No. 98208-2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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

Appellants,

v.

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

Respondents.

BRIEF OF APPELLANTS

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I. INTRODUCTION

Appellants[1] raise two questions. First, does Seattle's Rental Registration and Inspection Ordinance (the "RRIO", Seattle Municipal Code ("SMC") §§ 22.214 *et seq*.)[2] violate the Washington Constitution's guarantee in article I, § 7 that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law"? The second is whether RCW 59.18.125, the section of the State's Residential Landlord Tenant Act (the "Act") that authorized Seattle to pass RRIO, is also unconstitutional. The answer to both questions is "yes."

Article I, § 7 prohibits a warrantless, nonconsensual search of a tenant's home. Contrary to this bedrock principle, RRIO mandates that inspectors search a percentage (either 10% or 100%) of rental units in a building—regardless of whether the tenant consents or demands a warrant. The searches are highly intrusive, and if a private inspector finds anything wrong, in almost all instances, that finding gets reported to the government. Tenants can only avoid this outcome if they convince every one of their neighbors (which, in big buildings, could be hundreds of households) to let a stranger into their home and go through their bedrooms and bathrooms.

[1] Appellants shall refer to Appellee City of Seattle as the "City" or "Seattle" and Appellee State of Washington as the "State." The tenant Appellants will be referred to as "Tenants" and the landlord Appellants will be referred to as "Landlords."

[2] In accordance with RAP 10.4(c), the verbatim text of the primary statute and ordinances cited in this brief is included in the accompanying appendix.

The tenant must also convince the landlord to spend hundreds or thousands more dollars—just to have a modicum of constitutionally-entitled privacy.

Seattle justifies this burdensome matrix for maintaining privacy by relying on *City of Pasco v. Shaw*, 161 Wn.2d 450, 460, 166 P.3d 1157 (2007) ("*City of Pasco*"), which held that privately-employed inspectors, even when carrying out government-mandated inspections, are not "state actors." *City of Pasco* was wrongly decided. Article I, § 7's history—and subsequent treatment by the Washington Supreme Court—do not support *City of Pasco's* "state action" exemption to Washingtonians' privacy rights. Put simply, Seattle's "private inspectors" are government agents, acting at the City's direction, and pursuant to its rules and training. They are only "private" in that Seattle does not directly employ them. As government agents, they may not conduct warrantless, nonconsensual inspections.

And even if *City of Pasco* is valid, Seattle's inspection scheme is still unconstitutional because it does not have the protections that saved the ordinance under review in *City of Pasco*. *Id.* at 460. It conditions the preservation of tenant privacy rights on the tenant and landlord shouldering special, expensive burdens. These burdens are unconstitutional conditions on the exercise of constitutional rights and are invalid.

Finally, the state authorizing Act is unconstitutional. Because the legislature cannot statutorily authorize a municipality to conduct unconstitutional searches, the Act is invalid as well.

This Court's vigorous application of article I, § 7 of the Washington Constitution is crucial. The COVID-19 pandemic shows that privacy in the home is more important than ever. Now, the home is not just a habitat where a person retreats from the world. For many people, it *is* the world.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The Superior Court erred when it concluded that RRIO was constitutional under article I, § 7 of the Washington Constitution.

2. The Superior Court erred when it concluded that the state statute granting Seattle the authority to pass the RRIO could be constitutionally applied.

B. Issues Pertaining to Assignments of Error

1. Are private inspectors under RRIO government agents bound by article I, § 7?

2. If they are, is the Seattle ordinance at issue here consistent with article I, § 7?

3. If private inspectors under RRIO are not bound by article I, § 7, is RRIO nonetheless unconstitutional because it conditions the

preservation of a tenants' right of privacy on the tenant and landlord shouldering expensive and difficult inspection requirements?

4. Is a state statute that authorizes municipal governments to pass unconstitutional laws itself unconstitutional?

5. Are Appellants entitled to an award of attorney fees under the common fund exception to the American Rule on attorney fees?

III. STATEMENT OF THE CASE

Appellants are Seattle tenants and landlords who brought a class action suit against the City seeking a declaration that RRIO is unconstitutional and an injunction stopping it. They also sued the State for unconstitutionally authorizing Seattle to pass RRIO. The trial court dismissed under CR 12(b)(6), so all facts alleged in the Complaint "are presumed to be true." *Burton v. Lehman*, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005).

The following sections will (A) describe RRIO's genesis, and how the Washington Supreme Court and the Act have shaped it; (B) explain the mechanics of RRIO inspections; (C) identify the inspectors who conduct RRIO inspections and how the City of Seattle trains them; (D) describe the threatened, warrantless, RRIO inspections of Tenants and Landlords; and, in Sections (E) and (F), describe the two phases of trial court litigation.

A. RRIO's History.

In the 1980s, Seattle used a complaint system to address code violations. Tom Byers & Claire Powers, *Improving Rental Housing Conditions in Seattle: Issues and Options* 5 (2008). In 1990, however, Seattle implemented a so-called "proactive" inspection program. *Id*. Under this program, Seattle followed the constitutional norm of applying for search warrants to conduct non-consensual inspections. Nevertheless, the "*McCready*" [3] cases, discussed in Sections 1 and 2 below, invalidated those search warrants—and Seattle's program—under article I, § 7. The Court held that rental inspections invade privacy and set a high bar for obtaining valid inspection warrants. Seattle was never able to obtain search warrants that met *McCready*'s standards. In Section 3, Appellants will show how Seattle, inspired by *City of Pasco*, attempted to jettison *McCready*'s warrant requirement altogether by passing and amending RRIO.

1. *McCready I*—non-consensual rental inspections invade "private affairs," and require a valid search warrant.

Under RRIO's predecessor inspection program, Seattle notified building owners and tenants as a "matter of courtesy," requesting tenants' consent to be inspected. If the tenant refused entry to city inspectors, Seattle sought search warrants ex parte. *City of Seattle v. McCready*, 123 Wn.2d

[3] *City of Seattle v. McCready*, 123 Wn.2d 260, 868 P.2d 134 (1994) *("McCready I")*; *City of Seattle v. McCready*, 124 Wn.2d 300, 877 P.2d 686 (1994) ("*McCready II*").

260, 264–65, 868 P.2d 134 (1994) *("McCready I")*. In considering the validity of those search warrants under article 1, § 7, the Washington Supreme Court considered: "[1] the disturbance of a person's 'private affairs' or the invasion of his or her home, which triggers the protection of the section; and [2] the requirement that 'authority of law' justify the governmental disturbance or invasion." *Id*. at 270.

Rental inspections so obviously invade private affairs that the Court foreclosed any argument to the contrary: "Seattle does not claim, nor could it, that a non-consensual inspection of residential apartments is not a disturbance of 'private affairs' under Const. art. 1, § 7." *Id*. at 271. "The only question under Const. art. 1, § 7 [wa]s therefore whether there exists adequate 'authority of law' to justify the manifest disturbance of appellants' private affairs represented by the issuance and potential execution of these warrants." *Id*.

The City had no suspicion that a specific apartment violated the code, and no statute authorized courts to issue warrants upon less than probable cause, so the warrants had no "authority of law" and could not stand. *Id*. at 140–41, 143–45. Seattle went back to the drawing board.

2. *McCready II*—quashing inspection warrants, even though they were based on probable cause.

Following *McCready I*, Seattle obtained fresh inspection warrants, but the high court again held the warrants were invalid, this time because they were based on probable cause of civil, but not criminal, housing code infractions. *City of Seattle v. McCready*, 124 Wn.2d 300, 877 P.2d 686 (1994) ("*McCready II*"). Seattle's municipal court was limited in jurisdiction to "issue administrative search warrants supported by probable cause *only if* the application for the inspection warrant alleges a housing code violation which constitutes a crime rather than a civil infraction." *McCready II*, 124 Wn.2d at 310 (emphasis added). The warrant application did not allege that code violations constituted a *crime*, and "warrant issued by the municipal court was without authority of law and must be quashed under *McCready I*." *Id*.

3. Post-*McCready* Inspections—Seattle Passes RRIO in response to *City of Pasco v. Shaw*.

With no legal basis to continue searches without invading private affairs, Seattle returned to a complaint-based system. Byers & Powers, *supra*, at 6. In 2013, however, Seattle enacted the RRIO, which requires all Seattle landlords and tenants submit to interior inspections. SMC §§ 22.214 *et seq*. Like its progenitor program, RRIO was shaped by—and presses beyond the limits of—Washington precedent. This time, RRIO was

spawned by *City of Pasco's* "state action" analysis. The case introduced the idea that if the search was not done by state actors, it was not subject to constitutional limitation. *City of Pasco*, 161 Wn.2d at 460–61.

In 1997, Pasco adopted a rental-inspection program requiring a certificate of inspection from landlords to ensure housing code compliance. *Id.* at 455. The landlord could choose either a city or private inspector, and Pasco did not require the city itself to conduct the searches. *Id*. at 456, 460.

Pasco tenants objected to the inspections, and the high court considered "whether the Fourth Amendment or article I, section 7 is violated where a landlord and a privately engaged inspector inspect a rental property for code violations." *Id*. at 459. A divided court held that Pasco's ordinance violated neither constitutional provision because the private inspectors were not state actors. *Id*. at 461.

For private inspectors to be state actors, according to the Court, they must be functioning "as an agent or instrumentality of the state." *Id*. at 460. *City of Pasco* acknowledged that all common law agency analyses "depend[] on the circumstances of a given case." *Id*. at 460. It is the searcher's "capacity" at the time of the search "rather than [] the person's primary occupation" that informs whether they are acting for the government's benefit. *Id*.

The *City of Pasco* majority imported a Ninth Circuit two-part test:

"[1] whether the government knew of and acquiesced in the intrusive conduct *and* [2] whether the party performing the search intended to assist law enforcement efforts *or to further his [or her] own ends*." *Id*. (quoting *State v. Swenson*, 104 Wn. App. 744, 754, 9 P.3d 933 (2000) (quoting *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982) (quoting *United States v. Walther*, 652 F.2d 788, 791–92 (9th Cir. 1981)).) (alterations and emphasis in *City of Pasco*).

Applying this federal test, the majority concluded that because the city never saw—and thus had no direct knowledge of—the inspection, the inspection was purely done for the landlord's purposes. *Id.* at 460–61. The dissent disagreed, noting that "landlords are coerced into complying with these unwanted intrusions into private residential units to further the government's objective of compliance with health and safety codes" and not the landlord's desires. *Id*. at 469 (Sanders, J. dissenting).

The negative inference of the *City of Pasco* decision, critical to analyzing RRIO, is that if the city *did* see the report, the inspector was acting for the city's benefit, and, therefore, *was* a government actor. Seattle and the State seized on *City of Pasco's* holding to try, unsuccessfully, to evade article I, § 7.

B. How RRIO Inspections Work.

Following *City of Pasco*, Seattle passed RRIO in 2013 requiring

landlords to register their properties. SMC § 22.214.040.A. Registration requires a certificate of compliance issued after an inspection. SMC § 22.214.050. A landlord's registration is valid for two years from the date Seattle issues the registration. SMC § 22.214.040.C.

Under the RRIO, Seattle inspects 10 percent of rental properties randomly each year. SMC § 22.214.050.A. Seattle will inspect 100 percent, or close to 100 percent, of all properties within 10 years, whether they are empty or occupied. CP 204, 212. RRIO applies "to all rental housing units," defined as "a housing unit that is or may be available for rent, or is occupied or rented by a tenant or subtenant in exchange for any form of consideration." SMC §§ 22.214.030, .020. This is a vast swath of housing in Seattle—almost 153,000 rental housing units. CP 204-05.

RRIO inspections are, or can be, as discussed in the following sections, (1) invasive; (2) non-consensual; and (3) warrantless, a combination that violates private affairs when the searcher is a government agent. *McCready I*, 123 Wn.2d at 271 ("Seattle does not claim, nor could it, that a non-consensual inspection of residential apartments is not a disturbance of 'private affairs' under Const. art. 1, § 7.").

1. RRIO Inspections Are Invasive.

RRIO inspections are wall-to-wall, covering "each habitable room in the unit." CP 110–23. Inspectors have a blank slate to enter any "living,

sleeping, eating or cooking" area. CP 110. Inspectors search bedrooms shared by intimate partners and search children's rooms without the consent or presence of parents. CP 205.

When inspectors gain access to the interior of the home, they can view religious, political, medical, and other personal information about the tenants—things like holy books, medications, and photographs of politicians. CP 205–06. Inspections also reveal expensive goods or reserves of cash or precious metals, jewelry, or stones, or, alternatively, demonstrate conditions of poverty. CP 206. Because Seattle gives inspectors access to bedrooms, they can view undergarments, medical devices, and religious, recreational, and intimate possessions. *Id*.

2. RRIO Inspections Are Non-Consensual.

RRIO inspections are mandatory for both tenants and landlords. *See* SMC § 22.214.050.H.1.d. ("A tenant shall not unreasonably withhold consent for the owner or owner's agent to enter the property.") The "Renters" information on RRIO's website warns that "City and state law says that you cannot unreasonably deny access for the inspection." CP 126, 209–210. Seattle does not enforce this ordinance itself, however. Instead, the landlord must force him or herself into a nonconsenting tenant's home without a warrant. The RRIO "place[s] the obligation of complying with its requirements upon the owners of the property and the rental housing

units subject to [the RRIO]." SMC § 22.214.075.D. In the pamphlet, "*What You Need to Know About Inspections*," Seattle tells landlords, "You should work out access to the unit with your renter. Renters cannot unreasonably deny access for a RRIO inspection." CP 131. The property owner is liable for fines of up to $500 a day if they honor a tenant's right to deny an inspection. SMC § 22.214.086.A.

3. RRIO Inspections Are Warrantless.

If the tenant does not grant consent, state law authorizes Seattle—if it chooses—to obtain a search warrant based on probable cause (also referred to as individualized suspicion) to believe that there is a problem with the property. *See* RCW 59.18.150(4). State law does not, however, mandate that a municipality obtain a warrant. *See* RCW 59.18.150(4)(a) ("A search warrant *may* be issued . . . . allowing the inspection of any specified dwelling unit") (emphasis added). This is a problem in Seattle because—in the wake of *McCready II*—the City adopted a policy of not seeking warrants. Seattle conceded below that "a warrant requires probable cause of an actual violation and the City may not seek a warrant simply because a tenant refuses entry." CP 233. Seattle has never sought an inspection warrant since adopting RRIO and instead forces landlords to coercively obtain tenant consent. CP 210.

C. Government Inspectors and Government Trained Inspectors Conduct RRIO Inspections.

To carry out RRIO's mandatory, invasive, non-consensual, and warrantless inspection, landlords may use city inspectors or private inspectors.[4] SMC § 22.214.050.C. Section One describes RRIO's framework for ostensibly private inspections. Section Two describes how, according to the allegations in Appellants' complaint, the city trains privately employed inspectors to act as its representatives.

1. RRIO's Framework for "Private" Inspectors.

Initially, the RRIO did not require private inspectors to provide failed inspections results to Seattle. However, in 2010, the Washington Legislature—contradicting *City of Pasco*—amended the Act to *require* municipalities to collect inspection information from private inspectors. *See* RCW 59.18.125(6)(e) ("If a rental property owner chooses to hire a qualified [private] inspector . . . and a selected unit of the rental property fails the initial inspection . . . the results of the initial inspection . . . must be provided to the local municipality.").

In 2016, pursuant to the Act, Seattle amended the RRIO and forced private inspectors to provide inspection results to the city, which then audits the reports to select additional units for inspection.

[4] There is no dispute here that city inspectors are state actors.

SMC § 22.214.050.J. As discussed below, this provision was the basis for the Tenants and Landlords' first complaint against RRIO.

2. Seattle Trains and Deploys Private Inspectors.

Appellants alleged below—based on training materials obtained in discovery—that Seattle trains "private" inspectors to be government representatives. According to Seattle training materials, the city "views the relationship with Private Inspectors as a *partnership*" with "[s]hared investment in the success of the RRIO Program." CP 208, 271; emphasis added. Seattle coaches privately employed inspectors how to communicate government information to tenants—including access to city services. CP 208, 273. "Private" inspectors should expect to "get questions about access to City services." *Id*. Privately employed inspectors pay Seattle a total of $450.00 to register and to complete this mandatory training. [5]

Seattle recognizes that privately employed inspectors will be perceived to be government agents, warning privately employed inspectors that "[i]mmigrants and refugees may have a fear of government based on experiences in their home countries." CP 273, 275. Seattle tells privately

[5] *See* CP 242 (citing RRIO Program Fees, https://www.seattle.gov/Documents/Departments/SDCI/Codes/RRIO/RRIOProgramFees.pdf (last visited July 8, 2020) ("The fee for a two-year registration as a private qualified rental housing inspector is $250. The fee must be paid to complete registration. Private inspectors must also participate in the City's RRIO inspector training. The training fee is $200 and is payable in advance of the training. Private inspector registration and payments must be made through the online system.")).

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

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

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

1. Appellants Bean, Heiderich, and Lee.

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

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

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

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

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

Seattle will intrude into Ms. Bean's home without her consent. They are committed to helping their tenants protect their constitutional rights. CP 203. Furthermore, they do not want to be placed in an adversarial position with their own tenants by compelling unwanted inspections. *Id*.

2. Appellants Bentley, Briere, Pynchon, and Shadbolt.

On May 14, 2018, Appellants Pynchon and Shadbolt received an inspection notice for the rental home where Matthew Bentley, Joseph Briere, and their housemates reside. CP 159. In 2018, the housemates wrote to SDCI declining to voluntarily allow a city or private inspector inside. CP 159, 162. The tenants invoked their rights under article I, § 7, demanding a search warrant. CP 162.

Ms. Pynchon also wrote to SDCI, informing it that her tenants refused an inspection—a decision she respected. CP 159, 164. On August 23, 2018, SDCI wrote to Ms. Pynchon, acknowledging receipt of the tenants' letter, but responding only to her. CP 159, 166. The letter laid out the RRIO requirements, extended the inspection deadline to October, and threatened fines of up to $500 per day for non-compliance. CP 166. SDCI ignored the tenants' constitutional objections. CP 166, 211.

On November 14, 2018, SDCI threatened action against Ms. Pynchon for respecting her tenants' privacy: "[U]nder RRIO it is your obligation to complete the inspection. Any enforcement action resulting

from failure to complete the RRIO inspection will be taken against you. At the same time, your tenants have an obligation to not unreasonably deny you access for activities such as an inspection." CP 159, 168. Seattle thus forced Pynchon and Shadbolt to either invade the privacy of their tenants or face hundreds of dollars in daily fines. CP 212.

This correspondence ended when Tenants and Landlords filed this lawsuit on December 4, 2018.

3. Appellant Brown.

Appellant Boaz Brown is a college student and renter. Mr. Brown does not want an inspection and has taken steps to hide and store items he wishes to keep private in the event inspectors force their way in. CP 213. He feels he should not have to take these steps to maintain his privacy in his own home. *Id*.

E. Phase One of the Litigation Below—The Superior Court Denies the City's Motion to Dismiss, But Dismisses the State.

The Tenants and Landlords filed a class-action lawsuit in the King County Superior Court against the City and the State in response to the threats of the above warrantless searches of their homes. CP 1–18. On March 29, 2019, Judge Steven Rosen heard CR 12(b)(6) motions to dismiss by the State and the City. Regarding the State, Judge Rosen acknowledged that the Act's mandate that inspection reports go to the government was

constitutionally problematic under *City of Pasco* because "the state is telling the city what has to be turned over, *which, at least in some reading, violates the State Supreme Court case*." RP 14:14–25 (emphasis added).

Nevertheless, Judge Rosen dismissed the State on the theory that a city could conceivably comply with the Act—and the Washington Constitution—by inspecting "when the unit is empty before it's been rented." RP 44:9. Judge Rosen denied the City's motion to dismiss: "I believe that the Supreme Court, in *Pasco v. Shaw*, was saying exactly what the plaintiffs are saying in this case that you're a state actor if you must turn over failed reports to the state, the government. And I'm denying the city's motion to dismiss because of that." RP 43:5–10.

Based on Judge Rosen's decision, in June 2019, the City amended RRIO purportedly "to conform to the Pasco ordinance that was upheld as constitutional in *City of Pasco*." CP 224. Under the 2019 RRIO, if a landlord chooses to hire a privately employed inspector, they must either obtain inspections of "100 percent of the rental housing units on the property" or else "both the results of the initial inspection and any certificate of compliance must be provided to the Department" in the event a unit fails inspection. SMC § 22.214.050.J. So, *all* tenants must submit to a sweep of the entire apartment building—and landlords must pay multiple fees—if they wish the inspection to be truly private. CP 207.

Under the revised RRIO, then, to preserve tenants' privacy, landlords and tenants must submit to a sweep of the entire apartment building, with strangers entering every occupied apartment, and landlords must pay multiple inspection fees. CP 207. Hiring a privately employed inspector means not only paying that inspector, but also paying Seattle an additional $40 processing fee per certificate. CP 268.

To illustrate, under the 2019 ordinance, Seattle says which units must be inspected—for example, 300 Main Street, apartments 3 and 8 in a 20-unit building. If the owner hires a private inspector to inspect only units 3 and 8, any failed results must still be reported to Seattle. However, if the landlord chooses to respect the wishes of a nonconsenting tenant and not have any failed inspections go to the City, he or she must have units 3 and 8, as well as 1 and 2, 4–7, and 9–20 inspected, all at extra cost—and even if the other residents object to the inspection.[6]

F. Phase Two of the Litigation Below—Dismissal of the City.

Appellants amended the Complaint, adding a claim that Seattle's 2019 RRIO violates the unconstitutional conditions doctrine by making the choice to exercise one's article I, § 7 rights subject to government burdens.

[6] This description of how the law works is only based on what the ordinance says. At the time of the hearing, Seattle was still, on its website, telling inspectors to report results back. CP 269. The gap between what the City's ordinance says and what the City says it is doing warranted factual development.

CP 208, 218–19. Seattle contended that its program was indistinguishable from Pasco's in a Second Motion to Dismiss. On January 24, 2020, Judge Susan Craighead dismissed the City, noting she had "some concerns about *Pasco*." RP 91:4–21. But, she reasoned, "I am not the Supreme Court," and though "a lot of things have changed in society since . . . [*City of Pasco*] . . .," she was "obligated to follow *Pasco*," concluding that the "redrafted the ordinance . . . does comply with *Pasco*." RP 91:4–21. At the end of the hearing, Seattle warned tenants:

> [B]e careful what you ask for [in] response to plaintiffs' arguments. Because we can chip away at this and take away different aspects, but if the sampling is a problem we don't have to do it. We can roll back to we're going to do every single property and unit in the city of Seattle and be completely within *Pasco*, and I don't actually think that's what plaintiffs want.

RP 90:22–91:4. The Court entered final judgment on February 28, 2020.

IV. STANDARD OF REVIEW

"Whether a dismissal was appropriate under CR 12(b)(6) is a question of law that an appellate court reviews de novo." *Burton v. Lehman*, 153 Wn.2d at 422. CR 12(b)(6) motions should be granted only "sparingly and with care." *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995) (citation omitted). "[A]ny hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support plaintiff's claim." *Id*. (citation omitted). And "[w]hen an area of

the law involved is in the process of development, courts are reluctant to dismiss an action on the pleadings alone by way of a CR 12(b)(6) motion." *Id.* at 751.

V. SUMMARY OF ARGUMENT

In Section A, Appellants will show that RRIO is unconstitutional under article I, § 7, which aggressively protects privacy, particularly in the home. *City of Pasco* defied article I, § 7's history and jurisprudence by holding, pursuant to federal precedent, that a plaintiff must show that a search is "state action" before article I, § 7 applies. This was wrong. Moreover, even under the federal precedent upon which *City of Pasco* relied, the City's ostensibly private inspectors are, in fact, government agents. Under federal principles, private people conducting searches as a part of regulatory enforcement are archetypal state actors.

Even if *City of Pasco* stands, Appellants will show in Section B that Seattle's ordinance is still unconstitutional. Seattle's inspection regime is substantively different from, and far more controlled by the government than, the program upheld in *City of Pasco*. In addition, for tenants and landlords to preserve their privacy rights under the RRIO, they must shoulder extensive, expensive burdens not borne by those who waive their rights. This is a classic unconstitutional condition.

Appellants will show in Section C that the statute authorizing Act

is also unconstitutional. It impermissibly grants authority to municipalities to implement inspection regimes that do not comply with article I, § 7 and requires private inspectors to reports results to the government. Because the enabling Act is itself unconstitutional, RRIO must also fall.

Finally, in Section D, if Appellants successfully restrain the illegal expenditure of funds under RRIO, they are entitled to attorney's fees.

VI. ARGUMENT

A. RRIO is Unconstitutional Under Article I, § 7.

Article I, § 7, at its core, protects against trespass—the timeless concept that an individual determines who enters their private space. Yet under the ruling below, the challenged RRIO inspections, though unquestionably non-consensual, physical trespasses, did not implicate article I, § 7. The Appellees argued, and the trial court ruled, that because privately employed inspectors carry out RRIO inspections, their attendant invasion of tenant privacy does not merit constitutional review. This is wrong. Seattle mandates "private" inspections—and Seattle trains, registers, and requires reports from "private" inspectors. Requiring tenants to submit to invasive warrantless searches of their homes by government-trained inspectors violates the Washington Constitution.

To the extent *City of Pasco* forecloses Appellants' claim, it was wrongly decided under article I, § 7 and should be overturned. The high

court "can reconsider [its] precedent not only when it has been shown to be incorrect and harmful but also when the legal underpinnings of our precedent have changed or disappeared altogether." *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 668, 451 P.3d 675 (2019) (overruling prior cases based on U.S. Supreme Court doctrinal changes).

City of Pasco was wrongly decided because it allowed trespass without consent and without a search warrant. Washington is uniquely protective of personal privacy against such unwanted invasions. Washington's framers intentionally chose more expansive language than the U.S. Constitution. Both early and more recent scholarship confirms that the language was meant to protect against all trespasses—public or private. Article I, § 7 is also expansive in its definition of the home. *See State v. Pippin*, 200 Wn. App. 826, 839, 403 P.3d 907 (2017) (extending article I, § 7, to a homeless person's tent). And, unlike many other jurisdictions, it rejects the private search doctrine because "article I, § 7 . . . requires a warrant before any search, reasonable or not." *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008). *City of Pasco* departed from Washington's fundamental constitutional protection of privacy by allowing invasive and warrantless searches of homes by strangers.

In the following sections, Appellants seek reversal of *City of Pasco* because: (1) it is inconsistent with article I, § 7 privacy protections against

all forms of trespass; (2) it has been eroded by subsequent article I, § 7 precedent disallowing private searches; (3) it misread federal cases, which actually hold that searches conducted pursuant to regulation invoke state action; and, finally, (4) it has harmful state-wide consequences.

1. Contrary to *City of Pasco*, Article I, § 7 guards against all trespasses into home privacy.

The Washington Constitution strongly protects against invasions of privacy, especially in the home. Although federal courts require that a plaintiff show that a search is a state action before the constitution applies, Washington, contrary to *City of Pasco*, does not require that showing. "Unlike the Fourth Amendment, Const. art. I, § 7 'clearly recognizes an individual's right to privacy with no express limitation.'" *State v. Young*, 123 Wn.2d 173, 180, 867 P.2d 593 (1994) (quoting *State v. Simpson*, 95 Wn.2d at 178). The high court recently affirmed that article I, § 7 "is qualitatively different from the Fourth Amendment and provides greater protections." *State v. Muhammad*, 194 Wn.2d 577, 586, 451 P.3d 1060 (2019) (lead opinion) (citations omitted).[7] These "greater protections"

[7] The Washington Supreme Court has adopted Sir William Pitt's classic defense of one's home:

> The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!

State v. Ferrier, 136 Wn.2d 103, 112 n.6, 960 P.2d 927 (1998).

apply to any physical trespass, thus encompassing virtually any non-consensual search. *See State v. Mecham*, 186 Wn.2d 128, 149, 380 P.3d 414 (2016) (en banc) (noting a search occurs "whenever the Government *obtains information* by physically intruding" on a citizen's private space) (cleaned up) (emphasis added)).

Protecting the home is the core article I, § 7 value. *See Young*, 123 Wn.2d at 181 ("In no area is a citizen more entitled to his privacy than in his or her home. For this reason, the closer officers come to intrusion into a dwelling, the greater the constitutional protection.") (cleaned up). That is because article I, § 7 "private affairs"—"disclosure of beliefs or associations, whether familial, political, religious, or sexual, as well as the disclosure of intimate or personally embarrassing information"—are all viewable at home. *Pippin*, 200 Wn. App. at 839.

City of Pasco's ruling that government-mandated inspections do not involve government actors conflicts with article I, § 7's protection of privacy in the home against trespass, starting with its adoption at the Washington Constitutional Convention.

In the late nineteenth century, the U.S. Constitution had already been construed to protect "all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life." *Young*, 123 Wn.2d at 179–80 (cleaned up) (citing *Boyd v. United States*,

116 U.S. 616, 630, 6 S. Ct. 524, 29 L. Ed. 746 (1886)). Nevertheless, Washington's Constitutional Convention provided "even more rigorous protection of privacy rights than those guaranteed by the Fourth Amendment." *Id*. *See also* Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* 20–21 (Greenwood Press, 2002) (noting that after rejecting "a proposal to adopt a provision identical to the Fourth Amendment, the convention adopted a strikingly different provision that . . . emphasize[s] the individual's privacy rights"). A "state action" exception to these principles was unthinkable at the time of the convention.

Justice Utter observed "that late nineteenth-century constitution makers were well aware of the broader nature of state constitutions and governments and, thus, *did not feel constrained to include any state action limitation in their charters*." Justice Robert F. Utter, *The Right to Speak, Write, and Publish Freely: State Constitutional Protection Against Private Abridgement*, 8 U. Puget Sound L. R. 157, 166 (1985) (emphasis added). Accordingly, they "enacted numerous provisions that directly regulated private conduct and granted private parties constitutional rights against each other." *Id*.

Scholarship published after *City of Pasco* also confirms that "the portion of article 1, section 7 prohibiting the invasion of one's home without

authority of law was likely meant to emphasize the 'sanctity of a man's home,' and the prohibition against *any physical intrusion* into the home and its surrounding areas as opposed to merely search or seizure." Associate Chief Justice Charles W. Johnson & Scott P. Beetham, *The Origin of Article I, Section 7 of the Washington State Constitution*, 31 Seattle U. L. Rev. 431, 443 (2008) (emphasis added). The Washington framers relied on the English common law maxim that "*every invasion of private property*, be it ever so minute, *is a trespass*." *Id*. (quoting *Entick v. Carrington*, 19 How. St. Tr. 1029, 95 Eng. Rep. 807 (K. B. 1765)) (emphasis added).

A trespass, in turn, exists regardless of whether the person trespassing is a government agent. *See id*. ("[E]very man under the protection of the laws may close the door of his habitation, and defend his privacy in it, *not against private individuals merely, but against the officers of the law and the state itself, against* <u>*everything*</u>.") (quoting Thomas M. Cooley, *Constitutional Limitations* 365 (5th ed. 1883)) (emphasis added). With trespass as the chief evil to be protected against, "[n]ineteenth century Americans," like the Washington founders, "were so protective of their homes that the courts and public were tolerant of force, often deadly force, in the defense of their dwellings." *Id*. at 443–44. Contemporaneous common law "provided heightened protection for citizens' homes" and "[b]y drafting article I, section 7 to prohibit the invasion of an individual's

home without authority of law, the Rights Committee likely intended to continue this tradition." *Id*. Under this tradition, individuals can only protect liberties from private interference through the courts, and if courts like *City of Pasco*, "dismiss cases involving challenges to private violations of liberties, natural rights are sacrificed." Erwin Chemerinsky, *Rethinking State Action*, 80 Nw. U. L. Rev. 503, 531 (Fall, 1985) (footnotes omitted).

The Washington constitution was adopted to forbid any invasion of "private affairs." It does not limit the ban to state actors, and it certainly does not permit privacy violations by private parties forced to comply with a law requiring the privacy violation. *See* Utter*, supra,* 8 U. Puget Sound L. R. at 186 ("Because the state has a strong welfare interest in protecting the fundamental rights of individuals, the police power may be used to require certain private actors to honor fundamental individual rights."). Regardless of the full extent of article I, § 7's protections, it clearly guards against warrantless inspections conducted by private parties pursuant to a municipal mandate, as is the case here—and in *City of Pasco*.

2. *State v. Eisfeldt* Undermined *City of Pasco.*

Washington precedent undermines *City of Pasco* by holding that although federal precedent, and many states,[8] allow police to conduct a

[8] *See, e.g., Virdin v. State*, 780 A.2d 1024, 1033 (Del. 2001) (holding private search did not violate the Fourth Amendment or Article I, § 6 of the Delaware Constitution); *State v. Miller*, 110 Nev. 690, 697, 877 P.2d 1044 (1994) ("The babysitter initiated a private search

limited search if a private third party has already made the same search, Washington forbids those searches. After *City of Pasco*, the Washington Supreme Court forcefully rejected the "private search" doctrine in *State v. Eisfeldt*, 163 Wn.2d 628. Here again, the Washington Constitution protects privacy more than other constitutions.

A repairman at the Eisfeldt residence thought he saw the remains of a marijuana growing operation and brought police inside with no warrant. *Id*. at 631–32. Mr. Eisfeldt was convicted of manufacturing a controlled substance. *Id*. at 632. On appeal, the State argued that the police did not go beyond the repairman's search, thus making it a constitutional "private" search. *Id*. at 635; *see id.* at 634 ("Under the private search doctrine a warrantless search by a state actor does not offend the Fourth Amendment if the search does not expand the scope of the private search.") The private search doctrine's rationale is "that an individual's reasonable expectation of privacy is destroyed when the private actor conducts his search." *Id*.

But the Court rejected the "private search doctrine." Unlike the Fourth Amendment, the Court reasoned that article I, § 7 "is unconcerned

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for the contraband that violated neither the federal nor the Nevada Constitution."); *State v. Comeaux*, 786 S.W.2d 480, 486 (Tex. App. 1990), *aff'd*, 818 S.W.2d 46 (Tex. Crim. App. 1991) (en banc) ("It is well-established that the United States and Texas Constitutions do not apply to purely private searches."); *Dist. Attorney for Plymouth Dist. v. Coffey*, 386 Mass. 218, 221, 434 N.E.2d 1276 (1982) ("Neither the Fourth Amendment nor art. 14 is implicated when the State is not involved in the private 'search,' even when the evidence is subsequently given to the police.").

with the reasonableness of the search, but instead requires a warrant before *any search, reasonable or not*." *Id*. at 634 (emphasis added). The private search doctrine could not stand in Washington, where "the privacy protected by article I, § 7 survive[s] where the reasonable expectation of privacy under the Fourth Amendment was destroyed." *Id*. at 637. Where there is a "private" search, "the individual's privacy interest is not extinguished simply because a private actor has actually intruded upon, or is likely to intrude upon, the interest. The private search does not work to destroy the article I, § 7 interest." *Id*. at 638. The Court "adopt[ed] a bright line rule holding [the private search doctrine] inapplicable under article I, § 7 of the Washington Constitution." *Id*.

Under *Eisfeldt* "any search" requires a warrant, which Seattle's searches plainly do not. The Washington Supreme Court should overrule *City of Pasco* in light of *Eisfeldt*—and reject it for the same reason it rejected the private search doctrine: to preserve "the individual's privacy interest."

3. *City of Pasco* Misinterpreted Federal Cases.

City of Pasco's basis for allowing warrantless "private" searches was federal precedent. *See* Section III(A)(3), *supra*. Federal precedent, however, does not support *City of Pasco* because it says that private people conducting searches as part of a government enforcement regime are state

actors. The government is responsible for private actions when it "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S. Ct. 2777, 73 L. Ed.2d 534 (1982). Where, as here, inspections are mandated by law, that law serves as the "coercive power" or "significant encouragement" necessary to involve government conduct.

In *Skinner v. Railway Labor Executives' Ass'n*, the U.S. Supreme Court found that ostensibly private employers were in fact state actors for constitutional purposes when private railroads collected blood and urine samples from employees involved in train accidents pursuant to a government regulation. 489 U.S. 602, 615–18, 109 S. Ct. 1402, 103 L. Ed.2d 639 (1989). The government argued that the Fourth Amendment did not apply because the blood and urine samples were collected by private entities—namely, private railroad employers—using private medical investigators. The Supreme Court rejected this argument and held that a railroad complying with the regulations did so "by compulsion of sovereign authority." *Id*. at 614. Even when the railroad company was only permitted—rather than required—to collect the samples, the government had "made plain . . . its strong preference for testing." *Id*. at 615–16. Government action occurred because the government "encourage[d],

endorse[d], and participate[d]" in the inspection. *Id*. at 615–16.

This rule readily identifies state action where the search is conducted as part of a larger government policy. So, where, as in Seattle, "the government actually requires that private parties conduct searches under certain specified circumstances. . . and a search is undertaken pursuant to those government regulations rather than for some private purpose, it is . . . correct to characterize the search as being governmental in character." Wayne A. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 1.8(c) (5th ed. 2019) (footnotes omitted); *see also* 79 C.J.S. Searches § 57 ("[I]f a statute or regulation so strongly encourages a private party to conduct a search that the search is not primarily the result of private initiative, then the Fourth Amendment applies.").

These principles demonstrate that RRIO inspectors, even if privately employed—and even if results are not given to the City—are state actors. The Tenants do not want government agents in their homes without a search warrant, and neither do the Landlords. The only reason they find themselves in this position is because of a law requiring these searches that Seattle passed with the State's blessing.

City of Pasco avoided this conclusion, in part, by likening government-mandated searches to the searches landlords routinely conduct as part of a traditional landlord-tenant relationship. The court noted "that

RCW 59.18.150(1) already provides that a tenant cannot unreasonably withhold consent to the landlord to enter into the rental unit in order to inspect the premises" and thus did "not exceed what is already allowed." 161 Wn.2d at 461 (citing *Kalmas v. Wagner*, 133 Wn.2d 210, 219–20, 943 P.2d 1369 (1997) (en banc)). [9]

But this is a misreading of the landlord's role in a government-mandated rental inspection. A landlord who has no reason or duty to enter the apartment, but for the requirements in an ordinance, is acting to further the government's interest. *See United States v. Hardin*, 539 F.3d 404, 420 (6th Cir. 2008) ("[B]ecause the officers urged the apartment manager to investigate and enter the apartment, and *the manager, independent of his interaction with the officers, had no reason or duty to enter the apartment*, we hold that the manager was acting as an agent of the government.") (emphasis added). As explained above, the Landlords do not conduct searches against their Tenants' will—and are perfectly willing to inspect at tenant request or between tenancies.

Neither the Tenants nor the Landlords want anything to do with the

[9] *Kalmas* does not support *City of Pasco*'s conclusion. In *Kalmas*, the plaintiffs' lease had a "right to enter" provision; the landlord gave notice; and the property manager brought potential buyers for a showing. 133 Wn.2d at 213–14. The tenant denied access and called 911 for assistance. The landlords were acting pursuant to their own interests, as expressed in their written the contract. *Kalmas's* holding, not applicable here, was that if the deputy's brief, invited entry into tenants' residence constituted a search, it was reasonable one. *Id*. at 218.

searches that Seattle requires. Yet the trial court's reading of *City of Pasco* treats them like willing participants in a scheme to which they object.

City of Pasco also reached the wrong result because it analyzed the wrong federal cases. The majority did not rely on *Skinner* and its progeny, but rather relied on the so-called *Miller* test.[10] *Miller* in turn, quoted *United States v. Walther*, 652 F.2d 788, 791–92 (9th Cir. 1981)—both cases involved private searches. This was the wrong starting point. As the Fourth Circuit explained, *Skinner* is not to be confused with the "usual situation" that comes up in private search cases like *Miller*. *Presley v. City Of Charlottesville*, 464 F.3d 480, 488 n.7 (4th Cir. 2006) (finding government action where private trespass was brought on by faulty government map). The "usual" situation involves an interaction where "the government merely knows of or acquiesces in a private person's search or seizure, whose fruits (e.g., drugs or a confession) are then appropriated by the government for its own purposes." *Id*. In these "usual" cases, "because government involvement in the actual search or seizure is relatively slight, courts generally require that the private individual intended to assist law

[10] *See City of Pasco,* 161 Wn.2d at 459–60 (citing *United States v. Miller*, 688 F.2d 652, 656–58 (9th Cir. 1982) (finding that a theft victim was not acting as an agent of the Government in visiting the defendant's property to look for his stolen trailer)); *see also id.* (citing *Swenson*, 104 Wn. App. at 754 (assessing under *Miller* whether murder victim's father conducting investigation into crime was a state actor)).

enforcement before they conclude that the government is sufficiently implicated." *Id*.

Miller, *Walther*, and all other cases cited by *City of Pasco*,[11] were the "usual" private search cases—involving a private person's search or seizure, whose fruits (e.g., drugs or a confession) were then appropriated by the government. Starting with *Walther* in 1981, an airline employee, and DEA informant, reported cocaine he found in luggage to the DEA. The court held that the cocaine was inadmissible because the searching employee was motivated to find evidence based on DEA rewards for his past efforts. 52 F.2d at 793. The airline employee was thus a government agent because the government was involved "indirectly as an encourager of the private citizen's actions." *Id.* at 791.

Nothing in *Walther* suggested that conduct mandated by regulation

[11] *See City of Pasco,* 161 Wn.2d at 459–60 (citing *State v. Carter*, 151 Wn.2d 118, 124-25, 85 P.3d 887 (2004) (considering whether search at a gun training class by off-duty investigators involved state action); *In re Pers. Restraint of Maxfield*, 133 Wn.2d 332, 334–35, 945 P.2d 196 (1997) (considering whether telephone call from treasurer-comptroller of a Public Utility to Drug Task Force member was state action); *State v. Walter*, 66 Wn. App. 862, 866, 833 P.2d 440 (1992) (considering search by private film processor who discovered incriminating photographs); *State v. Clark*, 48 Wn. App. 850, 856, 743 P.2d 822 (1987) (considering search by private citizen who found incriminating evidence in a box while looking for pornographic photos of his girlfriend); *State v. Thetford*, 109 Wn.2d 392, 401, 745 P.2d 496 (1987) (finding an agent's involvement with and control by police was so great that he no longer qualified as private individual); *State v. Ludvik*, 40 Wn. App. 257, 262–63, 698 P.2d 1064 (1985) (finding game agent's observations of drug transactions were not state action where he was not working with police); *Kuehn v. Renton School District No. 403*, 103 Wn.2d 594, 600, 694 P.2d 1078 (1985) (holding that parent chaperones of a high school student trip acted with enforcement authority of school officials when they searched student bags.)).

(like the inspections here and in *Skinner*) was somehow private. Quite the opposite—*Walther* noted that a "search made by airline employees pursuant to a federal anti-hijacking program may be considered a governmental search where the employee's actions fall within the federal guidelines." *Id*. (internal citation omitted); *see also Lugar v. Edmondson Oil Co*., 457 U.S. 922, 941, 102 S. Ct. 2744, 73 L. Ed.2d 482 (1982) ("[T]he procedural scheme created by the statute obviously is the product of state action[.]"); *United States v. Koenig*, 856 F.2d 843, 850 (7th Cir. 1988) ("[C]ompulsion by statute, regulation, or executive order may provide the control over private entities necessary to treat them as governmental agents.").

This federal precedent should have persuaded the *City of Pasco* majority to find that where a "private" inspector is only conducting a search because of a law requiring the search, article I, § 7 applies. The majority's holding to the contrary was incorrect.

4. *City of Pasco's* Harmful Impact.

Stare decisis should not save *City of Pasco* because it was not only incorrect, but also harmful. *Chong Yim*, 194 Wn.2d at 668. The *City of Pasco* majority opinion encouraged bad public policy by not drawing a strong line against invasive, warrantless searches of the home. *City of Pasco* allows the government to avoid constitutional protections any time

it wants to by creating laws that require someone else to perform the desired (warrantless) search. Incrementally limiting privacy rights paves the way for more invasive programs like the one in Seattle—and in areas beyond just rental inspections.

Other large Washington cities increasingly rely on mandatory rental inspections conducted by "private" inspectors.[12] And if cities follow Seattle's lead, they can avoid article I, § 7 entirely by delegating legally required searches to private entities. Want urine or blood samples? Require hospitals to take them. Fingerprints? Force employers to get them or lose their business license. Search homes? Force landlords to hire private inspectors. If the person being searched does not want the results going back to the government, Seattle has a simple, punitive answer: pay more and convince others to be searched as well. That allows the information to remain private, but people must still endure invasive, government-mandated warrantless searches of their home by a stranger.

City of Pasco set up a complicated and ultimately unworkable system trying to analyze how closely the private inspectors are tied to the city, what information they convey to the city, and what information they

[12] *See*, *e.g.*, Tacoma Municipal Code§ 6B.165.090(B)(3) ("If a rental property owner chooses to hire a qualified inspector other than a city code enforcement officer, and a selected unit of the rental property fails the initial inspection, both the results of the initial inspection and any certificate of inspection must be provided to the city.").

convey about city regulations. But this complex and ad hoc state action inquiry should yield to Washington's simple, overriding principle that government-mandated searches must be either with warrants or consensual, whether the inspectors are private or government employees. That holding would obviate the need for the *City of Pasco* test, bring this area of the law in line with Washington's article I, § 7 precedents, and provide a clear rule for municipalities throughout the state.

B. Even if *City of Pasco* stands, Appellants Stated Valid Claims.

Even if *City of Pasco* stands, the RRIO involves privately employed inspectors much more than Pasco did. First, Seattle trains its privately employed inspectors to be government representatives in a way that Pasco does not. Second, Seattle, unlike Pasco, conditions privacy on burdensome and unconstitutional conditions.

1. Seattle's RRIO Program Is Distinguishable From Pasco's Inspection Regime.

Pasco's inspection ordinance preserved the independence of private inspectors to a far greater degree than Seattle does. Pasco allowed landlords to select private inspectors that met basic independent certification requirements. A landlord could even hire a trusted architect. Pasco Municipal Code § 5.60.030(3). Seattle does not have such a detached attitude and "views the relationship with Private Inspectors as a

partnership" with "[s]hared investment in the success of the RRIO Program." CP 208, 271. Unlike Pasco, Seattle coaches privately employed inspectors about how to communicate government information to tenants—including access to city services. CP 208, 273.

By the time the ostensibly private inspector reaches the door, they will have paid Seattle hundreds of dollars to participate in its mandatory inspector training, where they learned to "partner[]" with Seattle to advance "success of the RRIO Program." CP 208, 242, 271. Unlike a handyman, or other agent of the landlord, the RRIO inspector will communicate government information to the tenant and promote city services. CP 208, 273. "Private" inspectors should, in turn, unlike the landlord's HVAC technician or real estate agent, expect to "get questions about access to City services" from tenants. *Id*. For immigrant households, Seattle warns private inspectors that the inspector's presence will evoke "a fear of government based on experiences" in immigrant "home countries." CP 273, 275. And of course, most failed inspection results are turned over to the City.

Seattle's program is thus far more invasive—and private inspectors far more entangled with the government—than in Pasco. Accordingly, the program should be stricken down, even under *City of Pasco*. If not, then Appellants should at least have been afforded the opportunity to develop a record. Appellants should be able to depose privately employed inspectors

and the City officials who train them. Appellants should also be able to testify about what is in their best interests. *See United States v. Wetselaar*, No. 2:11-CR-00347-KJD, 2013 WL 8206582, at *11 (D. Nev. Dec. 31, 2013), *report and recommendation adopted*, No. 2:11-CR-00347-KJD, 2014 WL 1366722 (D. Nev. Apr. 7, 2014) (considering testimony in state action analysis that "safeguarding customers' privacy, accessibility, and confidentiality, were best served by requiring officers to obtain a search warrant to gain access to safe deposit boxes.").

2. Appellants Stated a Valid Claim Under the Unconstitutional Conditions Doctrine.

In response to this suit, Seattle created an extremely burdensome mechanism for tenants who want to avoid search results falling into government hands. If a tenant can convince all of their neighbors to also submit to warrantless searches and their landlord to pay hundreds of extra dollars, then inspectors will not turn search results over the City. Appellants challenged this "unconstitutional condition," and the trial court erred in foreclosing it.

The trial court initially denied Seattle's motion to dismiss the RRIO program when it provided two choices: a government inspector or private inspector trained by—and reporting to—the government. Seattle then amended the RRIO to provide that if one tenant did not want results sent to

the City, all tenants would have to submit to private searches to avoid having reports sent to the government. In other words, privacy comes with a price. The landlord must pay a private inspector hundreds, or even thousands,[13] of dollars, depending on the size of the building, and shoulder the burden of more inspections. The tenant pays an even more severe price: If tenant A objects to an inspection, tenant A must convince—or force—their neighbor, tenant B (and possibly dozens or even hundreds of other tenants) to let strangers into her home so that tenant A's rights can be protected under the 100% requirement. Accordingly, the revised RRIO "creates an unconstitutional condition on the exercise of fundamental rights by withholding a certificate of occupancy unless landlords and tenants forfeit their right to privacy." CP 205.

Under the unconstitutional conditions doctrine, "the government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, *even if the government may withhold that benefit altogether*." *Butler v. Kato*, 137 Wn. App. 515, 530, 154 P.3d 259 (2007) (emphasis added) (invalidating condition that defendant on release undergo alcohol evaluation and attend self-help meetings) (citing *United States v.*

[13] Private inspectors charge their own market-based rates for inspections. But even rates for "cheaper" City-employed inspectors show how expensive searching each unit in a large building would be. *See* CP 99 ("The [city inspection] fees are currently $160 for the property, including the first unit, and $30 for each additional unit inspected.").

Scott, 450 F.3d 863, 866 (9th Cir. 2006) (conditioning pre-trial release on home searches is unconstitutional)).

Butler and *Scott* concerned not only home searches, but broad "spheres of autonomy." When the government grants conditional benefits, it risks "abus[ing] its power by attaching strings strategically, striking lopsided deals and gradually eroding constitutional protections." *Butler*, 137 Wn. App. at 530 (quoting *Scott*, 450 F.3d at 866). Where a constitutional right preserves "spheres of autonomy," the "[u]nconstitutional conditions doctrine protects that [sphere] by preventing governmental end-runs around the barriers to direct commands." *Id.*

Here, Appellants' privacy and security at home is the precise sphere of autonomy the doctrine protects. *See* Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 Harv. L. Rev. 1413, 1426 (1989). ("[T]he doctrine serves to protect only those rights that depend on some sort of exercise of autonomous choice by the rightholder, such as individual rights to speech, exercise of religion or privacy. . . .").

The Washington Supreme Court has not addressed the contours of article I, § 7 and unconstitutional conditions. But even under the less demanding Fourth Amendment, federal courts hold that conditioning a rental license on a non-consensual warrantless search is an unconstitutional condition. In *Thompson v. City of Oakwood,* a "violation of the

unconstitutional conditions doctrine occurred . . . . when Oakwood presented Plaintiffs the choice between agreeing to an inspection and being denied a certificate of occupancy." 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018). In *Dearmore v. City of Garland*, landlords could not be forced to choose between consenting to an inspection and not being able to obtain a rental license. 400 F. Supp. 2d 894, 902–03 (N.D. Tex. 2005).

Here, Seattle strategically attaches strings to tenant and landlord rights under article I, § 7 by conditioning a rental license on tenants foregoing their privacy rights. If even one tenant does not consent to an inspection—and demands a search warrant—then all tenant units must be inspected to prevent a failing report from going to the government. CP 205. Forced third-party consent to a search is an unconstitutional condition. The Washington Supreme Court has roundly rejected the ability of third parties—especially landlords—to vicariously consent to an apartment search. *See City of Pasco*, 161 Wn.2d at 469 ("[A]n entry based only on a landlord's consent . . . without a warrant would reduce the [Fourth] Amendment to a nullity and leave [tenants'] homes secure only in the discretion of [landlords].") (cleaned up)). The revised RRIO violates this precedent by forcing landlords—and neighboring tenants—to impose warrantless inspections on their own neighbors. CP 205. This coercive social pressure is an unconstitutional condition.

RRIO's 100 percent inspection requirement is also a costlier alternative, forcing landlords to pay money to release their tenants from illegal searches. Because the cost is dependent on the number of units to be inspected a landlord is literally paying to have constitutional rights protected. Seattle implied as much below, claiming that "[t]he baseline of the Pasco model is that all units are inspected; the City is offering a lower cost and lower burden alternative." CP 232. But this lower cost and lower burden alternative requires a warrantless government inspection. Put another way, exercising constitutional rights means being saddled with a higher cost, higher burden alternative.

In *Black v. Village of Park Forest*, 20 F. Supp. 2d 1218, 1230 (N.D. Ill. 1998), the court found an unconstitutional condition under similar circumstances—a village charged a $60 fee when tenants requested a warrant. This fee placed "an unconstitutional burden" on the exercise of the tenants' Fourth Amendment rights. *Id*. The costlier alternative under RRIO similarly places an unconstitutional burden on landlords.

The only way to keep inspection reports from going to Seattle is to submit to far more intrusive, disruptive, and expensive inspections—without a search warrant. That is an unconstitutional condition.

C. The State Authorizing Act is Unconstitutional.

Below, Appellants will show that 1) The state enabling Act is unconstitutional and 2) the trial court erred in dismissing the State as party by misapplying the "facial versus as applied" doctrine.

1. The State Authorizing Act Unconstitutionally Makes Search Warrants Optional—and Turning Search Results Back to the Government Mandatory.

The Act did two unconstitutional things. First, it makes search warrants for rental inspections optional for municipalities rather than mandatory. *See* RCW 59.18.150.(4)(a) ("A search warrant *may* be issued . . . . allowing the inspection of any specified dwelling unit"). Second, the Act mandates that results of failed inspections "*must* be provided to the local municipality." RCW 59.18.125(6)(e) (emphasis added). The reports must be provided even if the search was both warrantless and without consent.

Where one group of legislators (the Washington State Legislature) directs or permits a subordinate group of legislators (the Seattle City Council) to enact an unconstitutional law, both the enabling statute and resulting ordinance are unconstitutional. *State ex rel. Evans v. Bhd. of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787 (1952) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."); *N. Illinois Home Builders Ass'n, Inc.*

v. Cty. of Du Page, 165 Ill. 2d 25, 35–36, 649 N.E.2d 384 (1995) (holding that where the "enabling act is constitutionally flawed," county "ordinances passed pursuant to the . . . enabling act are invalid").

Here, the State, through the Act, told cities to do the very thing *City of Pasco* said they could not do: require failing inspection reports from private inspectors go back to the government. RCW 59.18.125(6)(e). The State allows municipalities state-wide to conduct surreptitious, warrantless government searches through privately employed inspectors.

In addition, by not affirmatively requiring a warrant for non-consensual rental inspections, the State makes municipal compliance with the state constitution optional. But "[t]he provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise." Const. art. I, § 29. Article I, § 7, of course, contains no "express words" making it optional. Indeed, it has a "blanket" warrant requirement for all searches. *Eisfeldt*, 163 Wn.2d at 634, 641.

In *State v. Miles,* 160 Wn.2d 236, 156 P.3d 864 (2007), the court affirmed that the legislature may not authorize searches that violate article I, § 7, striking down a portion of the Washington Securities Act that authorized subpoenas without judicial review. *Id.* at 248. *See also Belas v. Kiga,* 135 Wn.2d 913, 920, 959 P.2d 1037 (1998) ("Constitutional provisions cannot be restricted by legislative enactments.").

Here, RRIO mirrors the Act's lack of constitutional protections—it has no warrant requirement and requires government disclosure of failing inspection reports. Accordingly, because RRIO was passed pursuant to, and contains the hallmarks of, a constitutionally invalid enabling Act, the trial court erred in dismissing the State.

2. The Trial Court Erred in its the "Facial Versus As Applied" Analysis.

The trial court erroneously dismissed the State when it employed the wrong legal test. The trial court ruled that, under a facial challenge, Appellants could only prevail if "there's no way in which [the Act] can be applied constitutionally" by a hypothetical city. RP 44:22–23. But that is an incorrect statement of the law. "[W]hen addressing a facial challenge to a statute authorizing warrantless searches, the proper focus of the constitutional inquiry is searches that the law actually authorizes, not those for which it is irrelevant." *City of Los Angeles v. Patel*, 576 U.S. 409, 418, 135 S. Ct. 2443, 192 L. Ed.2d 435 (2015). The question is whether the Act, on its face, "authorizes" warrantless searches. It does, and it is therefore unconstitutional. Speculation about hypothetical applications is irrelevant.

D. Request for Attorneys' Fees and Costs Under RAP 18.1

Finally, Appellants seek attorneys' fees and costs. Contrary to the American Rule that parties pay their own fees, *Weiss v. Bruno* allows fee

recovery where the following elements are met: 1. A successful suit; 2. Challenging the expenditure of public funds; 3. Made pursuant to unconstitutional legislative and administrative actions; 4. Following a refusal by the appropriate official to maintain such a challenge. 83 Wn.2d 911, 914, 523 P.2d 915 (1974) (en banc). *See also Hsu Ying Li v. Tang*, 87 Wn.2d 796, 799–800, 557 P.2d 342 (1976) (en banc) ("[T]he power to award attorney fees 'springs from our inherent equitable powers (and) we are at liberty to set the boundaries of the exercise of that power.'").

If Appellants secure a victory, they satisfy the first factor. As to the second factor, Appellants seek a declaration "that enforcement of the RRIO constitutes an unconstitutional expenditure of public funds." CP 217. Appellants want to end the expenditure of public funds—from fees gathered in accordance with RRIO and the Act—which violate article I, § 7, thus meeting the third. *See Weiss,* 83 Wn.2d at 914 (rejecting respondents' argument that there was no identifiable fund, holding requirement was not literal.). Finally, the Washington Attorney General and Seattle City Attorney have defended, not guarded against, warrantless searches permitted by the Act and RRIO.

In addition to attorneys' fees, under RAP 14.2, "the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise." Therefore, under RAP 14.3(a),

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

VII. CONCLUSION

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

Dated: July 10, 2020

Respectfully Submitted,

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Appendix 1

Pasco Municipal Code § 5.60.030

5.60.030 Inspection required.

(1) As a condition for the issuance of a license provided by this chapter, the applicant shall provide a certificate of inspection that all of the applicant's rental dwelling units comply with the standards of the Uniform Housing Code and do not present conditions that endanger or impair the health or safety of a tenant, including:

(a) Structural members that are insufficient in size or strength to carry imposed loads with safety;

(b) Exposure of the occupants to the weather;

(c) Plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury;

(d) Lack of water, including hot water;

(e) Heating or ventilation systems that are not functional or are hazardous;

(f) Defective, hazardous, or missing electrical wiring or electrical service;

(g) Defective or inadequate exits that increase the risk of injury to occupants;

(h) Violations that increase the risks of fire; or

(i) Violations of other applicable codes, rules or regulations.

(2) *Timing of Inspection.* To facilitate the availability of an inspection by each applicant, at the time of application, an inspection renewal period shall be established upon which the applicant shall submit its initial certificate of inspection and the corresponding renewal date of the certificate of inspection two years thereafter. The renewal periods shall be divided into calendar quarters over a two-year period and assigned to the applicant at the time of registration on a rotational basis. The first calendar quarter shall commence on the first day of January, terminating on the last day of March; the second calendar quarter shall commence on the first day of April and terminate on the last day of June; the third calendar quarter shall commence on the first day of July and terminate on the last day of September; and the fourth calendar quarter shall commence on the first day of October and terminate on the last day of December, with one half of which shall be scheduled in years ending with an even digit and the remaining half being scheduled in years ending with an odd digit. Certificates of inspection shall be submitted no later than the last day of the applicant's assigned calendar quarter. During the first two years of the implementation of the ordinance codified in this chapter, the applicant shall be granted a provisional business license pending the timely submission of its initial certificate of inspection.

(3) *Inspectors.* The applicant shall submit a certificate of inspection based upon the physical inspection of the dwelling units conducted not more than 90 days prior to the date of the certificate of inspection and compliance certified by the following:

(a) A City of Pasco Code Enforcement Officer;

(b) Inspectors certified by the United States Department of Housing and Urban Development for grant-required inspections;

(c) Certified private inspectors approved by the City upon evidence of completion of formal training, including the passing of an examination administered by the National Association of Housing and Redevelopment Officials (NAHRO), the American Association of Code Enforcement (AACE) or other comparable professional association as approved by the Director of Community and Economic Development, which approval or denial shall be subject to appeal to the Code Enforcement Board;

(d) A Washington-licensed structural engineer;

(e) A Washington-licensed architect.

All inspection certifications shall be submitted on forms provided by the City or approved by the United States Department of Housing and Urban Development.

(4) *Other Inspections.* Nothing herein shall preclude such additional inspections as may be conducted pursuant to the tenant remedy provided by RCW 59.18.0115 of the Residential Landlord-Tenant Act, at the request or consent of a tenant, or issued pursuant to a warrant. [Ord. 3231 § 2, 1997; Code 1970 § 5.78.020.]

Appendix 2

Seattle Municipal Code § 22.214 (2013)

Chapter 22.214 - RENTAL REGISTRATION AND INSPECTION ORDINANCE

Sections:

22.214.010 - Declaration of purpose

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

(Ord. 124312, § 2, 2013; Ord. 124011, § 2, 2012.)

22.214.020 - Definitions

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

1. "Accessory dwelling unit" or "ADU" means an "Accessory dwelling unit" or a "Detached accessory dwelling unit" or "DADU" as defined under "Residential use" in Section 23.84A.032
2. "Certificate of Compliance" means the document issued by a qualified rental housing inspector and submitted to the Department by a property owner or agent that certifies the rental housing units that were inspected by the qualified rental housing inspector comply with the requirements of this Chapter 22.214
3. "Common areas" mean areas on a property that are accessible by all tenants of the property including but not limited to: hallways; lobbies; laundry rooms; and common kitchens, parking areas, or recreation areas.
4. "Department" means the City's Department of Planning and Development or successor Department.
5. "Director" means the Director of the Department of Planning and Development or the Director's designee.
6. "Housing Code" means the Housing and Building Maintenance Code in Chapters 22.200 through 22.208
7. "Mobile Home" means a "Mobile Home" or a "Manufactured Home" as defined in RCW 59.20.
8. "Owner" has the meaning as defined in RCW 59.18.030(11).
9. "Qualified Rental Housing Inspector" means:
    a. A City Housing and Zoning Inspector; or
    b. A private inspector who is registered with the City as a qualified rental housing inspector under section 22.214.060 and currently maintains and possesses at least one of the following credentials:
        1) American Association of Code Enforcement Property Maintenance and Housing Inspector certification;
        2) International Code Council Property Maintenance and Housing Inspector certification;
        3) International Code Council Residential Building Inspector certification ;
        4) Washington State home inspector under RCW 18.280, or
        5) Other individuals with credentials acceptable to the Director as established by rule.
10. "Rental housing unit" means a housing unit that is or may be available for rent, or is occupied or rented by a tenant or subtenant in exchange for any form of consideration.
11. "Housing Unit" means any structure or part of a structure that is used or may be used by one or more persons as a home, residence, dwelling, or sleeping place; including but not limited to single-family residences, duplexes, triplexes, and four-plexes; multi-family units, apartment units, condominium units, rooming-house

units, micro dwelling units, housekeeping units, single-room-occupancy units, and accessory-dwelling units; and any other structure having similar living accommodations.

12. "Rental Housing Registration" means a registration issued under this Chapter 22.214
13. "Rooming house" means, for the purposes of this Chapter 22.214, a building arranged or used for housing and that may or may not have sanitation or kitchen facilities in each room that is used for sleeping purposes.
14. "Shelter" means a facility with overnight sleeping accommodations, owned, operated, or managed by a nonprofit organization or governmental entity, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.
15. "Single-room occupancy unit (S.R.O.) has the meaning in section 22.204.200.B.
16. "Tenant" has the meaning given in section 22.204.210.A.
17. "Transitional housing" means housing units owned, operated or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing within a period of not more than 24 months.
18. "Unit unavailable for rent" means a housing unit that is not offered or available for rent as a rental unit, and where prior to offering or making the unit available as a rental housing unit, the owner is required to obtain a rental housing registration for the property where the rental housing unit is located and comply with all rules adopted under this Chapter 22.214

(Ord. 124312, § 3, 2013; Ord. 124011, § 3, 2012.)

22.214.030 - Applicability

A. The registration provisions of this Chapter 22.214 shall apply to all rental housing units with the exception of:
   1. Housing units lawfully used as vacation rentals for periods not to exceed three consecutive months and not consecutively used by the same individual or individuals for more than three months in any twelve-month period;
   2. Housing units rented for not more than 12 consecutive months as a result of the property owner, who previously occupied the unit as a primary residence, taking a work-related leave of absence or assignment such as an academic sabbatical or temporary transfer;
   3. Housing units that are a unit unavailable for rent;
   4. Housing units in hotels, motels, inns, bed and breakfasts, or in similar accommodations that provide lodging for transient guests;
   5. Housing units in facilities licensed or required to be licensed under RCW 18.20, RCW 70.128, or RCW 72.36, or subject to another exemption under this Chapter;
   6. Housing units in any state licensed hospital, hospice, community-care facility, intermediate-care facility, or nursing home;
   7. Housing units in any convent, monastery, or other facility occupied exclusively by members of a religious order or congregation;
   8. Emergency or temporary-shelter or transitional housing accommodations;
   9. Housing units owned, operated, or managed by a major educational or medical institution or by a third party for the institution; and
   10. Housing units that a government entity or housing authority owns, operates or manages; or units exempted from municipal regulation by federal, state, or local law.

B. The inspection provisions of this Chapter 22.214 shall apply to rental housing units that are included in this Rental

Registration and Inspection Ordinance, with the exception of:

1. Rental housing units that receive funding or subsidies from federal, state, or local government when the rental housing units are inspected by a federal, state, or local governmental entity at least once every five years as a funding or subsidy requirement; and the rental housing unit owner or agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic federal, state, or local government inspection is substantially equivalent to the inspection required by this Chapter; and
2. Rental housing units that receive conventional funding from private or government insured lenders when the rental housing unit is inspected by the lender or lender's agent at least once every five years as a requirement of the loan; and the lender or lender's agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic lender inspection is substantially equivalent to the inspection required by this Chapter; and
3. Accessory dwelling units and detached accessory dwelling units, provided the owner lives in one of the housing units on the property and an "immediate family" member as identified section 22.206.160.C.1.e lives in the other housing unit on the same property.

(Ord. 124312, § 4, 2013; Ord. 124011, § 4, 2012.)

22.214.040 - Rental housing registration, compliance declaration, and renewals.

A. With the exception of rental housing units identified in subsection 22.214.030.A, all properties containing rental housing units shall be registered with the Department according to the registration deadlines in this section 22.214.040.A. After the applicable registration deadline, no one shall rent, subrent, lease, sublease, let, or sublet to any person or entity a rental housing unit without first obtaining and holding a current rental housing registration for the property where the rental housing unit is located. The registration shall identify all rental housing units on the property and shall be the only registration required for the rental housing units on the property. For condominiums and cooperatives, the property required to be registered shall be the individual housing unit being rented and not the entire condominium building, cooperative building, or development. If a property owner owns more than one housing unit in a condominium or cooperative building, the owner may submit a single registration application for the units owned in the building. Properties with rental housing units shall be registered according to the following schedule:
   1. By July 1, 2014 all properties with ten or more rental housing units, and any property that has been subject to two or more notices of violation or one or more emergency orders of the Director for violating the standards in Chapters 22.200 through 22.208 of the Seattle Municipal Code where enforced compliance was achieved by the Department or the violation upheld in a final court decision;
   2. By January 1, 2015 all properties with five to nine rental housing units; and
   3. Between January 1, 2015 and December 31, 2016, all properties with one to four rental housing units shall be registered according to a schedule established by Director's rule. The schedule shall include quarterly registration deadlines; and shall be based on dividing the city into registration areas that are, to the degree practicable, balanced geographically and by rough numbers of properties to be registered in each area.
B. All properties with rental housing units constructed or occupied after January 1, 2014 shall be registered prior to occupancy or according to the registration schedule established in subsection 22.214.040.A, whichever is later.
C. A rental housing registration shall be valid for five years from the date the Department issues the registration.
D. The rental housing registration shall be issued to the property owner identified on the registration application filed with the Department.
E. The fees for rental housing registration, renewal, reinstatement, or for other Rental Registration and Inspection Ordinance program purposes shall be adopted by amending Chapter 22.900.

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

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

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

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

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

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

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

(Ord. 124312, § 5, 2013; Ord. 124011, § 5, 2012.)

22.214.045 - Registration denial or revocation

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

1. A registration or renewal registration application may be denied for:
   a. Submitting an incomplete application; or
   b. Submitting a declaration of compliance the owner knows or should have known is false; and
2. A rental housing registration may be revoked for:
   a. Failing to comply with the minimum standards as required in this Chapter 22.214
   b. Submitting a declaration of compliance or certificate of compliance the owner knows or should have known is false;
   c. Failing to use a qualified rental housing inspector;
   d. Failing to update and deliver or post registration information as required by subsection 22.214.040.F; or

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

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

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

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

22.214.050 - Inspection and certificate of compliance required

A. The Department shall periodically select from registered properties containing rental housing units, the properties that shall be inspected by a qualified rental housing inspector for certification of compliance. The property selection process shall be based on a random methodology adopted by rule, and shall include at least ten percent of all registered rental properties per year. Newly-constructed or substantially-altered properties that receive final inspections or a first certificate of occupancy and register after January 1, 2014 shall be included in the random property selection process after the date the property registration is required to be renewed for the first time.

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

C. If the Department receives a complaint regarding a rental housing unit regulated under this program, the Department shall request that an interior inspection of the rental housing unit identified in the complaint be conducted by a Department inspector using the general authority, process, and standards of the full Housing and Building Maintenance Code, Chapters 22.200 through 22.208 of the Seattle Municipal Code. If, after inspecting the rental housing unit the Department received the complaint on, the Department determines the rental housing unit violates the standards in subsection 22.214.050.M and causes the rental housing unit to fail inspection under this Chapter 22.214, the Director may require that any other rental housing units covered under the same registration on the property be inspected following the procedures of this section 22.214.050 for inspection timing, giving notice to tenants, and submitting a certificate of compliance. The inspection of any other rental housing units may be conducted by a private qualified rental housing inspector.

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

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

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

1. Certify compliance with the standards as required by this Chapter 22.214 for each rental housing unit that was

inspected;

2. State the date of the inspection and the name, address, and telephone number of the qualified rental housing inspector who performed the inspection;
3. State the name, address, and telephone number of the property owner or owner's agent; and
4. Contain a statement that the qualified rental housing inspector personally inspected all rental housing units listed on the certificate of compliance.

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

1. In buildings that contain more than one rental housing unit, a property owner may choose to have all of the rental housing units inspected by a qualified rental housing inspector. If the building has not had Housing and Building Maintenance Code violations reported to and verified by the Department through enforced compliance or a final court decision that would have caused a unit to fail inspection under this Chapter 22.214 within any preceding 12 months or since the last inspection required by this Chapter 22.214, whichever is the most recent, an applicant may choose to have only a sample of the rental housing units inspected. If the applicant chooses to have a sample of the rental housing units inspected the following requirements shall apply:
   a. For buildings containing 20 or fewer rental housing units, a minimum of two units are required to be inspected; or
   b. For buildings containing more than 20 rental housing units, 15 percent of the rental housing units, rounded up to the nearest whole number, are required to be inspected, up to a maximum of 50 rental housing units in each building.
2. The Department shall select the rental housing units to be inspected under this Section 22.214.050 using a methodology adopted by rule.
3. If a rental housing unit selected by the Department fails the inspection, the Department may require that up to 100 percent of the rental housing units in the building where the unit that failed inspection is located be inspected.

H. Notice of inspection to tenants.

1. After the Department selects the rental housing units to be inspected, and the Department has provided written notice to the owner or owner's agent of the units to be inspected, the owner or owner's agent shall, prior to any scheduled inspection, provide at least two days advance written notice to all tenants residing in all rental housing units on the property advising the tenants that:
   a. Some or all of the rental housing units will be inspected. If only a sample of the units will be inspected the notice shall identify the rental housing units to be inspected;
   b. A qualified rental housing inspector will enter the rental housing unit for purposes of performing an inspection according to this Chapter 22.214
   c. The inspection will occur on a specifically-identified date and at an approximate time, and the name of the company and person performing the inspection;
   d. A tenant shall not unreasonably withhold consent for the owner or owner's agent to enter the property as provided in RCW 59.18.150;
   e. The tenant has the right to see the inspector's identification before the inspector enters the rental housing unit;
   f. At any time a tenant may request, in writing to the owner or owner's agent, that repairs or maintenance actions be undertaken in his or her unit; and
   g. If the owner or owner's agent fails to adequately respond to the request for repairs or maintenance at

any time, the tenant may contact the Department about the rental housing unit's conditions without fear of retaliation or reprisal.

2. The contact information for the Department as well as the right of a tenant to request repairs and maintenance shall be prominently displayed on the notice of inspections provided under this subsection 22.214.050.H.
3. The owner or owner's agent shall provide a copy of the notice of inspection to the qualified rental housing inspector on or before the day of the inspection.

I. A certificate of compliance shall be valid and used for purposes of complying with the inspection provisions of this Chapter 22.214 for five years from the date the certificate is issued, unless the Department determines that the certificate is no longer valid because one or more of the rental units listed in the certificate of compliance no longer meets the standards as required in this Chapter 22.214. When the Department determines a certificate of compliance is no longer valid, the owner may be required to have all rental housing units on the property inspected by a qualified rental housing inspector, obtain a new certificate of compliance, and pay a new registration fee.

J. The Department shall audit certificates of compliance prepared by private qualified rental housing inspectors by reviewing certificates of compliance to determine their completeness and accuracy. If the Department determines that a violation of this Chapter 22.214 exists, the owner and qualified rental housing inspector shall be subject to all enforcement and remedial provisions provided for in this Chapter 22.214

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

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

M. The following requirements of the Housing and Building Maintenance Code shall be included in the weighted checklist required by subsection 22.214.050.L and used by a qualified rental housing inspector to determine whether a rental housing unit will pass or fail inspection:

1. The minimum floor area standards for a habitable room contained in subsection 22.206.020.A. Section 22.206.020.A shall not apply to single room occupancy units;
2. The minimum sanitation standards contained in the following sections:
    a. 22.206.050.A. Subsection 22.206.050.A shall only apply to a single room occupancy unit if the unit has a bathroom as part of the unit;
    b. 22.206.050.D. Subsection 22.206.050.D shall only apply to a single room occupancy unit if the unit has a kitchen;
    c. 22.206.050.E;
    d. 22.206.050.F;
    e. 22.206.050.G; and
    f. If a housing unit shares a kitchen or bathroom, the shared kitchen or bathroom shall be inspected as part of the unit inspection.
3. The minimum structural standards contained in section 22.206.060
4. The minimum sheltering standards contained in section 22.206.070
5. The minimum maintenance standards contained in subsection 22.206.080.A;
6. The minimum heating standards contained in section 22.206.090
7. The minimum ventilation standards contained in section 22.206.100
8. The minimum electrical standards contained in subsection 22.206.110.A;

9. The minimum standards for Emergency Escape Window and Doors contained in subsection 22.206.130.J;
10. The requirements for garbage, rubbish, and debris removal contained in subsection 22.206.160.A.1;
11. The requirements for extermination contained in subsection 22.206.160.A.3;
12. The requirement to provide the required keys and locks contained in subsection 22.206.160.A.11; and
13. The requirement to provide and test smoke detectors contained in subsection 22.206.160.B.4.

(Ord. 124312, § 7, 2013; Ord. 124011, § 7, 2012.)

22.214.060 - Private qualified rental housing inspector registration

A. To register as a private qualified rental housing inspector, each registration applicant shall:
   1. Pay to the Director the registration fee as specified in Chapter 22.900;
   2. Successfully complete a rental housing inspector training program on the Seattle Housing and Building Maintenance Code, the Rental Registration and Inspection Ordinance, and program inspection protocols administered by the Director. Each applicant for the training program shall pay to the Director a training fee set by the Director that funds the cost of carrying out the training program; and
   3. Provide evidence to the Department that the applicant possesses a current City business license issued according to section 5.55.030, and possesses current credentials as defined in subsection 22.214.020.9.b.
B. All rental housing inspector registrations automatically expire two years after the registration was issued and must be renewed according to section 22.214.060.C.
C. In order to renew a registration, the qualified rental housing inspector shall:
   1. Pay the renewal fee specified in Chapter 22.900; and
   2. Provide proof of compliance with sections 22.214.060.A.2. and 22.214.060.A.3.
D. A qualified rental housing inspector who fails to renew their registration is prohibited from inspecting and certifying rental housing under this Chapter 22.214 until the inspector registers or renews a registration according to Section 22.214.060
E. The Department is authorized to revoke a qualified rental housing inspector's registration if it is determined that the inspector:
   1. Knows or should have known that information on a Certificate of Compliance issued under this Chapter 22.214 is false; or
   2. Is convicted of criminal activity that occurs during inspection of a property regulated under this Chapter 22.214
F. The Director shall consider requests to reinstate a qualified rental housing inspector registration. The Director's determination following a request to reinstate a revoked registration shall be the Department's final decision.
G. The Director shall adopt rules to govern the administration of the qualified rental housing inspector provisions of this Chapter 22.214

(Ord. 124312, § 8, 2013; Ord. 124011, § 8, 2012.)

22.214.070 - Enforcement authority and rules

A. The Director is the City Official designated to exercise all powers including the enforcement powers established in this Chapter 22.214
B. The Director is authorized to adopt rules as necessary to carry out this Chapter 22.214 including the duties of the Director under this Chapter 22.214

(Ord. 124011, § 9, 2012.)

22.214.075 - Violations and enforcement

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

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

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

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

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

(Ord. 124011, § 10, 2012.)

22.214.080 - Investigation and notice of violation

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

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

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

D. A copy of the notice of violation may be filed with the King County Department of Records and Elections when the owner fails to correct the violation or the Director requests the City Attorney take appropriate enforcement action.

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

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

22.214.085 - Civil enforcement

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

(Ord. 124312, § 10, 2013; Ord. 124011, § 12, 2012.)

22.214.086 - Penalties

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

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

B. When the Director has issued a notice of violation according to Section 22.214.080, a property owner may, at any time prior to the initiation of a civil enforcement action, appeal to the Director the notice of violation or the penalty imposed. The appeal shall be in writing.

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

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

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

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

(Ord. 124312, § 11, 2013)

22.214.087 - Rental Registration and Inspection Ordinance Enforcement Accounting Unit

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

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

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

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

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

(Ord. 124312, § 12, 2013)

22.214.090 - Appeal to superior court

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

(Ord. 124011, § 14, 2012.)

Appendix 3

Seattle Municipal Code § 22.214 (2019)

Chapter 22.214 - RENTAL REGISTRATION AND INSPECTION ORDINANCE

22.214.010 - Declaration of purpose

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

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

22.214.020 - Definitions

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

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

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

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

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

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

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

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

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

"Qualified rental housing inspector" means:

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

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

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

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

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

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

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

"Tenant" has the meaning given in Section 22.204.210.

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

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

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

22.214.030 - Applicability

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

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

for the institution; and

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

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

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

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

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

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

22.214.040 - Rental housing registration, compliance declaration, and renewals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.214.045 - Registration denial or revocation

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

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

a. Submitting an incomplete application; or

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

2. A rental housing registration may be revoked for:

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

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

c. Failing to use a qualified rental housing inspector;

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

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

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

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

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

22.214.050 - Inspection and certificate of compliance required

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

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

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

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

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

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

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

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

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

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

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

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

H. Notice of inspection to tenants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.214.060 - Private qualified rental housing inspector registration

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

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

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

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

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

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

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

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

22.214.070 - Enforcement authority and rules

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

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

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

22.214.075 - Violations and enforcement

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

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

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

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

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

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

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

22.214.080 - Investigation and notice of violation

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

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

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

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

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

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

22.214.085 - Civil enforcement

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

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

22.214.086 - Penalties

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

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

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

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

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

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

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

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

22.214.087 - Rental Registration and Inspection Ordinance Enforcement Accounting unit

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

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

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

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

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

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

22.214.090 - Appeal to superior court

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

(Ord. 124011, § 14, 2012.)

Appendix 4

RCW 59.18.125

RCW 59.18.125

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[**2010 c 148 § 2.**]

RCW 59.18.150

Landlord's right of entry—Purposes—Searches by fire officials—Searches by code enforcement officials for inspection purposes—Conditions.

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles **3**, **35**, and **35A** RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.

(b) "Fire official" means any fire official authorized to enforce the state or local fire code.

(4)(a) A search warrant may be issued by a judge of a superior court or a court of limited jurisdiction under Titles **3**, **35**, and **35A** RCW to a code enforcement official of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified dwelling unit and premises to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(b) A search warrant must only be issued upon application of a designated officer or employee of a county or city prosecuting or regulatory authority supported by an affidavit or declaration made under oath or upon sworn testimony before the judge, establishing probable cause that a violation of a state or local law, regulation, or ordinance regarding rental housing exists and endangers the health or safety of the tenant or adjoining neighbors. In addition, the affidavit must contain a statement that consent to inspect has been sought from the owner and the tenant but could not be obtained because the owner or the tenant either refused or failed to respond within five days, or a statement setting forth facts or circumstances reasonably justifying the failure to seek such consent. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW **59.18.240** against a tenant who gives consent to a code enforcement official of the state or of any county, city, or other political subdivision to inspect his or her dwelling unit to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(c) In determining probable cause, the judge is not limited to evidence of specific knowledge, but may also consider any of the following:

(i) The age and general condition of the premises;

(ii) Previous violations or hazards found present in the premises;

(iii) The type of premises;

(iv) The purposes for which the premises are used; or

(v) The presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

(d) Before issuing an inspection warrant, the judge shall find that the applicant has: (i) Provided written notice of the date, approximate time, and court in which the applicant will be seeking the warrant to the owner and, if the applicant reasonably believes the dwelling unit or rental property to be inspected is in the lawful possession of a tenant, to the tenant; and (ii) posted a copy of the notice on the exterior of the dwelling unit or rental property to be inspected. The judge shall also allow the owner and any tenant who appears during consideration of the application for the warrant to defend against or in support of the issuance of the warrant.

(e) All warrants must include at least the following:

(i) The name of the agency and building official requesting the warrant and authorized to conduct an inspection pursuant to the warrant;

(ii) A reasonable description of the premises and items to be inspected; and

(iii) A brief description of the purposes of the inspection.

(f) An inspection warrant is effective for the time specified in the warrant, but not for a period of more than ten days unless it is extended or renewed by the judge who signed and issued the original warrant upon satisfying himself or herself that the extension or renewal is in the public interest. The inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of the time specified in the warrant, the warrant, unless executed, is void.

(g) An inspection pursuant to a warrant must not be made:

(i) Between 7:00 p.m. of any day and 8:00 a.m. of the succeeding day, on Saturday or Sunday, or on any legal holiday, unless the owner or, if occupied, the tenant specifies a preference for inspection during such hours or on such a day;

(ii) Without the presence of an owner or occupant over the age of eighteen years or a person designated by the owner or occupant unless specifically authorized by a judge upon a showing that the authority is reasonably necessary to effectuate the purpose of the search warrant; or

(iii) By means of forcible entry, except that a judge may expressly authorize a forcible entry when:

(A) Facts are shown that are sufficient to create a reasonable suspicion of a violation of a state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards that, if the violation existed, would be an immediate threat to the health or safety of the tenant; or

(B) Facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful.

(h) Immediate execution of a warrant is prohibited, except when necessary to prevent loss of life or property.

(i) Any person who willfully refuses to permit inspection, obstructs inspection, or aids in the obstruction of an inspection of property authorized by warrant issued pursuant to this section is subject to remedial and punitive sanctions for contempt of court under chapter **7.21** RCW. Such conduct may also be subject to a civil penalty imposed by local ordinance that takes into consideration the facts and circumstances and the severity of the violation.

(5) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(6) The landlord shall not abuse the right of access or use it to harass the tenant, and shall provide notice before entry as provided in this subsection. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' written notice of his or her intent to enter and shall enter only at reasonable times. The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the

dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

(7) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

(8) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

(9) Nothing in this section is intended to (a) abrogate or modify in any way any common law right or privilege or (b) affect the common law as it relates to a local municipality's right of entry under emergency or exigent circumstances.

[**2011 c 132 § 9; 2010 c 148 § 3; 2002 c 263 § 1.** Prior: **1989 c 342 § 7; 1989 c 12 § 18; 1973 1st ex.s. c 207 § 15.**]

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I filed the foregoing *Brief of Appellants* through the Court's electronic filing system which will send an email notification of such to the following:

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Dated this July 10, 2020, in Seattle, Washington.

s/William R. Maurer
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WSBA No. 25451

INSTITUTE FOR JUSTICE

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