition of Ray Hoffman, p. 114, ll. 2-5.) The City has admitted that such a suit would have been meritless. (RP 42-43.)

Given that the facts in this case do not support the City’s *ex post facto* police power justifications, the Court of Appeals misapplied Washington law when it affirmed the trial court. Certainly, at the very least, Petitioners were entitled to have their claims analyzed under the correct standard set out in recent controlling precedent from this Court.

3. The Court of Appeals Extended the Police Power Beyond its Constitutional Boundaries

Rather than apply *Grant County II* to the facts of this case, the Court of Appeals proclaimed the City’s actions a police power function

and applied a “very deferential” analysis to the City’s actions. Appendix A at 6. By implication, the Court of Appeals suggests that merely invoking the police power absolves municipalities from complying with the dictates of the state constitution. However, the limitless view of the police power adopted by the Court of Appeals contradicts the fact that our state constitution was specifically designed to protect Petitioners.

As the United States Supreme Court has explained:

To justify the State in thus interposing its authority in behalf of the public, it must appear—First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations; in other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.

Lawton v. Steele, 152 U.S. 133, 137, 14 S. Ct. 499, 38 L. Ed. 385 (1894)

(emphasis added). Here, there was no public purpose for restricting the market. (CP 924.) (Deposition of Ray Hoffman, p. 182, ll. 9-13.)

“[P]rotecting a discrete interest group from economic competition is not a legitimate governmental purpose.” *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002). The City never articulated a relationship between any legitimate governmental purpose and the accomplishment of such a

purpose through restriction of the market. In fact, the City has explicitly indicated that such goals can be met with more than two haulers. (CP 923.) (“The City can achieve its solid waste goals by contracting with one or more companies.”) (Emphasis added.)

When the government grants special privileges to large corporations, article I, section 12 – as interpreted by this Court in *Grant County II* – requires a carefully crafted solution to an identified problem related to the subject matter of the act. The Court of Appeals’ decision to permit the City to restrict the market in hauling CDL without any meaningful review was error under both the plain language of the constitution and this Court’s decision in *Grant County II*. Review is therefore appropriate.

B. Review is Appropriate Because This Case Raises a Significant Question of Law Under the Washington Constitution

Petitioners demonstrated below that Haider enjoys all incidents of ownership over CDL produced at his worksites. CP 560 (“I am free to possess, use, enjoy, sell or dispose of the waste produced at [residential] sites and refused by the customer.”). The chief incidents of ownership of property are the right to possession, use, enjoyment, and the ability to sell or dispose of property. *Wasser & Winters Co. v. Jefferson County*, 84 Wn.2d 597, 599, 528 P.2d 471 (1974). The City’s transfer of Haider’s

right to dispose of his property to Rabanco and Waste Management, two private entities, violates the prohibition on private takings found in article I, section 16 of the Washington Constitution. *See Manufactured Housing Cmty. 's v. State*, 142 Wn.2d 347, 371-72, 13 P.3d 183 (2000).

Regardless, the Court of Appeals found that Haider does not have a right to freely alienate this property because “CDL is waste that has no value or use to Haider.” Appendix A at 9.⁴ Thus, the court found that Haider’s takings claim was “frivolous,” although it did not bother to cite any case with such a holding. *Id.* Petitioners have searched for cases providing such a holding and have found none. In fact, Washington law is to the contrary:

⁴ The Court of Appeals also found that Petitioners had not properly pled this claim to the trial court. Appendix A at 9 n.21. Again, the Court of Appeals applied the wrong standard without bothering to cite any authority to support its claim that the cause was not properly pled. Because an appellate court’s review is *de novo*, it may consider any theory established by the pleadings and supported by the proof. *Mountain Park Homeowners Ass’n v. Tydings*, 125 Wn.2d 337, 344, 883 P.2d 1383 (1994). The Court of Appeals’ conclusion is patently disproved by a review of the pleadings. First, Petitioners pled the takings claim in their Reply to the City’s Amended Answer and Counterclaim for Injunctive Relief, which did not distinguish between relief sought in answer to Petitioners’ Complaint and relief sought by way of Counterclaim. CP 62. Petitioners addressed the issue in their Motion for Summary Judgment. CP 428, 476-77. Both the City and Waste Management responded substantively in their respective Responses. The trial court then granted some, but not all, of the relief specifically sought by the City in its Amended Answer and Counterclaim. CP 1333. Petitioners are aggrieved by this order, and the fact that Petitioners did not add the takings argument until the City sued them has no practical effect because the City sought the relief that has aggrieved Petitioners in its Amended Answer and Counterclaim without distinguishing which relief related to the Answer and which related to the Counterclaim. Thus, some of the relief sought by the City in its Amended Answer and Counterclaim (judgment and dismissal) was granted, while some (a permanent injunction) was not. The takings issue is therefore properly before this Court because the City achieved some of the relief sought in its Amended Answer and Counterclaim.

If a man may be required to surrender what is his own, because he does not need it and cannot use it, and because another does need it and can use it, then there is no reason why he may not be required to surrender what he needs but little because another needs it much. A doctrine so insidiously dangerous should never find lodgment in the body of the law through judicial declaration.

Manufactured Housing, 142 Wn.2d at 374 (quoting *White Bros. & Crum Co. v. Watson*, 64 Wash. 666, 671, 117 P. 497 (1911)) (emphasis added).

Moreover, the Court of Appeals was confused because what is being taken here is Haider's right to freely alienate his property, not the property itself – and the court is simply wrong that the right to freely alienate has no value to Haider in this case. The evidence is clear that Ventenbergs could haul such CDL cheaper than Rabanco or Waste Management and that Haider preferred to use Ventenbergs instead of the City's chosen monopolists. (CP 560.) Thus, it is of considerable value to Haider to be able to alienate his property to Ventenbergs and not to Rabanco or Waste Management. Saving money and using a more responsive service provider obviously has "value" to Haider.

This Court should reject the Court of Appeals' attempt to redefine the right of alienation out of Washington law or to condition such right on the value of the property at issue. The Court of Appeals' decision erroneously limits a basic constitutional right and review is appropriate.

C. Review is Proper Because This Case Involves an Issue of Substantial Public Interest

The Court of Appeals held that even if the City had failed to follow the procedures for issuing contracts for solid waste handling systems, it could not grant relief to Petitioners because the court could only enjoin the City's contracts and enjoining performance would conflict with the public interest. Appendix A at 9.⁵

The Court of Appeals' decision raises an issue of substantial public interest because it provides a roadmap for municipalities to completely avoid statutory procedures for issuing public contracts. The court based its conclusion on a finding that "reopening the negotiation process will cost valuable time and money." Appendix A at 10. But the "negotiation process" was never open in the first place – the City merely began negotiating with Rabanco and Waste Management and offered the opportunity to no one else. (CP 516-17.) This was not a flawed bidding process like that at issue in *Dick Enterprises, Inc. v. King County*, 83 Wn. App. 566, 569, 922 P.2d 184 (1996), relied upon by the court. This was no process at all.

If the standard is to be that a municipality may avoid procedural mandates by refusing to undertake the procedures, signing contracts and

⁵ The Court of Appeals' decision also raises an issue of substantial public interest because it utterly ignored Petitioners' claim that a city's monopolization of CDL hauling exceeds the statutory authority granted to municipalities by the legislature.

then relying on the courts to uphold the contracts on the basis of the cost and inconvenience of undoing the contracts, then such statutory procedures are simply suggestions that a municipality need not ever follow. This certainly does not advance the public interest given the risk that a municipality's choice of contractor may be influenced by illegitimate considerations such as corruption, cronyism, or, as is the case here, fear of a meritless lawsuit.⁶

Moreover, in *Dick* and its progeny, a losing bidder in a flawed bidding process has a limited, but real, opportunity to move for injunctive relief after the flawed bidding process is completed but before the contracts are signed. *See Dick*, 83 Wn. App. at 571 (contract formation is the bright line cut-off for bidder standing to seek injunctive relief). Here, Ventenbergs had no such opportunity. There was no open, public process for choosing vendors as required by RCW 35.21.156 – the City merely picked Rabanco and Waste Management out of fear and negotiated contracts with them. Thus, there was no opportunity to take advantage of the window to move for injunctive relief present in the flawed bidding cases because the entire process was not open. Indeed, Ventenbergs did

⁶ As the trial court stated after hearing the City's description of its method of granting the contracts, "So the City is absolutely unrestrained as a public organization spending public money and who they contract with. That's not our democracy, is it?" RP 53.

not learn of the existence of the contracts until two years after they became effective. CP 554-55. *Dick* is therefore not applicable.⁷

Because the Court of Appeals' decision provides municipalities with a road map for avoiding statutory processes mandating open consideration of public contracts, the Court of Appeals' decision raises an issue of substantial public interest and review is appropriate.

D. The Court of Appeals' Decision is in Conflict With the Rules of This Court

The City's brief contained an appendix with unidentified, unauthenticated materials it called "legislative history." Petitioners moved to strike this material pursuant to RAP 10.7 and requested sanctions. The Court of Appeals granted Petitioners' Motion to Strike, but did not impose sanctions because it accepted the City's assertion that the documents were "legislative history." Appendix A at 9 n. 22.

The Court of Appeals erred in refusing to grant sanctions. RAP 10.7 states that "the appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these

⁷ Moreover, cases concerning flawed bidding processes like *Dick* are inapplicable because RCW 35.21.156 is not a bidding statute, but a process for choosing "one or more vendors." The Court of Appeals assumed that the collection of solid waste would cease if the City were required to follow the requirements of RCW 35.21.156. But Petitioners have never sought to preclude Rabanco and Waste Management from hauling CDL – Ventenbergs simply wants the chance to be considered for the contracts on his merits, as RCW 35.21.156 requires. Thus, the Court of Appeals' conclusion that Petitioners sought a bidding process – where there is a bid winner and a bid loser – is simply wrong and cases concerning flawed bidding processes are not applicable.

rules.” Here, the City filed a brief with unidentified, unauthenticated, cryptic documents, to which Petitioners were obligated to respond. Sanctions are necessary so that the City does not continue to force its opponents to respond to mysterious documents or play “Twenty Questions” in a legal brief.

VI. CONCLUSION

For the reasons discussed above, this Court should grant review of the Court of Appeals’ decision terminating review.

RESPECTFULLY submitted this 16th day of March 2005.

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Attorneys for Appellants

APPENDIX A

for anyone to be in the business of hauling construction, demolition and land clearing waste (CDL) in Seattle, absent a City contract. The City has contracted for CDL collection with only two companies. Plaintiffs argue that their exclusion from the business of hauling CDL violates the Privilege and Immunities, Contract, and Takings Clauses of our state constitution. They also claim that the City violated the procedural mandates for contracting under RCW 35.21.156. Because the City's ordinances are consistent with Washington's statutory scheme for regulating solid waste and do not contravene the state constitution, we affirm.

I.

Josef Ventenbergs, owner of Kendell Trucking, Inc., has been in the business of hauling CDL since 1993. Ronald Haider founded Haider Construction in 2001. Haider Construction specializes in remodeling residential homes and roofing. Haider has consistently hired Kendell Trucking to remove CDL from his worksites.

Under state law, if a person or entity wants to be in the business of hauling CDL, it must do one of two things: obtain a certificate of convenience and necessity (G-certificate) from the Washington Utility and Transportation Commission (WUTC), or contract with the city or town in which it wants to operate. Kendell Trucking did neither. Nevertheless, it hauled CDL in Seattle for almost 10 years without interruption.

From 1962 to 2001, the City of Seattle did not regulate commercial solid waste. During this time, the WUTC regulated the transportation of Seattle's

commercial solid waste by issuing G-certificates to private companies. Following a series of acquisitions and consolidations, only two companies, Rabanco, Ltd. and Waste Management of Washington, Inc., were holders of G-certificates.

The City decided to begin regulating commercial solid waste in order to reduce collection rates, promote recycling in the commercial waste sector, and ensure proper disposal. In April of 2001, after years of negotiation, the City contracted with Waste Management and Rabanco for the collection of commercial solid waste. The contracts provided that each company would be the primary collector of municipal solid waste in its respective zone, and collect CDL without respect to zones. At that time, the definition of solid waste under the City's code did not include CDL.

In October of 2002, the City amended its code to include CDL in the definition of solid waste.¹ Another ordinance prohibits anyone from hauling solid waste without a city contract or G-certificate.² The two ordinances effectively prohibit Ventenbergs from hauling CDL in the City.

In early 2003, the City informed Ventenbergs that he was not permitted to haul CDL in Seattle. A few months later, Ventenbergs, Kendell Trucking, Haider, and Haider Construction (plaintiffs) filed suit against the City, Waste Management, and Rabanco (defendants), alleging constitutional and statutory violations. The City filed a counterclaim for injunctive relief from Ventenbergs and Kendell Trucking hauling CDL. The parties filed cross motions for summary

¹ Seattle Municipal Code § 21.36.016(12).

² Seattle Municipal Code § 21.36.030. The ordinance provides exceptions for the University of Washington, the military, and the Seattle Housing Authority.

judgment. The superior court granted the defendants' motion for summary judgment, and denied the plaintiffs' motion. It denied the City's motion for injunctive relief. The court ruled that Ventenbergs was violating the law by hauling CDL without a permit or contract, but denied the City's request for an injunction.³

II.

Plaintiffs appeal, and argue that the City's ordinances violate the Privileges and Immunities, Contract, and Takings Clauses of our state constitution because they make it illegal for anyone other than Waste Management and Rabanco to be in the business of hauling CDL. Plaintiffs also claim that defendants violated RCW 35.21.156 by not following its procedural mandates for issuing city contracts.

We review a grant of summary judgment de novo.⁴ Summary judgment is appropriate when there is no genuine issue as to any material fact and, when viewing the evidence in the nonmoving party's favor, the moving party is entitled to judgment as a matter of law.⁵ In deciding whether an ordinance is constitutional, the presumption is in favor of its validity.⁶

³ Seattle does not appeal the denial of an injunction.

⁴ Okeson v. City of Seattle, 150 Wn.2d 540, 548, 78 P.3d 1279 (2003).

⁵ Stenger v. Stanwood Sch. Dist., 95 Wn. App. 802, 812, 977 P.2d 660 (1999).

⁶ Shea v. Olson, 185 Wash. 143, 152, 53 P.2d 615 (1936); Snohomish County Builders Ass'n v. Snohomish Health Dist., 8 Wn. App. 589, 598, 508 P.2d 617 (1973).

A. Privileges and Immunities Clause

Plaintiffs argue that the City granted Rabanco and Waste Management special privileges, in violation of our state constitution. But the regulation of solid waste collection is a police power function, so the City may restrict people from hauling CDL.

Washington courts have repeatedly held that the regulation of solid waste is a valid exercise of local police power.⁷ Nevertheless, plaintiffs argue that CDL hauling is a proprietary, not a government, function because it is only collected upon request. Our Supreme Court has noted that services that are provided on request, for the comfort and use of individual customers, are proprietary in nature.⁸ But “[t]he principal test in distinguishing governmental functions from proprietary functions is whether the act performed is for the common good of all, or whether it is for the special benefit or profit of the corporate entity.”⁹ Although CDL is collected on request, rather than on a set schedule, the benefits of CDL disposal do not lie exclusively with CDL generators. CDL is waste. The regulation of solid waste hauling benefits public health because it ensures that waste is sent to designated landfills and environmental standards are maintained. Thus, CDL collection is a government function.

⁷ E.g., Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 40, 873 P.2d 498 (1994) (citing Shaw Disposal, Inc. v. City of Auburn, 15 Wn. App. 65, 68, 546 P.2d 1236 (1976)); City of Spokane v. Carlson, 73 Wn.2d 76, 80-81, 436 P.2d 454 (1968); Metro. Servs., Inc. v. City of Spokane, 32 Wn. App. 714, 717, 649 P.2d 642 (1982).

⁸ Okeson, 150 Wn.2d at 550.

⁹ Okeson, 150 Wn.2d at 550.

Courts are very deferential to laws enacted under police powers.¹⁰ Several courts have held that a city may collect and dispose of waste itself, or grant exclusive contracts to one or more companies.¹¹

But an ordinance that results in inequality must not be arbitrary.¹² The ordinance must have "a reasonable and substantial relation to the accomplishment of some purpose fairly within the legitimate range or scope of the police power."¹³ If it does, it will be held constitutional, "even though the law operates to deprive a citizen of the right which he might otherwise enjoy to maintain a business, or pursue a profession, or endeavor to gain a livelihood."¹⁴

The City's ordinances forbid anyone from being in the business of collecting solid waste, absent a city contract. The City has articulated important public health objectives: to maintain the environmental standards established in its long-haul disposal contract with Waste Management, to ensure that waste is sent to proper landfills, and to promote recycling in the commercial sector. The City's contracting requirement allows it to draft the contracts to more easily accomplish these objectives. Further, by contracting with only two companies, the City can more easily regulate the collection and disposal of CDL. The City

¹⁰ Shea, 185 Wash. at 153; Shaw Disposal, 15 Wn. App. at 69 (explaining that whether a city must contract for waste collection through competitive bidding is a question for the Legislature).

¹¹ Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 40, 873 P.2d 498 (1994) (citing Shaw Disposal, 15 Wn.App. at 68).

¹² Elkins v. Schaaf, 4 Wn.2d 12, 20, 102 P.2d 230 (1940).

¹³ Washington Kelpers Ass'n v. State, 81 Wn.2d 410, 417, 502 P.2d 1170 (1972).

¹⁴ Campbell v. State, 12 Wn.2d 459, 465, 122 P.2d 458 (1942).

acted reasonably, so we defer to its decision to contract exclusively with Rabanco and Waste Management.

B. Contract Clause

Plaintiffs claim that the City's ordinances interfered with their contract for CDL hauling, in violation of article I, section 23 of our state constitution. But Ventenbergs cannot perform the contract without violating state law; therefore the contract is void.

The State regulates waste collection and disposal where local governments do not.¹⁵ No person or company may be in the business of collecting solid waste "without first having obtained from the [WUTC] a certificate declaring that public convenience and necessity require such operation."¹⁶ The only exceptions to the permit requirement are when: (1) a company is engaged in solid waste disposal by contract with any city or town, or (2) a city pays its own employees to collect solid waste.¹⁷

Plaintiffs argue that when the City exercised its right to control the collection of commercial solid waste in April of 2001, the State lost all authority to regulate solid waste collection. In other words, they argue that the requirement to obtain a G-certificate under chapter 81.77 RCW no longer applied in Seattle. Under this premise, they claim that because the City did not redefine solid waste

¹⁵ RCW 81.77.020. See Metro. Servs., 32 Wn. App. at 717 (explaining that RCW 35.13.280 "provides that annexation of an area by a city cancels any permit granted by the state for garbage collection").

¹⁶ RCW 81.77.040; RCW 81.77.020.

¹⁷ RCW 81.77.020. A person may haul his own CDL without a permit, however.

to include CDL until November 2002, Ventenbergs and Haider entered a genuine, oral contract in the interim.

But the relevant statute indicates otherwise:

No person, his lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state, except in accordance with the provisions of this chapter: Provided, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste.^[18]

The language is unambiguous. The only exceptions to the State certificate requirement are if a company has contracted with a city or if a city itself, through its own employees, collects solid waste. It does not state, as plaintiffs argue, that once a city contracts with one vender, other vendors who wish to collect solid waste no longer need a permit to do so.¹⁹

Ventenbergs did not have a G-certificate. Contracts that violate state law are void.²⁰ Thus, there was never a valid contract between Haider and Ventenbergs.

C. Takings Clause

Plaintiffs argue that requiring Haider to hire Rabanco or Waste Management unconstitutionally deprives Haider of a fundamental attribute of

¹⁸ RCW 81.77.020.

¹⁹ WUTC regulations indicate that it will cease regulation of an area on the date a city commences services as specified in its notice to the commission, or if it commences service before notifying the commission, on the date of receipt of the city's notice. WAC 480-70-141(2). But, even if the WUTC received notice and cancelled its regulation of commercial solid waste in Seattle, the Ventenbergs would still be bound by the statute. Ventenbergs' only means of hauling CDL, however, would be to obtain a city contract.

²⁰ Parker v. Tumwater Family Practice Clinic, 118 Wn. App. 425, 433, 76 P.3d 764 (2003), rev. denied, 151 Wn.2d 1022 (2004).

ownership, the right to dispose of his property. We do not need to address this claim because it was not properly pled below.²¹ Regardless, the claim is completely without merit. CDL is waste that has no value or use to Haider. In fact, Haider pays someone to haul CDL away for disposal. Plaintiffs' takings claim is frivolous.

D. RCW 35.21.156

Plaintiffs next contend that the City violated the procedural mandates of RCW 35.21.156.²² The parties dispute whether this provision applies to contracts for CDL hauling. Because this issue is moot, we do not decide it.

We cannot grant meaningful relief to plaintiffs. The only possible relief is to enjoin the City's contracts with Waste Management and Rabanco. But injunctive relief from public contracts will only be granted if doing so does not compete with the public interest.²³ The public interest in performance of the contracts is great. Collection of commercial solid waste must continue. The

²¹ Plaintiffs first asserted a takings claim in a reply to the City's counterclaim for injunctive relief, and briefed the issue in their motion for summary judgment. But the claim was contingent on the court granting the City's injunction. The court did not grant the City an injunction. The claim was never pled as a direct challenge to the City's ordinances.

²² Plaintiffs also filed a motion to strike portions of the City's amended brief and for sanctions. They argue that the City violated RAP 10 by citing to new evidence and appending it to their brief. The City responds that it only attached legislative history, which is permitted under RAP 10.4(c). There is no rule against submitting additional legal authority on appeal. We must strike any portion of the City's brief that cites appended materials which cannot be verified independently. But, doing so does not affect the outcome of plaintiffs' appeal. We will not issue sanctions.

²³ Peerless Food Prods., Inc. v. State, 119 Wn.2d 584, 597, 835 P.2d 1012 (1992); Dick Enterprises, Inc. v. King County, 83 Wn. App. 566, 569, 922 P.2d 184 (1996) ("Bidder injunctions against performance of public contracts would adversely affect the public interest by increasing expense to the taxpayers.").

current contracts were negotiated over many years, and reopening the negotiation process will cost valuable time and money. Furthermore, the City's public interest objectives—to control collection rates, increase recycling, and ensure materials are properly disposed of—are preserved in the contracts. In contrast, there is little, if any, perceivable benefit to plaintiffs in reopening negotiations. Plaintiffs have not shown that they were wrongfully excluded from bidding on a City contract.

AFFIRMED.

WE CONCUR:

Appelwick, J

Baker, J

COX, CJ

APPENDIX B

LEXSTAT WASH. CONST ART I, SECTION 12

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CONSTITUTION OF THE STATE OF WASHINGTON
ARTICLE I. DECLARATION OF RIGHTS

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Wash. Const. Art. I, § 12 (2004)

§ 12. Special privileges and immunities prohibited

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

LEXSTAT WASH. CONST. ART. I, SEC. 16

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CONSTITUTION OF THE STATE OF WASHINGTON
ARTICLE I. DECLARATION OF RIGHTS

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Wash. Const. Art. I, § 16 (2004)

§ 16. Eminent domain

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

HISTORY: *AMENDMENT 9*, 1919 p 385 § 1. Approved November, 1920.

LEXSTAT U.S. CONST. AMEND. 14

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CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS
AMENDMENT 14

USCS Const. Amend. 14, § 1 (2005)

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LEXSTAT RCW 35.21.156

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TITLE 35. CITIES AND TOWNS
CHAPTER 35.21. MISCELLANEOUS PROVISIONS

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 35.21.156 (2004)

§ 35.21.156. Solid waste -- Contracts with vendors for solid waste handling systems, plants, sites, or facilities -- Requirements -- Vendor selection procedures

(1) Notwithstanding the provisions of any city charter, or any law to the contrary, and in addition to any other authority provided by law, the legislative authority of a city or town may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the systems, plants, sites, or other facilities for solid waste handling in accordance with the procedures set forth in this section. Solid waste handling systems, plants, sites, or other facilities constructed, purchased, acquired, leased, added to, altered, extended, maintained, managed, utilized, or operated pursuant to this section, RCW 35.21.120 and 35.21.152, whether publicly or privately owned, shall be in substantial compliance with the solid waste management plan applicable to the city or town adopted pursuant to chapter 70.95 RCW. Agreements relating to such solid waste handling systems, plants, sites, or other facilities may be for such term and may contain such covenants, conditions, and remedies as the legislative authority of a city or town may deem necessary or appropriate. When a contract for design services is entered into separately from other services permitted under this section, procurement shall be in accordance with chapter 39.80 RCW.

(2) If the legislative authority of the city or town decides to proceed with the consideration of qualifications or proposals for services from vendors, the city or town shall publish notice of its requirements and request submission of qualifications statements or proposals. The notice shall be published in the official newspaper of the city or town at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice shall state in summary form (a) the general scope and nature of the design, construction, operation, or other service, (b) the name and address of a representative of the city or town who can provide further details, (c) the final date for the submission of qualifications statements or proposals, (d) an estimated schedule for the consideration of qualifications, the selection of vendors, and the negotiation of a contract or contracts for services, (e) the location at which a copy of any request for qualifications or request for proposals will be made available, and (f) the criteria established by the legislative authority to select a vendor or vendors, which may include but shall not be limited to the vendor's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability and financial resources; cost of the services, nature of facility design proposed by the vendor; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public; project performance guarantees; penalty and other enforcement provisions; environmental protection measures to be used; consistency with the applicable comprehensive solid waste management plan; and allocation of project risks.

(3) If the legislative authority of the city or town decides to proceed with the consideration of qualifications or proposals, it may designate a representative to evaluate the vendors who submitted qualifications statements or

proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The legislative authority or representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or may request detailed proposals without having first received and evaluated qualifications statements. The legislative authority or its representative shall evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the legislative authority of the city or town, discussions and interviews shall be held with at least two vendors. Any revisions to a request for qualifications or request for proposals shall be made available to all vendors then under consideration by the city or town and shall be made available to any other person who has requested receipt of that information.

(4) Based on criteria established by the legislative authority of the city or town, the representative shall recommend to the legislative authority a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction or operation of, or other service related to, the proposed project or services. The legislative authority may select one or more qualified vendors for one or more of the design, construction, or operation of, or other service related to, the proposed project or services.

(5) The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the city or town. If the legislative authority or its representative is unable to negotiate such a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the city or town, negotiations with any one or more of the vendors shall be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the legislative authority decides to continue the process of selection, negotiations shall continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(6) Prior to entering into a contract with a vendor, the legislative authority of the city or town shall make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the city or town to use this method for awarding contracts compared to other methods.

(7) Each contract shall include a project performance bond or bonds or other security by the vendor that in the judgment of the legislative authority of the city or town is sufficient to secure adequate performance by the vendor.

(8) The provisions of chapters 39.12, 39.19, and *39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

(9) The vendor selection process permitted by this section shall be supplemental to and shall not be construed as a repeal of or limitation on any other authority granted by law.

The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. Instead, the applicable provisions of RCW 35.22.620, and 35.23.352, and chapters 39.04 and 39.30 RCW shall be followed.

HISTORY: 1989 c 399 § 7; 1986 c 282 § 17. Formerly RCW 35.92.024.

LEXSTAT RCW 81.77.020

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TITLE 81. TRANSPORTATION
CHAPTER 81.77. SOLID WASTE COLLECTION COMPANIES
(FORMERLY: GARBAGE AND REFUSE COLLECTION COMPANIES)

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 81.77.020 (2004)

§ 81.77.020. Compliance with chapter required -- Exemption for cities

No person, his lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state, except in accordance with the provisions of this chapter: PROVIDED, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste.

HISTORY: 1989 c 431 § 18; 1961 c 295 § 3.

LEXSTAT RCW 81.77.040

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TITLE 81. TRANSPORTATION
CHAPTER 81.77. SOLID WASTE COLLECTION COMPANIES
(FORMERLY: GARBAGE AND REFUSE COLLECTION COMPANIES)

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 81.77.040 (2004)

§ 81.77.040. Certificate of convenience and necessity required -- Procedure when applicant requests certificate for existing service area

No solid waste collection company shall hereafter operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. A condition of operating a solid waste company in the unincorporated areas of a county shall be complying with the solid waste management plan prepared under chapter 70.95 RCW applicable in the company's franchise area.

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

Except as provided in *RCW 81.77.150, when an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any solid waste collection company which upon July 1, 1961 is operating under authority of a common carrier or contract carrier permit issued under the provisions of chapter 81.80 RCW shall be granted a certificate of necessity without hearing upon compliance with the provisions of this chapter. Such solid waste collection company which has paid the plate fee and gross weight fees required by chapter 81.80 RCW for the year 1961 shall not be required to pay additional like fees under the provisions of this chapter for the remainder of such year.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter.

HISTORY: 1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.

WASHINGTON COURT RULES

S T A T E

2005

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FOR LOCAL RULES, SEE WASHINGTON
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The briefs will be transmitted by the clerks and provided at no cost to the State Law Library.

(c) **Service and Notice to Appellant in Criminal Case when Defendant is Appellant.** In a criminal case, the clerk will, at the time of filing of defendant/appellant's brief, advise the defendant/appellant of the provisions of rule 10.10.

[Amended effective July 1, 1976; September 1, 1990; June 23, 1995; September 1, 1998; December 24, 2002.]

RULE 10.6 AMICUS CURIAE BRIEF

(a) **When Allowed by Motion.** The appellate court may on motion grant permission to file an amicus curiae brief only if all parties consent, or if the filing of the brief would assist the appellate court. An amicus curiae brief may be filed only by an attorney authorized to practice law in this state, or by a member in good standing of the Bar of another state in association with an attorney authorized to practice law in this state.

(b) **Motion.** A motion to file an amicus curiae brief must include a statement of (1) applicant's interest and the person or group applicant represents, (2) applicant's familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties, (3) specific issues to which the amicus curiae brief will be directed, and (4) applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion.

(c) **On Request of the Appellate Court.** The appellate court may ask for an amicus brief at any stage of review, and establish appropriate timelines for the filing of the amicus brief and answer thereto.

(d) **Objection to Motion.** An objection to a motion to file an amicus curiae brief must be received by the appellate court and counsel of record for the parties and the applicant not later than 5 business days after receipt of the motion.

(e) **Disposition of Motions.** The Supreme Court and each division of the Court of Appeals shall establish by general order the manner of disposition of a motion to file an amicus curiae brief, including whether such disposition is reviewable or subject to reconsideration by the particular court.

[Amended effective September 1, 1999.]

RULE 10.7 SUBMISSION OF IMPROPER BRIEF

If a party submits a brief that fails to comply with the requirements of Title 10, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

[Amended effective July 2, 1976; December 24, 2002.]

RULE 10.8 ADDITIONAL AUTHORITIES

A party or amicus curiae may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion.

[Amended effective September 1, 1999; December 24, 2002.]

RULE 10.9 CORRESPONDING BRIEFS ON CD-ROM

(a) **Filing Corresponding Briefs on Compact Disc.** The submission of briefs and appendices on compact disc read-only memory (CD-ROM), referred to in this rule as corresponding briefs, filed as companions to printed briefs is allowed and encouraged, provided that the Supreme Court and each Division of the Court of Appeals may by general order vary any of the conditions of this Rule, and may prohibit the filing of corresponding briefs.

(b) **Conditions of filing.** A party may file corresponding briefs upon 14 days notice to all other parties and the court, subject to the following requirements:

(1) **Content.** A CD-ROM with corresponding briefs must contain all appellate briefs filed by all parties. Corresponding briefs must be identical in content to the paper briefs. Corresponding briefs may provide hyper-text links to the report of proceedings and clerks papers and to materials cited in the briefs such as cases, statutes, treatises, law review articles, and similar authorities. If any briefs are hyperlinked, all briefs must be similarly hyperlinked by the submitting party. All materials to which a hyperlink is provided must be included on the disc.

(2) **Format.** Corresponding briefs must come fully equipped with their own viewing program; or, if the disk does not contain its own viewing program, the briefs must be viewable within a version of a program such as Adobe Acrobat, Microsoft Word Viewer, or WordPerfect that is downloadable from the Internet at no cost to the user.

(3) **Statement Concerning Instructions and Viruses.** Corresponding briefs must be accompanied by a statement, preferably within or attached to the packaging, that

(A) sets forth the instructions for viewing the briefs and the minimum equipment required for viewing; and

(B) verifies the absence of computer viruses and lists the software used to ensure that the briefs are virus-free.

(c) **Joint Submission.** Upon receiving notice of intent to file corresponding briefs, within 14 days any other party may file notice of intent to join in the submission. When one or more parties join in the submission, the parties shall cooperate in preparing a joint submission. Absent agreement to the contrary,

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(b) **To Correct Mistake or Remedy Fraud.** The appellate court may recall a mandate issued by it to correct an inadvertent mistake or to modify a decision obtained by the fraud of a party or counsel in the appellate court.

(c) **Time for Motion.** The motion to recall the mandate must be made within a reasonable time. [Amended effective September 1, 1994.]

TITLE 13. REVIEW BY THE SUPREME COURT OF COURT OF APPEALS DECISION

RULE 13.1 METHOD OF SEEKING REVIEW

(a) **One Method of Seeking Review.** The only method of seeking review by the Supreme Court of decisions of the Court of Appeals is review by permission of the Supreme Court, called "discretionary review."

(b) **Writ Procedure Superseded.** The procedure for seeking review of decisions of the Court of Appeals established by these rules supersedes the review procedure formerly available by extraordinary writs of review, certiorari, mandamus, prohibition, and other writs formerly considered necessary and proper to the complete exercise of appellate and revisory jurisdiction of the Supreme Court.

[Amended effective June 7, 1979.]

RULE 13.2 DECISIONS REVIEWED AS A MATTER OF RIGHT [RESCINDED]

RULE 13.3 DECISIONS REVIEWED AS A MATTER OF DISCRETION

(a) **What May Be Reviewed.** A party may seek discretionary review by the Supreme Court of any decision of the Court of Appeals which is not a ruling including:

(1) *Decision Terminating Review.* Any decision terminating review.

(2) *Interlocutory Decision.* Subject to the restrictions imposed by rule 13.5(b), any interlocutory decision, including but not limited to (i) a decision denying a motion to modify a ruling of the commissioner or clerk which denies a motion for discretionary review, and (ii) if the clerk refers a motion for discretionary review to the court, a decision by the court which denies a motion for discretionary review.

(b) **Decision Terminating Review.** A party seeking review of a Court of Appeals decision terminating review may first file a motion for reconsideration under rule 12.4 and must file a "petition for review" or an "answer" to a petition for review as provided in rule 13.4.

(c) **Interlocutory Decision.** A party seeking review of an interlocutory decision of the Court of Appeals must file a "motion for discretionary review" as provided in rule 13.5.

(d) **Incorrect Designation of Motion or Petition.** A motion for discretionary review of a decision terminating review will be given the same effect as a petition for review. A petition for review of an interlocutory

decision will be given the same effect as a motion for discretionary review.

(e) **Ruling by Commissioner or Clerk.** A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. The decision of the Court of Appeals on a motion to modify a ruling by the commissioner or clerk may be subject to review as provided in this title.

[Amended effective June 7, 1979; September 1, 1983; September 1, 1994.]

References

Rule 12.3, Forms of Decision; Rule 17.3, Content of Motion, (b) Motion for discretionary review.

RULE 13.4 DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) **How to Seek Review.** A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must file a petition for review or an answer to the petition which raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed.

(b) **Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) **Content and Style of Petition.** The petition for review should contain under appropriate headings and in the order here indicated: (1) Cover. A title page, which is the cover. (2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where cited. (3) Identity of Petitioner. A statement of the name and designation of the person filing the petition. (4) Citation to Court of Appeals Decision. A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration. (5) Issues Presented for Review. A concise statement of the issues presented for review. (6) Statement of the Case. A statement of the facts and procedures relevant to the issues presented for review, with appropriate references to the record. (7) Argument. A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument. (8) Conclusion. A short conclusion stating the precise relief sought. (9) Appendix. An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

(d) **Answer and Reply.** A party may file an answer to a petition for review. If the party wants to seek review of any issue which is not raised in the petition for review, that party must raise that new issue in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a reply to an answer only if the answer raises a new issue. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

(e) **Form of Petition, Answer, and Reply.** The petition, answer, and reply should comply with the requirements as to form for a brief as provided in rules 10.3 and 10.4, except as otherwise provided in this rule.

(f) **Length.** The petition for review, answer, or reply should not exceed 20 pages double spaced, excluding appendices.

(g) **Service and Reproduction of Petition, Answer, and Reply.** The clerk will arrange for the reproduction of copies of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as provided in rule 10.5. The clerk will serve the petition, answer, or reply as provided in rule 10.5(b).

(h) **Amicus Curiae Memoranda.** The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae not later than 60 days

from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should not exceed 10 pages.

(i) **No Oral Argument.** The Supreme Court will decide the petition without oral argument.

[Amended effective September 1, 1983; September 1, 1990; September 18, 1992; September 1, 1994; September 1, 1998; September 1, 1999; December 24, 2002.]

References

Form 9, Petition for Review.

RULE 13.5 DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION

(a) **How to Seek Review.** A party seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after the decision is filed.

(b) **Considerations Governing Acceptance of Review.** Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

(1) if the Court of Appeals has committed an obvious error which would render further proceedings useless; or

(2) if the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or

(3) if the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

(c) **Motion Procedure.** The procedure for and the form of the motion for discretionary review is provided in Title 17. A motion for discretionary review under this rule, and any response, should not exceed 10 pages double spaced, excluding appendices.

(d) **Effect of Denial.** Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the Court of Appeals decision on the issues pertaining to that decision.

[Amended effective September 1, 1990.]

References

Form 3, Motion for Discretionary Review.

RULE 13.6 ACCEPTANCE OF REVIEW

The Supreme Court accepts discretionary review of a decision of the Court of Appeals by granting a motion for discretionary review or by granting a petition for review. Upon accepting discretionary review

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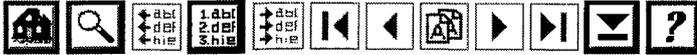
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Seattle Municipal Code

Information retrieved March 15, 2005 12:20 PM

Title 21 - UTILITIES
Subtitle III Solid Waste
Chapter 21.36 - Solid Waste Collection
Subchapter I General Provisions

SMC 21.36.012 Definitions C -- E.

1. "Can" means a watertight, galvanized, sheet metal or plastic container not exceeding thirty-two (32) gallons in capacity, fitted with at least one (1) sturdy handle and a tight cover equipped with a handle, except in the case of sunken cans, such can to be rodent and insect proof and to be kept in a sanitary condition at all times. Alternative containers such as bags, boxes and bundles may be used in place of cans for materials in excess of the customer's primary container. A can or alternate container shall not exceed sixty (60) pounds for each thirty-two (32) gallons of nominal capacity.
2. "Can-unit pickup" means a pickup of a group of cans made of durable corrosion-resistant, nonabsorbent material, watertight, with a close-fitting cover and two handles. Size to exceed twenty (20) gallons, but not to exceed thirty-two (32) gallons or four (4) cubic feet.
3. "Cart" (also at times referred to as "toter" or "wheeled container") means a watertight plastic container, not greater than one-half (1/2) cubic yard in capacity and equipped with wheels, handles and a tight-fitting cover. "Wheeled containers" means containers capable of being mechanically unloaded into the contractor's collection vehicles.
4. "City" means The City of Seattle.
5. "City's Waste" means all residential and nonresidential solid waste generated within the City, excluding Unacceptable Waste, Special Waste, and materials destined for recycling, which materials shall contain no more than ten (10) percent non-recyclable material, by volume. City's Waste includes all such waste, regardless of which private or public entity collects or transports the waste. City's Waste includes all waste remaining after recycling.
6. "Clean wood waste" means and will consist of wood pieces generated as byproducts from manufacturing of wood products, hauling and storing of raw materials, tree limbs greater than four (4) inches in diameter and wood demolition waste (lumber, plywood, etc.) thrown away in the course of remodeling or construction, and waste approved for wood-waste recycling by the Director of the Seattle Public Utilities. It excludes clean yardwaste, treated lumber, wood pieces, or particles containing chemical preservatives, composition roofing, roofing paper, insulation, sheetrock, and glass.
7. "Commercial establishment" means any nonresidential location from which the solid waste is collected by the contractor, and includes the nonresidential portion of mixed use buildings.
8. "Commercial waste" means MSW and CDL collected from commercial establishments within the City.
9. "Compacted material" means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the collector.
10. "Compactor disconnect/reconnect cycle" means the service of disconnecting a compactor from a drop box or container prior to taking it to be dumped and then reconnecting the compactor when the drop box or container is returned to the customer's site.

11. "Compostable waste" means any organic waste materials that are source separated for processing or composting, such as yard waste and food waste.

12. "Composting" means the controlled degradation of organic waste yielding a product for use as a soil conditioner.

13. "Construction, Demolition and Landclearing Waste" or "CDL Waste" means waste comprised primarily of the following materials:

a. Construction waste: waste from building construction such as scraps of wood, concrete, masonry, roofing, siding, structural metal, wire, fiberglass insulation, other building materials, plastics, styrofoam, twine, baling and strapping materials, cans and buckets, and other packaging materials and containers.

b. Demolition waste: solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition waste consists of, but is not limited to, concrete, brick, bituminous concrete, wood and masonry, composition roofing and roofing paper, steel, and minor amounts of metals like copper. Plaster (i.e., sheet rock or plaster board) or any other material, other than wood, that is likely to produce gases or leachate during its decomposition process and asbestos wastes are not considered to be demolition waste.

c. Landclearing waste: natural vegetation and minerals from clearing and grubbing land for development, such as stumps, brush, blackberry vines, tree branches, tree bark, mud, dirt, sod and rocks.

14. "Container" means a bundle, bundle-of-yardwaste, can, cart or detachable container used for collection of garbage, recyclable materials or yardwaste.

15. "Container collection" means collection of commercial or residential waste, recyclable materials or yardwaste from bundles, bundles-of-yardwaste, cans, carts, or detachable containers.

16. "Contaminated soils" means soils removed during the cleanup of a remedial action site, or a dangerous waste site closure or other cleanup efforts and actions which contain harmful substances but are not designated dangerous wastes. Contaminated soils may include excavated soils surrounding underground storage tanks, vector wastes (street and sewer cleanings), and soil excavated from property underlying industrial activities.

17. "Contractor" means those contracting with the City to collect and dispose of solid waste as described in this section, or the authorized representative of such contractors.

18. "Dangerous waste" means those solid wastes designated in WAC 173-303-070 through WAC 173-303-103 as dangerous or extremely hazardous waste.

19. "Detachable container" means a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by the Director of Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels.

20. "Director of Seattle Public Utilities" means the Director of Seattle Public Utilities of The City of Seattle and authorized employees.

21. "Disposal site" means the areas or facilities where any final treatment, utilization, processing or deposition of solid waste occurs. See also the definition of interim solid waste handling site.

22. "Drop box" (also at times referred to as "rolloff" or "lugger" or "dino") means a metal container, of three (3) to forty (40)

cubic-yard-capacity, capable of being mechanically loaded onto a collection vehicle for transport to a disposal facility.

23. "Dumpster" means the same as "detachable container."

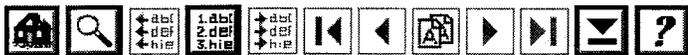
24. "Dwelling unit" in addition to its ordinary meaning includes a room or suite of rooms used as a residence and which has cooking facilities therein, but does not include house trailers in trailer courts, rooms in hotels or motels, or cells or rooms in jails or government detention centers.

25. "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(Ord. 120947 Section 1, 2002: Ord. 120250 Section 1(part), 2001: Ord. 118396 Section 138, 1996: Ord. 116412 Section 3, 1992: Ord. 115589 Section 1, 1991: Ord. 115231 Section 1, 1990: Ord. 114723 Section 3, 1989: Ord. 114205 Section 1(part), 1988: Ord. 113502 Section 2(part), 1987: Ord. 112942 Section 1(part), 1986: Ord. 112171 Section 1(part), 1985: Ord. 96003 Section 1(part), 1967.)

Link to [Recent ordinances](#) passed since 12/31/04 which may amend this section. (Note: this feature is provided as an aid to users, but is not guaranteed to provide comprehensive information about related recent ordinances. For more information, contact the Seattle City Clerk's Office at 206-684-5175, or by e-mail at clerk@seattle.gov)





Seattle Municipal Code

Information retrieved March 15, 2005 12:21 PM

Title 21 - UTILITIES
Subtitle III Solid Waste
Chapter 21.36 - Solid Waste Collection
Subchapter I General Provisions

SMC 21.36.016 Definitions R -- Z.

1. "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to The City of Seattle's Comprehensive Solid Waste Plan.

2. "Recycling" or "recycle" means transforming or remanufacturing waste materials into usable or marketable materials for use other than incineration (including incineration for energy recovery) or other methods of disposal.

3. "Refuse" means either garbage or rubbish or both garbage and rubbish, and includes litter, but excludes yardwaste.

4. "Residence" or "residential" means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include mixed use buildings.

5. "Return Trip" means a trip to pick up material that was originally unavailable for collection through no fault of the collector.

6. "Roll-off collection" means the collection of commercial waste by means of a drop box.

7. "Rubbish" means all discarded nonputrescible waste matter excluding yardwaste.

8. "Scavenging" means removal of material at a disposal site or interim solid waste handling site without the approval of the site owner or operator or of the Health Officer.

9. "Secondary collection area" means for each contractor that area of the City within which the City's other commercial MSW collection contractor is the designated primary MSW collection service provider, and in which the contractor may provide such services only to individual customers who have requested, and been granted by the City, the right to receive such services from the contractor.

10. "Service unit" means a "garbage container."

11. "Small quantity generator hazardous waste" means any discarded liquid, solid, contained gas or sludge, including any material, substance, product, commodity or waste used or generated by businesses, that exhibits any of the characteristics or criteria of dangerous waste set forth in Chapter 173.303 WAC, but which is exempt from regulation as dangerous waste.

12. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yardwaste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials. This includes all liquid, solid and semisolid materials which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste includes, but is not limited to sludge from wastewater treatment plants, seepage from septic tanks, wood waste, dangerous waste, and problem wastes, as well as other materials and substances that may in the future be included in the definition of "solid waste"

in RCW 70.95.030. Solid waste does not include recyclable materials (including compostable waste) collected from commercial establishments.

13. "Solid waste container" means a garbage container, detachable container, or any other secure, rigid, watertight container with a tight-fitting lid.

14. "Special category wastes" means wastes whose disposal is limited by certain restrictions and limitations, as identified in Section 21.36.029 **CC**.

15. "Special Event Service" means services requiring container and/or drop box delivery and pickup at events which serve the general public with a duration of one (1) week or less, and which are not part of a series of events sponsored by the same customer. Examples of qualifying events include Bumbershoot, Folklife and Seafair. Payment for services will include daily rental, time rates, disposal charges as well as applicable taxes.

16. "Special pickup" means a pickup requested by the customer at a time other than the regularly scheduled pickup time, but which does not involve the dispatch of a truck.

17. "Special Waste" means contaminated soils, asbestos and other waste specified by Washington Waste Systems in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.

18. "Street" means a public or private way, other than alleys, used for public travel.

19. "Street side litter collection" means collection of MSW from City-supplied containers located on public right-of-way.

20. "Sunken can" means a garbage can which is in a sunken covered receptacle specifically designed to contain garbage cans and where the top of the garbage can is approximately at the ground level.

21. "Temporary service" means service that is required for a period of ninety (90) days or less in conjunction with containers or drop boxes. Temporary service and its associated rates are not to be used for the first ninety (90) days of service when the customer requests, and the contractor provides, service for more than ninety (90) days.

22. "Toter" means the same as "cart."

23. "Unacceptable Waste" means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, by those governmental entities having jurisdiction or any waste the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste includes any waste that is now or hereafter defined by federal law or by the disposal jurisdiction as radioactive, dangerous, hazardous or extremely hazardous waste and vehicle tires in excess of those permitted to be disposed of by the laws of the disposal jurisdiction.

24. "WUTC" means the Washington Utilities and Transportation Commission of the State of Washington.

25. "Yardwaste" means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four (4) inches in diameter; and biodegradable waste approved for the yardwaste programs by the Director of the Seattle Public Utilities. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; and soil contaminated with hazardous substances.

(Ord. 120591 Section 1, 2001; Ord. 120250 Section 1(part), 2001; Ord. 118396 Section 140, 1996; Ord. 116419 Section 5, 1992; Ord.

115589 Section 3, 1991: Ord. 115231 Section 2, 1990; Ord. 114723 Section 5, 1989: Ord. 114205
Section 1(part), 1988: Ord. 113502 Section 2(part), 1987: Ord. 112942 Section 1(part), 1986: Ord.
112171 Section 1(part), 1985: Ord. 96003 Section 1(part), 1967.)

Link to Recent ordinances passed since 12/31/04 which may amend this section. (Note: this feature is provided as an aid to users, but is not guaranteed to provide comprehensive information about related recent ordinances. For more information, contact the Seattle City Clerk's Office at 206-684-5175, or by e-mail at clerk@seattle.gov)



DECLARATION OF SERVICE

I, Yvonne Maletic, declare:

I am not a party in this action. I reside in the State of Washington and am employed by Institute for Justice in Seattle, Washington. On March 16, 2005, a true copy of the foregoing Reply was placed in envelopes addressed to the following persons:

Polly McNeill
Summit Law Group, PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104-2682

Andrew Kenefick
Waste Management of Washington, Inc.
801 Second Avenue, Suite 614
Seattle, WA 98104-1599

James K. Sells
Ryan Sells Uptegraft, Inc. PS
9657 Levin Rd. NW, Ste. 240
Silverdale, WA 98383

Will Patton
Assistant City Attorney
The City of Seattle
600 - 4th Ave., 4th Floor
P.O Box 94769
Seattle, WA 98124-4769

David W. Wiley
Dana A. Ferestein
Williams, Kastner & Gibbs, PLLC
Two Union Square, Suite 4100
Seattle, WA 98111-3926

which envelopes with postage thereon fully prepaid were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Seattle, Washington.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 16th day of March 2005 at Seattle, Washington.


Yvonne Maletic