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

RICHARD BONESTEEL; EDWIN YASUKAWA;)
STEVEN DAVIES; SALLY OLJAR; KELI)
CARENDER; MARK ELSTER; GREG MOON; and)
SCOTT SHOCK,)
Plaintiffs,)
v.)
THE CITY OF SEATTLE, a Washington Municipal)
Corporation; SEATTLE PUBLIC UTILITIES; RAY)
HOFFMAN, Director, in his official capacity,)
Defendants.)

No. _____

**COMPLAINT FOR VIOLATION
OF RIGHT TO PRIVACY
(WASH. CONST. ART. I, §7),
DUE PROCESS (WASH. CONST.
ART. I, § 3), AND FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. The Washington State Constitution prohibits government searches of garbage cans
3 without first obtaining a warrant.

4 2. Article I, Section 7, of the Washington State Constitution says, “No person shall be
5 disturbed in his private affairs, or his home invaded, without authority of law.” A person has a
6 legitimate expectation that the contents of his or her garbage cans will remain private and free from
7 government inspection when placed curbside for collection. *State v. Boland*, 115 Wn.2d 571, 800
8 P.2d 1112 (1990). Therefore, a warrantless search of a garbage can unconstitutionally intrudes into
9 a person’s private affairs.

10 3. For many years, the City of Seattle has boasted one of the highest recycling and
11 composting rates in the nation. Notwithstanding this success, in September 2014, the City enacted
12 a law that penalizes people for discarding food or recyclables in their personal garbage bins. The
13 Ordinance directs garbage collectors and Seattle Public Utilities (SPU) inspectors to search both
14 residential and business garbage cans, without suspicion or a warrant, in order to estimate whether
15 compostable materials or recyclables make up a “significant amount” of a garbage can’s contents.
16 Seattle Municipal Code §§ 21.36.082-21.36.083. If garbage collectors deem a garbage bin to
17 contain more than 10 percent of food or recyclables, Seattle Public Utilities directs garbage
18 collectors to affix a brightly colored tag on the garbage can notifying the public of a violation of
19 the City’s laws. Seattle Public Utilities Director’s Rule, SW-402.1 (Jan. 1, 2015). Starting in
20 2016, these tags will be accompanied by fines. The Ordinance offers no avenue for residents to
21 contest a supposed infraction, contrary to the guarantee of due process in Article I, Section 3, of
22 the Washington State Constitution and as incorporated into RCW 7.80.

23 4. The City’s garbage inspection law violates privacy rights on a massive scale. Seattle
24 has an estimated population of 652,500. The Ordinance directs garbage collectors to invade the
25 private affairs of each and every Seattle resident and business on a weekly basis. The City and its

1 agents began enforcing the Ordinance in January 2015. From January through April 2015, the City
2 issued an estimated 9,000 notices of violation.

3 **I. PARTIES**

4 5. Plaintiffs Richard Bonesteel, Edwin Yasukawa, Scott Shock, Steven Davies, Sally Oljar,
5 Mark Elster, and Greg Moon are Seattle residents, subject to the garbage inspection law.

6 6. Plaintiff Keli Carender resided in Seattle until March 2015 and was tagged twice for
7 allegedly violating the garbage inspection law.

8 7. The City of Seattle is a Washington state municipality located in King County and
9 chartered by the State of Washington.

10 8. Seattle Public Utilities (SPU) is the City agency responsible for solid waste management
11 throughout Seattle.

12 9. Ray Hoffman is the director of Seattle Public Utilities and is being sued in his official
13 capacity.

14 10. Plaintiffs reserve the right to name additional defendants as may be necessary.

15 **II. JURISDICTION AND VENUE**

16 11. This civil action is a case of actual controversy between Plaintiffs and Defendants,
17 arising under the Washington State Constitution.

18 12. This Court has jurisdiction over this matter pursuant to RCW 4.28.020, RCW 7.24.010,
19 7.40.010, and/or Article IV, Sections 1 and 6, of the Washington State Constitution.

20 13. Pursuant to RCW 4.12.020, venue is proper in King County Superior Court because
21 the City of Seattle sits within county limits.

22 **III. FACTUAL BACKGROUND**

23 **The Garbage Inspection Ordinance**

24 14. The City of Seattle has a duty to collect residential garbage pursuant to a waste
25 management plan. RCW 70.95.080, 090, 094; KCC 10.25.040. Waste disposal companies,

1 contracted by the City and under the direction and control of SPU, collect garbage and organic
2 waste on a weekly basis, while recycling is collected on a bi-weekly basis.

3 15. Over the past decade, Seattle, according to the City Council, had one of the highest
4 recycling and composting rates in the nation, diverting an estimated 56 percent of all waste from
5 the landfill in 2013. Seattle City Council Ordinance No. 124582. The City wants to increase that
6 rate. In 2013, Seattle adopted Resolution 31426, which set a goal of increasing the recycling and
7 composting rate to 60 percent by 2015 and 70 percent by 2022.

8 16. On September 22, 2014, the Seattle City Council passed Ordinance No. 124582, which
9 was signed by Mayor Edward B. Murray the next day. The stated purpose of the ordinance is to
10 “prohibit disposal of food waste and compostable paper as garbage.” Council Bill No. 118195.
11 The Ordinance took effect on January 1, 2015. A copy of the Ordinance is attached as Exhibit A.

12 17. The Ordinance amends Sections 21.36.082, 21.36.083, and 21.36.922 of the Seattle
13 Municipal Code, which address residential and commercial recycling and composting.

14 18. The Ordinance states that, for both commercial establishments and residents, “no food
15 waste or compostable paper shall be deposited in garbage containers or drop boxes or disposed as
16 garbage at the City’s transfer stations.” SMC §§ 21.36.082(C), 21.36.083(B). Instead, food waste
17 and compostable paper must be disposed of in the yard waste bin and recyclables must be disposed
18 of in the recycling bin.

19 19. The Ordinance states that SPU will “monitor” residential and commercial garbage bins
20 for compliance with its requirements, and provides for enforcement of the Ordinance via escalating
21 penalties for any person or business who disposes of recyclable materials and/or “significant
22 amounts of food waste and compostable papers” in their garbage containers.

23 20. The Ordinance authorizes SPU to impose penalties when garbage collectors determine
24 that individuals or businesses have violated the recycling and/or compostable materials
25 requirements, such as brightly colored tags notifying the public of a violation, and/or fines of

1 between \$1 to \$50 per violation (deemed an “additional collection fee” in the Ordinance).

2 21. The Ordinance does not provide any avenue for residents or businesses to challenge
3 a garbage collector’s decision that they violated the law restricting food and recyclables in trash
4 cans.

5 **Implementing Rule**

6 22. Ray Hoffman, the director of SPU, is responsible for implementing and enforcing the
7 Ordinance. The Ordinance authorizes the director to “promulgate rules . . . for purposes of
8 interpreting and clarifying the requirements of this subsection.”

9 23. Pursuant to this authority, Ray Hoffman amended Director’s Rule SW-402.1,
10 “Prohibition of Recyclables in garbage,” with new provisions having an effective date of
11 January 1, 2015. A copy of the Rule is attached as Exhibit B.

12 24. The stated purpose of the Implementing Rule is to “impose[] penalties for
13 noncompliance” with the City’s ban on placing “significant amounts” of food and recyclables in
14 garbage containers.

15 25. The Implementing Rule defines “significant amounts” as food waste and recyclables
16 that “alone or in combination[] make up more than 10 percent by volume of the contents of a
17 garbage can, detachable container, or drop box.”

18 26. The Implementing Rule authorizes and directs garbage collectors and SPU inspectors
19 to inspect the contents of residential and business garbage containers in order to determine
20 compliance.

21 27. The Implementing Rule does not require the garbage collector or SPU inspector to
22 have reasonable suspicion of a violation before inspecting the garbage container. Nor does the
23 Rule require them to obtain a warrant before examining the contents of a residential or business
24 garbage can. Instead, each residence and business is subject to having its garbage containers
25 searched at any time.

1 28. The Implementing Rule provides for escalating penalties for any violations determined
2 after the City's visual inspection of a garbage container, ranging from warnings to public tagging
3 to fines that run from \$1 to \$50 per violation.

4 29. The Implementing Rule provides no avenue for an accused individual or business to
5 contest the determination of a violation, or to challenge the imposition of penalties. Nor does the
6 Rule require garbage collectors or SPU inspectors to preserve evidence of an alleged violation of
7 the Ordinance.

8 **SPU Trains Collectors to Examine**
9 **the Contents of Residential Garbage Cans**

10 30. SPU trains the garbage collectors who are authorized and directed to enforce the
11 Ordinance and Implementing Rule.

12 31. The training program states that inspection and enforcement are mandatory: any
13 violation "will need to be noted and tagged." A copy of the training materials are attached as
14 Exhibit C.

15 32. The training program refers to the monetary penalty that will begin in January 2016
16 as a "fine."

17 33. The training program directs garbage collectors to use "good judgment" in determining
18 whether restricted items such as food exceed 10 percent of a garbage can's total volume.

19 34. To make this determination, the training program directs garbage collectors to inspect
20 loose contents in the container, lift bags to determine if loose materials are located out of sight,
21 inspect the contents of clear plastic bags, and search opaque bags that are untied or have tears. The
22 garbage collector must then solve the equation, $x > \pi r^2 h \div 10$, where x is the volume of prohibited
23 materials; r is the can's radius; and h is the height of the can, to calculate whether the food and
24 recyclables exceed 10 percent of the gross volume of the container. Garbage cans serviced by SPU
25 range from 12 to 96 gallons in size, each requiring a separate calculation.

1 35. Once a garbage collector determines to his/her satisfaction that an individual violated
2 the Ordinance and Implementing Rule, he/she must note the violation and affix a brightly colored
3 tag on the garbage can.

4 36. The residential violation tag bears SPU's logo and states in large, bold font: "Items
5 in Your Garbage Violate Recycling, Food and Yard Waste Requirements!" The other side of the
6 tag warns that "Starting January 1, 2016, a fine of \$1 will be levied on your bill for each
7 violation." A copy of the violation tag is attached as Exhibit D.

8 37. Once a violation is noted and the tag affixed with a tie, garbage collectors empty the
9 can into the garbage truck and mingle the contents with all of the other garbage.

10 38. Apart from the tag, a resident receives no other notice of violation and has no avenue
11 for contesting the citation.

12 39. The Ordinance and Implementing Rule contain no requirement for the City or its
13 agents to preserve or otherwise document evidence of a cited violation.

14 **SPU Adopts "Monitoring Protocols" for Ongoing**
15 **Inspection of Commercial Garbage Containers**

16 40. SPU adopted an informal "monitoring protocol" on May 15, 2015, for the inspection
17 of commercial garbage containers. The protocol is attached as Exhibit E.

18 41. The protocol establishes an "inspection staff." Each "lead inspector" is responsible
19 for overseeing 250 inspections of commercial garbage containers per month.

20 42. The protocol mandates enforcement of the Ordinance and Implementing Rule and
21 envisions escalating penalties for alleged violations.

22 43. The protocol states that SPU has a "zero tolerance" approach to commercial accounts
23 and instructs inspectors to issue notices of violation to businesses upon the discovery of *any* food
24 waste or recyclables in a garbage container. Upon the discovery of any of these materials, SPU
25 will tag the garbage container and schedule the business for a follow-up inspection.

1 44. The commercial inspection and citation protocol adheres to the 10 percent volume
2 threshold only upon the issuance of a third and subsequent notices of violation. Starting January 1,
3 2016, the City will impose a \$50 fine for the third and subsequent violations.

4 45. The commercial protocol instructs inspectors to photograph the contents of a
5 commercial garbage container upon the third and subsequent violations.

6 46. Upon any determination of a violation, SPU will send the business a letter notifying
7 the business of a “Violation of Seattle Municipal Code 21.36.082/21.36.083.” The letter states
8 that, upon inspection, SPU found prohibited materials in the garbage container.

9 47. SPU’s notice provides that “a \$50 fine will be levied to your account for this violation.
10 \$50 fines will be levied against your account for each infraction of this ordinance hereafter.”

11 48. The notice of violation does not provide any avenue for a business to contest the
12 citation or fines.

13 **Ongoing Harm to Plaintiffs**

14 49. On a weekly basis, garbage collectors from SPU’s contractors are enforcing the
15 Ordinance and Implementing Rule by examining the contents of residential garbage cans for
16 evidence of a code infraction. Upon information and belief, the City issued an estimated 9,000
17 tags between January 2015 and April 2015. Enforcement, however, has been highly varied, with
18 some trash collectors reported to have been tagging as many as one in five residential garbage cans
19 each week since the garbage inspection law took effect. Amy Radil, *Tossing Food In The Trash?*
20 *In Seattle, You’ll Be Fined For That*, NATIONAL PUBLIC RADIO (Jan. 26, 2015).¹ Other collectors,
21 however, have not maintained this same level of enforcement given the number of violations noted
22 by SPU.

23 ///

24 _____
25 ¹ Available at <http://www.npr.org/sections/thesalt/2015/01/26/381586856/tossing-out-food-in-the-trash-in-seattle-you-ll-be-fined-for-that>.

1 50. Plaintiff Richard Bonesteel lives with his family in a single-family home in Seattle
2 serviced by SPU. He and his family use clear plastic bags and open paper bags to contain their
3 garbage. Upon information and belief, the contents of Mr. Bonesteel's garbage can and the bags
4 contained therein have been and continue to be inspected by City garbage collectors seeking to
5 find materials restricted by the challenged Ordinance and Implementing Rule. Mr. Bonesteel owns
6 the garbage can subject to search under the garbage inspection law.

7 51. Plaintiff Edwin Yasukawa lives in a single-family home in Seattle serviced by SPU.
8 Mr. Yasukawa uses translucent plastic bags to contain his garbage. Upon information and belief,
9 the contents of Mr. Yasukawa's garbage can and the bags contained therein have been and
10 continue to be inspected by City garbage collectors seeking to find materials restricted by the
11 challenged Ordinance and Implementing Rule. Mr. Yasukawa owns the garbage can subject to
12 search under the garbage inspection law.

13 52. Plaintiff Gregory Moon lives in a single-family home in Seattle serviced by SPU.
14 Mr. Moon uses opaque drawstring plastic bags to collect his garbage, which he does not always
15 tie. Upon information and belief, the contents of Mr. Moon's garbage can and the bags contained
16 therein have been and continue to be inspected by City garbage collectors seeking to find materials
17 restricted by the challenged Ordinance and Implementing Rule. Mr. Moon owns the garbage can
18 subject to search under the garbage inspection law.

19 53. Plaintiff Scott Shock lives in a single-family home in Seattle serviced by SPU.
20 Mr. Shock uses translucent plastic bags to collect all of his garbage. Upon information and belief,
21 the contents of Mr. Shock's trash can have been and continue to be inspected by City garbage
22 collectors seeking to find materials restricted by the challenged Ordinance and Implementing Rule.
23 Mr. Shock owns the garbage can subject to search under the garbage inspection law.

24 54. Plaintiff Mark Elster lives in a single-family home in Seattle serviced by SPU.
25 Mr. Elster and his family bag most of their garbage in white bags with a drawstring tie. Upon

1 information and belief, the contents of Mr. Elster’s garbage can have been and continue to be
2 inspected by City garbage collectors seeking to find materials restricted by the challenged
3 Ordinance and Implementing Rule. Mr. Elster owns the garbage can subject to search under the
4 garbage inspection law.

5 55. Plaintiffs Sally Oljar and Steve Davies are a married couple living in a single-family
6 home in Seattle serviced by SPU. They place their garbage in opaque, tied plastic bags. Upon
7 information and belief, the contents of their garbage cans have been and continue to be inspected
8 by City garbage collectors seeking to find materials prohibited by the challenged Ordinance and
9 Implementing Rule. Mrs. Oljar and Mr. Davies own the garbage can subject to search under the
10 garbage inspection law.

11 56. Keli Carender lived in a single-family home in Seattle serviced by SPU through March
12 2015. In two consecutive weeks in January 2015, Ms. Carender received tags on her garbage can
13 accusing her of placing forbidden items in the can and warning of future fines. The tags were
14 placed on the garbage can in plain view. The notices did not provide her with any opportunity to
15 contest SPU’s determination that she had violated the Ordinance and Implementing Rule.
16 Ms. Carender continues to own the Seattle home serviced by SPU, and she owns her home’s
17 garbage can subject to the garbage inspection law.

18 **DECLARATORY RELIEF ALLEGATIONS (Ch. 7.24 RCW)**

19 57. Under Article 1, Section 7, of the Washington State Constitution, Plaintiffs have a right
20 to be free from government intrusion into their private affairs. Specifically, Washington’s
21 Supreme Court has held that a person has a legitimate expectation that, absent a warrant, the
22 contents of his or her garbage cans will remain private and free from government inspection when
23 placed curbside for collection. *Boland*, 115 Wn.2d 571.

24 58. Defendants assert the right to, and will, examine the contents of Plaintiffs’ garbage
25 cans to search for evidence of a civil infraction—to look for materials restricted by the Ordinance

1 and Implementing Rule. Defendants have no reasonable or articulable suspicion that Plaintiffs
2 have or will violate the Ordinance and Implementing Rule. Nonetheless, Defendants have been
3 inspecting the contents of Plaintiffs' garbage cans and will continue to do so.

4 59. There is a justiciable controversy in this case as to whether the Ordinance and
5 Implementing Rule, authorizing Defendants to examine Plaintiffs' garbage cans in order to search
6 for restricted or prohibited materials, can be applied or enforced consistent with the state
7 constitution. There is a controversy as to whether the Ordinance and Implementing Rule can be
8 applied or enforced, pursuant to a warrantless search, to penalize Plaintiffs where restricted
9 materials are found in their trash cans. There is also a controversy as to whether the Ordinance
10 and Implementing Rule can be applied or enforced without providing residents and businesses with
11 notice and opportunity to challenge any violations arising from Defendants' warrantless inspection
12 of their garbage cans.

13 60. A declaratory relief judgment as to whether Defendants may enforce the Ordinance
14 and Implementing Rule to inspect garbage containers without a warrant for the purpose of finding
15 materials prohibited by City regulation, and for the further purpose of penalizing citizens and
16 businesses who are found to have discarded banned materials after a warrantless search, will serve
17 a useful purpose in clarifying and settling the legal relations between Plaintiffs and Defendants.

18 61. A declaratory relief judgment will terminate and afford relief from the uncertainty and
19 insecurity giving rise to this controversy.

20 **PRELIMINARY AND PERMANENT**
21 **INJUNCTIVE RELIEF ALLEGATIONS**
22 **(Ch. 7.40 RCW)**

23 62. Plaintiffs have no adequate remedy at law to address Defendants' unlawful and
24 unreasonable intrusion into Plaintiffs' private affairs.

25 63. There is a substantial likelihood that Plaintiffs will succeed on the merits of their claim
that enforcement of a warrantless inspection policy violates the Privacy and Due Process Clauses

1 of the Washington State Constitution.

2 64. Plaintiffs have suffered repeated irreparable injuries and will continue to suffer such
3 injuries absent an injunction restraining the Defendants from searching the contents of Plaintiffs'
4 garbage cans without articulable suspicion or a warrant.

5 65. The injuries—intrusion upon one's private affairs without a reasonable basis and
6 without due process—outweigh any harm the injunction might cause Defendants.

7 66. An injunction restraining Defendants from interfering with private affairs without a
8 warrant and without due process, will not impair, but rather enhance, the public interest.

9 **CAUSES OF ACTION**

10 **COUNT I**

11 **Warrantless Search of Private Property and**
12 **Intrusion Into Private Affairs in Violation of Article I,**
13 **Section 7, of the Washington State Constitution**

14 67. Plaintiffs repeat and reallege as though set forth in full each and every allegation
15 contained in Paragraphs 1 through 66 inclusive.

16 68. Article 1, Section 7, of the Washington State Constitution states that "No person shall
17 be disturbed in his private affairs, or his home invaded, without authority of law."

18 69. Plaintiffs have a reasonable expectation that the contents of their garbage cans will
19 remain private and free from government inspection, absent a warrant. Under Supreme Court of
20 Washington precedent, a government inspection of the contents of a garbage can without a warrant
21 violates the right to privacy.

22 70. The City of Seattle has and continues to violate Plaintiffs' privacy rights by directing
23 garbage collectors and SPU inspectors to engage in warrantless searches of Plaintiffs' garbage
24 cans.

25 71. The garbage collectors are agents of the City, contracted to carry out the City's waste
removal obligation and act under the direction and control of the City and SPU.

1 72. The SPU inspectors are agents of the City.

2 73. The City's Ordinance and Implementing Rule authorize and direct the garbage
3 collectors to inspect the contents of residential garbage cans for the purpose of finding materials
4 prohibited by the challenged Ordinance and Implementing Rule.

5 74. SPU, a City agency, provided training for garbage collectors to inspect the contents
6 of residential garbage cans, which included instructions to inspect the interior of the container by
7 moving bags, to open bags that are not securely tied, to look into the contents of translucent or
8 transparent bags, and to exploit tears in sealed opaque bags to inspect their contents.

9 75. Defendants' actions infringe on Plaintiffs' privacy rights.

10 76. The Ordinance and Implementing Rule violate constitutional privacy rights on their
11 face and as applied.

12 77. Plaintiffs have suffered and will suffer irreparable injuries until this law is declared
13 unconstitutional and void.

14 78. This constitutional claim for relief is ripe for resolution.

15 **COUNT II**

16 **Deprivation of Constitutionally Protected Rights** 17 **Without Due Process in Violation of Washington State** 18 **Constitution Article I, Section 3, and Ch. 7.80 RCW**

19 79. Plaintiffs repeat and reallege as though set forth in full each and every allegation
20 contained in Paragraphs 1 through 78 inclusive.

21 80. Article 1, Section 3, of the Washington State Constitution says, "No person shall be
22 deprived of life, liberty, or property, without due process of law."

23 81. At minimum, due process requires that the government provide an individual with
24 notice of the alleged violation and a meaningful opportunity to contest the government's
25 allegations before the government can deprive the person of his or her rights in life, liberty, or
property. *In re A.W.*, 182 Wn.2d 689, 701, 344 P.3d 1186 (2015).

1 82. The Ordinance and Implementing Rule create a civil infraction and authorize SPU to
2 impose penalties and fines. Under Washington’s due process case law, incorporated into Chapter
3 7.80 of the Revised Code of Washington, the government must provide all persons accused of civil
4 infractions with notice and opportunity to challenge the determination that he/she committed a
5 civil infraction in court.

6 83. The Ordinance and Implementing Rule deprive Seattle residents of a liberty interest
7 in privacy, a liberty interest in being free of official stigma, and a property interest in money.

8 84. The Ordinance and Implementing Rule have provided no means of challenging these
9 deprivations nor any method for preserving evidence of violations.

10 85. The Ordinance and Implementing Rule’s failure to offer meaningful notice and
11 opportunity to be heard violates due process rights secured by the Washington State Constitution
12 facially and as applied.

13 86. The Ordinance and Implementing Rule’s failure to offer a meaningful notice and
14 opportunity to be heard also violates Washington’s civil infractions statute, Chapter 7.80 of the
15 Revised Code of Washington.

16 87. The Ordinance and Implementing Rule have deprived Plaintiffs of their protected
17 rights without due process. Such injuries will continue until the Ordinance and Implementing Rule
18 are invalidated.

19 88. Defendants have stated an intent to deprive Seattle residents of protected property
20 interests—namely, money—without due process beginning January 1, 2016.

21 89. This constitutional claim is ripe for equitable relief.

22 **V. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs respectfully pray for the following relief:

24 1. For a declaration that the Ordinance and Implementing Rule facially and as applied
25 violate the privacy and due process rights enshrined in Article I, Sections 3 and 7, of the

1 Washington State Constitution because they authorize warrantless searches of constitutionally
2 protected areas and provide no means of challenging alleged violations;

3 2. For a preliminary and permanent injunction forbidding Defendants and their agents from
4 enforcing the Ordinance and Implementing Rule;

5 3. For an award of reasonable attorney fees, expenses, and costs as allowed by law and
6 equity, including RCW 4.84.010 and RCW 7.24.100; and

7 4. For such other relief as the Court deems just and proper.

8 DATED: July 16, 2015.

9 Respectfully submitted,

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