SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

BOBBY KITCHEON and CANDANCE REAM, individually, and SQUIRREL CHOPS, LLC, a Washington limited liability company, *Plaintiffs,* v. CITY OF SEATTLE, WASHINGTON, a municipal corporation, *Defendant*.	Case No. 19-2-25729-6 SEA **ORDER:** **(1) PARTIALLY GRANTING AND PARTIALLY DENYING DEFENDANT CITY OF SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING PLAINTIFFS' FACIAL CHALLENGES;** **(2) PARTIALLY GRANTING AND PARTIALLY DENYING DEFENDANT CITY OF SEATTLE'S MOTION FOR SUMMARY JUDGMENT RE: AS-APPLIED AND CONVERSION CLAIMS; AND** **(3) PARTIALLY GRANTING AND PARTIALLY DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OF LIABILITY**

The Court grants in part and denies in part the motions for summary judgment filed by Plaintiffs Bobby Kitcheon, Candance Ream, and Squirrel Chops, LLC and Defendant City of Seattle (the "City") as follows:

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The Court partially grants and partially denies the City's Motion for Summary Judgment Regarding Plaintiffs' Facial Challenges, Dkt. 161, and partially grants and partially denies Plaintiffs' Motion for Summary Judgment of Liability, Dkt. 179, and finds and concludes that: (1) Plaintiffs' claims are justiciable and Plaintiffs have standing to bring them; (2) the Rules are unconstitutional on their face under Washington Constitution article I, section 7, where (a) unhoused people have a constitutional privacy right, (b) the Rules provide authority of law in some circumstances to invade that right, (c) the City has valid governmental interests in invading that right, and (d) the Rules are not carefully tailored in some circumstances to pursue the City's valid governmental interests and require more disclosure than is reasonably necessary, because the Rules define "Obstruction" so broadly that the City can invade unhoused people's privacy rights without notice, offers of shelter, and property preservation; (3) the Rules are unconstitutional on their face under Washington Constitution article I, section 14, where (a) article I, section 14 is at least as protective as the Eighth Amendment, (b) like the Eighth Amendment, article I, section 14 prohibits criminal penalties and civil penalties leading to criminal penalties when seeking to move unhoused people, absent an immediate hazard, true obstruction, or other emergent situation or law enforcement context not addressed here, (c) the Rules do not constitute cruel punishment under article I, section 14, provided shelter is offered in cases not presenting an immediate hazard, true obstruction, or other emergent situation or law enforcement context not addressed here, and (d) the Rules do constitute cruel punishment to the extent that they rely on the overbroad "Obstruction" definition, because that definition allows the City to move unhoused people who are not actual obstructions, without offering unhoused people shelter.

The Court partially grants and partially denies the City's Motion for Summary Judgment Re: Individual Plaintiffs' As-Applied and Conversion Claims, Dkt. 159, and

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partially grants and partially denies Plaintiffs' Motion for Summary Judgment of Liability, Dkt. 179, and finds and concludes that: (1) there are genuine issues of material fact as to whether Ream and Kitcheon were removed from public property as obstructions without notice, a shelter offer, and property segregation and reclamation procedures, when they were not actual obstructions, and thus whether the Rules violated Washington Constitution article I, sections 7 and 14, as applied to Ream and Kitcheon; (2) for those instances in which Plaintiffs Ream and Kitcheon submitted damages claims to the City, their conversion claims can proceed; and (3) there are genuine issues of material fact as to whether the City took or retained Ream's or Kitcheon's property and, if it did, whether the City had lawful authority to do so.

In reaching these decisions, the Court considered:

Plaintiff's Motion for Summary Judgment of Liability, Dkt. 179;

Roberts, Jr. Decl. In Support of Plaintiffs' Motion for Summary Judgment, Dkt. 173;

Butler Decl., Dkt. 175;

Ream Decl. In Support of Plaintiffs' Motion for Summary Judgment, Dkt. 176;

City's Opposition to Plaintiffs' Motion for Summary Judgment of Liability, Dkt. 216;

Mam Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 217;

Caparoso Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 219;

Horan Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 220;

Irwin Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 221;

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Lohman Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 222;

Waters Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 223;

Korpi Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 224;

Shephard Decl. In Support of City's Opposition to Plaintiffs' Motion for Summary Judgment Liability, Dkt. 225;

Plaintiffs' Reply In Support of Motion for Summary Judgment of Liability, Dkt. 227;

Roberts, Jr. Decl. In Support of Plaintiffs' Reply in Support of Motion for Summary Judgment, Dkt. 228;

City's Motion for Summary Judgment RE: Individual Plaintiffs' As-Applied and Conversion Claims, Dkt. 159;

City's Motion for Partial Summary Judgment Regarding Plaintiffs' Facial Challenges, Dkt. 161;

Gholston Decl. In Support of City's Motions for Summary Judgment, Dkt. 163;

Martinez Decl. In Support of City's Motions for Summary Judgment, Dkt. 165;

Cowan Decl. In Support of City's Motions for Summary Judgment, Dkt. 167;

Adams Decl. In Support of City's Motions for Summary Judgment, Dkt. 169;

Waters Decl. In Support of City's Motions for Summary Judgment, Dkt. 171;

Plaintiffs' Combined Opposition to City's Motions for Summary Judgment, Dkt. 213;

Roberts, Jr. Decl. In Support of Plaintiffs' Combined Opposition to City's Motions for Summary Judgment, Dkt. 214;

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City's Reply in Support of Motion for Partial Summary Judgment Regarding Plaintiffs' Facial Challenges, Dkt. 230;

City's Reply in Support of Motion for Summary Judgment Re: Individual Plaintiffs' As-Applied and Conversion Claims, Dkt. 231;

Mam Decl. In Support of City's Reply to Motions for Summary Judgment, Dkt. 232; and

Argument on the motions on June 30, 2023.

I. BACKGROUND

Plaintiffs filed this action on October 1, 2019, alleging that the City uses Multi-Departmental Administrative Rule 17-01 ("MDAR 17-01") and Finance and Administrative Services Rule 17-01 ("FAS 17-01") (the "Rules") as part of an abatement program "designed to stop homeless people from sleeping, sitting, resting, or keeping their belongings on public property." Dkt. 1 at 22. Plaintiffs allege that: (1) the Rules are unconstitutional on their face and as applied to Plaintiffs Ream and Kitcheon under Washington Constitution article I, section 7, *id.* at 28; the Rules are unconstitutional on their face and as applied to Plaintiffs Ream and Kitcheon under Washington Constitution article I, section 14, *id.* at 29; and (3) the City is liable to Plaintiffs Ream and Kitcheon for conversion, *id.* at 28.

Plaintiffs allege that the City's actions violate the Washington Constitution in two respects, arguing that: (1) "[w]hen the City tosses a tent and all its contents into the garbage, it disturbs a homeless person's private affairs and invades their only source of privacy and refuge from the rest of their world—their home," and that the City "does so without first obtaining a warrant," in violation of Washington Constitution article I, section 7's prohibition on government disturbing one's private affairs without authority of law, *id.* at 3; and (2) "the City has criminalized living on virtually every parcel of City-owned land

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despite a severe lack of shelter availability," in violation of Washington Constitution article I, section 14's ban on cruel punishment, *id.* 1 at 3.

Plaintiffs claim that the City's alleged constitutional violations support three causes of action, including that: (1) the "City of Seattle, through its agents and employees, violated the Homeless Plaintiffs' right under article I, section 7 of the Washington State Constitution to be free from disturbance of their private affairs and invasion of their homes without authority of law when it seized and destroyed their homes and belongings without first obtaining a warrant, in circumstances where no exception to the warrant requirement applies," *id.* at 27; (2) there was "Conversion," where, among other allegations, the City allegedly "had no lawful authority to seize or destroy the Homeless Plaintiffs' property, and the City's agents knew that they had no lawful authority," *id.*; and (3) the City has allegedly "forcibly removed the Homeless Plaintiffs' homes and belongings from City property under the express threat of citation and arrest under criminal statutes and ordinances," which Plaintiffs allege "amounts to cruel punishment in violation of article I, section 14 of the Washington State Constitution," *id.* at 28.

Regarding relief: (1) "Plaintiffs seek from the Court a declaration that the City's policies and practices violate article I, sections 7 and 14 of the Washington Constitution," *id.* at 3; and (2) "The individual Homeless Plaintiffs . . . also seek compensatory and punitive damages for the City's seizure and destruction of their personal property," *id.* at 3-4;

II. FINDINGS AND CONCLUSIONS

A. Summary Judgment Standard

Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). In making this determination, a court considers all facts and makes all reasonable, factual inferences in the light most favorable to the nonmoving party. *Scrivener v. Clark Coll.*, 181

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Wn.2d 439, 444, 334 P.3d 541 (2014) (citation omitted). "In ruling on a motion for summary judgment, the court's function is to determine whether a genuine issue of material fact exists, not to resolve any existing factual issue." *McConiga v. Riches*, 40 Wn. App. 532, 536, 700 P.2d 331 (1985) (citation omitted). "[T]he superior court does not need to state its reasoning in an order granting summary judgment," *Greenhalgh v. Dep't of Corrections*, 180 Wn. App. 876, 888, 324 P.3d 771 (2014) (citation omitted), and, for decisions under CR 56, "[f]indings of fact and conclusions of law are not necessary," CR 52(a)(5)(B).

B. Plaintiffs' Claims are Justiciable and Plaintiffs Have Standing to Bring Them

1. The overlapping law on justiciability and standing.

The Uniform Declaratory Judgments Acts "requires a justiciable controversy, meaning one (1) presenting an actual, present, and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) involving interests that are direct and substantial, rather than potential, theoretical, abstract, or academic, and (4) of which a judicial determination will be final and conclusive." *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 847, 474 P.3d 589 (2020) (citation omitted).

In addition, "[t]he presence of issues of broad overriding import may persuade a court to exercise its discretion in favor of reaching an issue which is otherwise not justiciable." *Kitsap Cnty. v. Smith*, 143 Wn. App. 893, 908, 180 P.3d 834 (2008) (citation omitted). "To determine whether there is an issue of public importance sufficient to overcome the justiciable controversy requirements, courts look to the public interest which is represented by the subject matter of the challenged statute and the extent to which public interest would be enhanced by reviewing the case." *Id.* (citation omitted).

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Relatedly, "RCW 7.24.020 confers standing on any person 'whose rights . . . are affected by a . . . municipal ordinance.'" *Alim*, 14 Wn. App. 2d at 854 (citing RCW 7.24.020). Thus, "[a] party seeking a judgment that a statute or ordinance is unconstitutional must show that enforcement of the law will directly affect [them]." *Id.* (citation omitted). "The test under the UDJA is not whether a party intends to violate the law being challenged but merely whether their rights are adversely affected by it." *Id.*

Additionally, "Washington recognizes litigant standing to challenge governmental acts on the basis of status as a taxpayer." *Robinson v. City of Seattle*, 102 Wn. App. 795, 804, 10 P.3d 452 (2000) (citation omitted). "Under the doctrine of taxpayer standing, a taxpayer need not allege a personal stake in the matter, but may bring a claim on behalf of all taxpayers." *Id.* at 805 (citation omitted).

Finally, inherent in the four-element justiciability test "are the traditional limiting doctrines of standing, mootness, and ripeness," *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (citation omitted), and thus "[s]tanding requirements tend to overlap the requirements of justiciability under the UDJA," *Amalgamated Transit Union Local No. 1576 v. Snohomish Cnty. Public Transp. Benefit Area*, 178 Wn. App. 566, 572, 316 P.3d 1103 (2013) (citation omitted).

2. Plaintiffs' facial claims present matters of public importance.

Plaintiffs' claims for declaratory relief concerning the facial constitutionality of the Rules present matters of public importance needing judicial resolution. The City characterizes this case's subject matter as concerning "a homelessness crisis," Dkt. 161 at 8, asserting that, despite "[n]umerous City employees devot[ing] their working hours to minimize the harm of the crisis," "the number of unhoused individuals in Seattle has continued to rise over the past several years," *id.* at 9. The Washington Supreme Court has also characterized the situation in Seattle as a "homelessness crisis," *City of Seattle v. Long*,

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198 Wn.2d 136, 171, 493 P.3d 94 (2021), explaining that "[m]any factors have contributed to this emergency," including "volatile housing markets, uncertain social safety nets, colonialism, slavery, and discriminative housing practices," *id.* at 172 (citation omitted). As the parties and courts have already recognized, the matters presented by Plaintiffs' claims are issues of public importance, and irrespective of their justiciability under the otherwise applicable four-element test, Plaintiffs' requests for declaratory relief concerning the facial constitutionality of the Rules are sufficiently important to the public to require this Court to resolve them.

3. Ream's and Kitcheon's as-applied and conversion claims are justiciable and they have standing to bring them.

Making all reasonable, factual inferences in the light most favorable to Plaintiffs Ream and Kitcheon as non-moving parties, the Court concludes that they present justiciable controversies and have the standing to vindicate their rights in this Court. Ream and Kitcheon allege that they lived on public property in Seattle at various times, moved as the City sought to remove them from public property, and even if they are currently living in more permanent, stable housing, the dispute as to why they allegedly had to move and what allegedly happened to their property still exists. As individuals who lived on public property in Seattle, Ream's and Kitcheon's interests are genuine, and given the City's efforts to stop people from living on public property, the City's interests stand in opposition to those of Ream and Kitcheon. Given that the heart of Ream's and Kicheon's claims concern their homes and belongings, and given that the City's opposition is based in part on public safety, health, and access to and the accessibility of public property, the interests here are direct and substantial. Finally, a judicial declaration concerning the as-applied constitutionality of the Rules will be final and conclusive, as will the Court's resolution of

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Ream's and Kitcheon's conversion claims. Ream's and Kitcheon's claims are justiciable and they have standing to bring them.

4. Squirrel Chops, LLC has taxpayer standing as to the facial claims.

Squirrel Chops, LLC also has taxpayer standing to seek declaratory relief in its challenge to the facial constitutionality of the Rules. Judge Ruhl previously concluded that Squirrel Chops, LLC has "legal standing to assert the claims that they have asserted," Dkt. 41 at 4, and "the City did not challenge standing here" as to Squirrel Chops, LLC, Dkt. 231 at 6. Thus, Squirrel Chops, LLC has taxpayer standing to seek declaratory relief in challenging the constitutionality of the Rules on their face.

C. The Rules Are Unconstitutional on Their Face Under Washington Constitution Article I, section 7

The City asks the Court to rule on summary judgment "that as a matter of law plaintiffs cannot contend that the [Rules] facially violate the Washington Constitution," Dkt. 161 at 31, and Plaintiffs argue on summary judgment that the Rules "[a]re [f]acially [u]nconstitutional," Dkt. 213 at 21. Thus, the Court considers the facial constitutionality of the Rules appropriate for resolution on summary judgment.

1. Generally, successful facial challenges establish that there is no set of circumstances in which statutes can be constitutionally applied, though Plaintiffs may bring a partial facial challenge.

Courts "presume statutes are constitutional, and the party challenging constitutionality bears the burden of proving otherwise." *Portugal v. Franklin Cnty.*, -- Wn.3d ---, --- P.3d ----, No. 100999-2, 2023 WL 4004726, *1, *9 (Wn. June 15, 2023) (citation omitted). "A successful facial challenge is one where no set of circumstances exists in which the statute, as currently written, can be constitutionally applied." *State v. Fraser*, 199 Wn.2d 465, 486, 509 P.3d 282 (2022) (citation omitted); *see also City of Pasco v. Shaw*, 161 Wn.2d 450, 458, 166 P.3d 1157 (2007) ("In order to prevail, they must show

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that the ordinance is unconstitutional beyond a reasonable doubt and that there are no factual circumstances under which the ordinance could be constitutional.") (citation omitted). "The remedy for facial unconstitutionality is to render the statute totally inoperative." *Fraser*, 199 Wn.2d at 486 (citation omitted).

A party can make a partial facial challenge in circumstances such as those found here, where the Rules contain multiple categories. *See Robinson*, 102 Wn. App. at 807 ("But the ordinance itself creates five *categories*, only one of which is 'public safety responsibilities.' The City does not explain why a facial challenge is not available to *other aspects* of the ordinance.") (emphasis added); *see also Pasado's Safe Haven v. State*, 162 Wn. App. 746, 751, 259 P.3d 280 (2011) ("Pasado's seeks to have certain provisions of the Act . . . declared unconstitutional and stricken from the statute."); *id.* at 754 (holding that "[t]he remedy of partial statutory invalidation is not *always* available," and "is unavailable where the various provisions of the statute are so connected and interdependent in their meaning and purpose that it could not be believed that the legislature would have passed one without the other") (emphasis added).

2. Unhoused people have a have a right not to be disturbed in their private affairs when they make their homes, for example, in tents.

a. The Washington Constitution's privacy protections.

The Washington Constitution provides: "No person shall be disturbed in [their] private affairs, or [their] home invaded, without authority of law." Wash. Const. art. I, § 7. The Washington Supreme Court has held that this constitutional provision "clearly recognizes an individual's right to privacy with no express limitations." *Robinson*, 102 Wn. App. at 809 (citation omitted).

Washington courts "have recognized two types of privacy: the right to nondisclosure of intimate personal information or confidentiality, and the right to

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autonomous decisionmaking." *Id.* at 817 (citation omitted). "The former may be compromised when the State has a rational basis for doing so, while the latter may only be infringed when the State acts with a narrowly tailored compelling state interest." *Id.* (citation omitted).

b. Privacy protection scope.

In considering article I, section 7's scope, courts examine "(1) the historical protections afforded to the privacy interest, (2) the nature of information potentially revealed from the intrusion, and (3) the implications of recognizing or not recognizing the asserted privacy interest." *State v. Pippin,* 200 Wn. App. 826, 836, 403 P.3d 907 (2017).

i. Washington protects home privacy.

To Bobby Kitcheon and Candance Ream, shelter is home. For example, Ream relayed that Ream "resided," and was "living" in Ream's "home" and "residence," which happened to be a tent. Ream Decl., Dkt. 176 at 1. As to the protections afforded one's home, the Washington Supreme Court explained:

> Our decisions have consistently reflected the principle that the home receives heightened constitutional protection. Generally, a person's home is a highly private place. In no area is a citizen more entitled to [their] privacy than in [their] home. For this reason, the closer officers come to intrusion into a dwelling, the greater the constitutional protection.

State v. Young, 123 Wn.2d 173, 185, 867 P.2d 593 (1994) (citations omitted). "Home" can be defined in relevant part as "one's principal place of residence." Webster's 3d New Int'l Dictionary 1082 (2020). Given that many community members look to tents and other less-than permanent structures as their homes, it follows that the historical protections the State has extended to the privacy of one's home apply to those making their homes in, for example, tents.

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ii. Tents and other less-than-permanent structures serving as homes contain intimate and discrete details of unhoused people's personal lives.

Ream and Kitcheon considered their tents home and they filled them with the intimate and discrete details of their personal lives. Ream repeatedly described her home's contents, including, for example, a bedroom, Dkt. 176 at 2 (referring to her "mattress, . . pillows, blankets"), a closet, *id.* at 2-3 (referring to "all of my clothing and shoes"), a kitchen, *id.* at 3 (referring to "a stove, . . . silverware, food, pots and pans, utensils"), and a medicine cabinet, *id.* (referring to "hygiene supplies and toiletries, . . . insulin and sugar checker"). Similarly, Kitcheon recalled his home containing items he held dear, like his "mother's wedding ring." Dkt. 173 at 207. "In no area is a [person] more entitled to [their] privacy than in [their] home." *Pippin*, 200 Wn. App. at 836-37 (citations omitted). As the *Pippin* court explained:

> [T]he more Pippin's tent served as a refuge or retreat from the outside world, the more it could be the repository of objects or information showing his familial, political, religious, or sexual associations or beliefs, and the more it could contain objects intimately connected with his person, then the more his tent and the belongings within should be considered part of his private affairs under article I, section 7.
>
> Pippin's tent allowed him one of the most fundamental activities that most individuals enjoy in private—sleeping under the comfort of a roof and enclosure. The tent also gave him a modicum of separation and refuge from the eyes of the world: a shred of space to exercise autonomy over the personal. These artifacts of the personal could be the same as with any of us, whether in physical or electronic form: reading material, personal letters, signs of political or religious belief, photographs, sexual material, and hints of hopes, fears, and desires. These speak to one's most personal and intimate matters.

Id. at 840-41 (citation omitted). As Ream's and Kitcheon's own words demonstrate, they too looked to their homes for separation, refuge, and a repository for the personal and mundane details of their lives. That is the real world of Ream and Kitcheon, and "[t]he law is meant to apply to the real world, and the realities of homelessness dictate that dwelling places are often transient and precarious." *Id.*at 841.

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As in *Pippin*, "[t]he temporary" and possibly "flimsy and vulnerable nature of an improvised structure" "does not undermine any privacy interest" or "leave it less worthy of protections." *Id.* It follows that Ream's and Kitcheon's "tent[s] w[ere] the sort of closed-off space that typically shelters the intimate and discrete details of personal life protected by article I, section 7." *Id.*

iii. Unhoused people will be left unprotected in their homes without the constitutional right not to be disturbed in their private affairs when they make their homes in tents and other less-than-permanent structures.

Denying Ream and Kitcheon any protected privacy in their homes would be yet one more permission slip to consider them not fully human. As in *Pippin*, "denying . . . the protections of article I, section 7 in [their] tent[s] would expose to state scrutiny . . . the sort of intimate and personal information" the Washington Constitution is concerned with, and "[t]his inquiry leans heavily in favor of constitutional protection." *Id.* at 844.

Washington's Constitution has historically protected home, and that history belongs to Ream and Kitcheon with as much force as anyone with access to stable housing. Tent walls, while perhaps not as thick as sheetrock, sheltered the intimate and discrete details of their personal lives, and not according those details any constitutional privacy protection would leave Ream and Kitcheon utterly exposed. Similar to—though as explained below, somewhat different—*Pippin*, "tent[s] and [their] contents f[all] among those privacy interests which citizens of this state should be entitled to hold, safe from governmental trespass," and the "tent[s] and contents are protected under article I, section 7 of the Washington Constitution." *Id.* at 846 (citation omitted).

3. The City's actions disturb unhoused people's private affairs.

The Court concluded above that Washington Constitution article I, section 7 protects Ream's and Kitcheon's privacy in their homes, and the Court now turns to whether the City

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disturbed that privacy and, if so, had any constitutional basis for doing so. As the Washington Supreme Court described the analysis:

> First, we determine whether the action complained of disturbs one's private affairs. If so, we look to the second inquiry: whether authority of law justifies the intrusion.

Long, 198 Wn.2d at 156 (citation omitted). As described below, the City disturbs private affairs when it moves unhoused people, and in some of those instances, authority of law may support these actions.

The City's actions disturb private affairs. Regardless of the scrutiny applied and irrespective of the requisite authority of law—questions addressed below—uprooting's one's home and all its contents amounts to disturbing one's private affairs. Though the alleged facts are disputed, neither side disputes that the City, in some instances, removed tents and their contents. *E.g.*, Dkt. 165 at 267 ("To remove those encampments – and sometimes it would be . . . a smaller number of tents."); *id.* at 266-67 ("[T]he individuals can remain on any public sidewalk, in a park, but the property or other things related that were creating the obstruction could not."). The practical consequences of this disturbance of one's private affairs are no different than if one returned to their single-family stick-built house in any Seattle neighborhood after a personal errand to find that it had vanished. Dkt. 165 at 285-86 ("So they just call a number, and they'll say, Hey, I was at 3rd and Yes[ ]ler yesterday, and I came back, and my tent's gone."). The City's moving of unhoused people disturbs private affairs.

a. The Rules may, in some circumstances, serve as authority of law to disturb unhoused people's private affairs.

The Rules do not supply the authority of law to justify the disturbance to the extent that "obstruction" applies even to tents not obstructing anything. "Generally speaking, the 'authority of law' required by Const. art. I, § 7 in order to obtain records includes authority

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granted by a valid (i.e., constitutional) statute, the common law or a rule of this court." *State v. Gunwall*, 106 Wn.2d 68-69, 720 P.2d 808 (1986 (citation omitted).

While "[n]o Washington decision has identified local government policy . . . as sufficient 'authority of law' under article I, section 7," *State v. Griffith*, 11 Wn. App. 2d 661, 681, 455 P.3d 152 (2019), the Rules are tied to statute. MDAR 17-01 relies on multiple statutes, including, among others: Seattle Mun. Code ("SMC") § 18.12.250 ("It is unlawful to camp in any park except at places set aside and posted for such purposes."), MDAR 17-01 § 2.1; SMC § 18.12.278 ("Park exclusion"), MDAR 17-01 § 2.2; SMC § 18.12.030; SMC § 18.12.030(11) (defining "Park rule" for purposes of SMC 18.12.278 to mean in relevant part "rules or codes of conduct the Superintendent has adopted and has designated"), MDAR 17-01 § 2.3; SMC 18.30.010(1) (defining "Abatement"), MDAR 17-01 § 2.4; SMC § 15.04 (relating to "Use and Occupation Permits'), MDAR 17-01 §2.5; SMC § 15.38 (relating to "Impounding"), MDAR 17-01 § 2.6; SMC § 3.26.040 (authorizing the Superintendent of Parks to "[m]ake rules and regulations . . . for the management, control, and use of the park and recreation system"), MDAR 17-01 § 2.7.1; and SMC § 3.12.020 ("[T]he Director of Transportation may adopt whatever rule he or she deems useful for the conduct of the Department's business including rules interpreting Municipal Code provisions and establishing standards authorized by the Code."), MDAR 17-01 § 2.7.3. Relatedly, FAS 17-01 relies on both MDAR 17-01 and the SMC. FAS 17-01 § 2.1 ("MDAR 17-01 establishes the authority of Parks, SPU, SDOT, SCL, FAS, DON, OH, and Seattle Center to prohibit camping on property under their jurisdiction."); *id.* at § 2.2 ("This rule is adopted under the authority of Chapters 3.02 and 3.39 of the Seattle Municipal Code."). The SMC provides the requisite authority of law for promulgation of the Rules, and those Rules supply authority of law on their face for some, but not all of the moving of unhoused people.

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b. The City must have a rational basis to disturb unhoused people's private affairs.

The City must have a rational basis to constitutionally disturb private affairs when it removes unhoused people. As the Washington Supreme Court explained:

> The Supreme Court has identified two types of interests protected by the right to privacy: the right to autonomous decisionmaking and the right to nondisclosure of intimate personal information, or confidentiality.
>
> The interest in autonomy is recognized as a fundamental right and is thus accorded the utmost constitutional protection. This right involves issues related to marriage, procreation, family relationships, child rearing and education. Government action which infringes on this right is given strict scrutiny and the State must identify a compelling governmental interest for such action to be justified.
>
> The interest in confidentiality, or nondisclosure of personal information, has not been recognized by this court as a fundamental right requiring utmost protection. . . . [W]e follow[ ] the rational basis analysis: disclosure of intimate information to governmental agencies is permissible if it is carefully tailored to meet a valid governmental interest, and provided the disclosure is no greater than is reasonably necessary.

O'Hartigan v. Dep't of Personnel, 118 Wn.2d 111, 117, 821 P.2d 44 (1991) (citations omitted). Here, the City's moving of unhoused people implicates the right to nondisclosure of personal information and confidentiality, because the removal of unhoused people results in the removal of one's home and the potential scrutiny and disposition of the home's contents. It follows that the City's actions are unconstitutional if the actions are not carefully tailored to meet a valid governmental interest, with no more disclosure of personal and confidential information than necessary.

i. The City has valid governmental interests.

The City does have valid governmental interests in moving unhoused people from public property in some instances, and Plaintiffs do not appear to disagree, at least as to part of the Rules. As the City explained in MDAR 17-01, "[t]he City finds [certain] conduct on various City properties is a threat to public safety and health and interferes with the public's ability to use public property for its intended purposes," and that conduct includes, among

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other things, "unauthorized entry on certain City property that is closed to the public or is open to the public during certain operating hours or for certain limited purposes," and "[e]recting unauthorized structures, tents, or other shelters in locations *that create an obstruction* or an immediate hazard." MDAR 17-01 §§ 1.1-1.1.2 (emphasis added). Moreover, the record in this case contains many references to the City's valid governmental interests. For example, the City described seeing "a lot of people in wheelchairs, walkers having to walk in the streets," and having "to see a person with a disability have to go into a bus lane to walk down because people are camping on the streets." Dkt. 165 at 287. As another example, the City described assessing things from the "number of needles, to trash, to excrement, to disease, to . . . things like rats . . ., what is happening with the environment, to . . . mudslides." *Id.* at 274. As Mayor Jenny Durkan put it, the City was "assessing the public health and risks as laid out and required by the MDARs," and "in the obstruction, we were dealing with *very real immediate obstructions*." *Id.* at 274 (emphasis added). The City's concern with threats to public health and safety and interference with the public's ability to use public property are valid governmental interests.

ii. The Rules are not carefully tailored in some circumstances to meet the City's valid governmental interests.

The City's definition of "Obstruction" and that definition's consequences for the rest of the Rules are not carefully tailored to meet the City's valid governmental interests in some circumstances.

FAS 17-01 provides an "Obstruction" definition:

> 'Obstruction' means *people, tents*, personal property, garbage, debris or other objects related to an encampment that: are *in a City park or on a public sidewalk*; interfere with the pedestrian or transportation purposes of public rights-of-way; or interfere with areas that are necessary for or essential to the intended use of a public property or facility.

FAS 17-01 § 3.4 (emphasis added).

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The obstruction definition has consequences for how the City acts, because "Obstructions . . . may be removed immediately," and "[t]he provisions of Sections 5, 6, 7, 8, 9, and 10 of this rule do not apply to removing obstructions," FAS 17-01 § 4.1, as further described below:

Section 5 relates to "Prioritizing encampments for removal," FAS 17-01 § 5.0, requiring that the City "prioritize encampments it will remove after an inspection of encampment locations," FAS 17-01 § 5.1.2, and requiring the City to use "criteria . . . when prioritizing encampments for removal: (1) objective hazards such as moving vehicles and steep slopes; (2) criminal activity beyond illegal substance abuse; (3) quantities of garbage, debris, or waste; (4) other active health hazards to occupants or the surrounding neighborhood; (5) difficulty in extending emergency services to the site; (6) imminent work scheduled at the site for which the encampment will pose an obstruction; (7) damage to the natural environment of environmentally critical areas; and (8) the proximity of homeless individuals to uses of special concern including schools or facilities for the elderly," FAS 17-01 § 5.1.3.

Section 6 relates to "Notice Requirements," FAS 17-01 § 6.0, and provides in part that "[a] notice shall be posted on or near each tent or structure that is subject to removal," FAS 17-01 § 6.1, and that "notice shall be posted no fewer than 72 hours before an encampment removal," FAS 17-01 § 17-01 § 6.3

Section 7 relates to "Identifying or Providing Alternative Shelter Before Removing Non-Obstructing Encampments," FAS 17-01 § 7.0, and provides in part that, "[p]rior to removing an encampment, the City shall offer alternative locations for individuals in an encampment or identify available housing or other shelter for encampment occupants," FAS 17-01 § 7.1

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Section 8 relates to "Outreach for Encampment Removals," FAS 17-01 § 8.0, and provides in part that "[o]utreach personnel shall visit each encampment site at least once between the time that notice of removal is posted and the scheduled removal date," FAS 17-01 § 8.1

Section 9 relates to "Encampment Site Cleanup," FAS 17-01 § 9.0, and provides in part that "[t]he City shall take reasonable steps to segregate personal property," FAS 17-01 § 9.2.

Section 10 relates to "Post-Encampment Removal Notice," FAS 17-01 § 10.0, and provides in part that "[a] notice shall be prominently posted at the site where an encampment has been removed," and "[t]he notice shall state (1) the date the cleanup was performed; (2) whether personal property was stored by the City; (3) where the personal property is stored; (4) how any stored personal property may be claimed by its owner; and (5) contact information for outreach personnel who can assist individuals with shelter alternatives and other services, and that "[t]his notice shall not be removed by the City for a minimum of 10 days," FAS 17-01 § 10.2

The City cites a number of examples "about what constitutes an obstruction, such as tents, persons, or other objects":

(1) on a sidewalk forcing a person with a wheelchair to use the bus lane;

(2) on a planting strip where the campsite blocks a person from exiting a car;

(3) in a street or roadway;

(4) blocking building access, like at the juror entrance to the courthouse;

(5) blocking use of a public playground (*in contrast to a greenbelt in the same park*); and

(6) in the middle of a Little League ball field.

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Dkt. 216 at 3 (internal citations omitted) (emphasis added). During argument on the Motions, counsel for Plaintiffs agreed that these examples were probably constitutional.

However, the Obstruction definition is not carefully tailored, because it provides on its face for actions beyond those which the parties appear to agree are constitutional. This is because Obstruction means "people" and "tents" "in a City park or on a public sidewalk." FAS 17-01 § 3.4. When the Court asked the City at argument if, for example, a tent in an isolated wooded area in a large park would still be an obstruction under FAS 17-01, the City agreed that it would. Indeed, the City's briefing distinguishes this example from what the parties agree is a constitutional application, citing "blocking use of a public playground," and adding, "*in contrast to* a greenbelt in the same park." Dkt. 216 at 3 (emphasis added). Yet the obstruction definition makes no such distinction. Thus, despite the specific constitutional applications of the Rules the parties appear to agree on, it is also undisputed that the obstruction definition on its face is much broader. It follows that, under the obstruction definition, the City can remove a tent or person anywhere in a park, and anywhere on a public sidewalk, irrespective of actual obstruction, and can do so under the Rules without using prioritization criteria (Section 5), without notice (Section 6), without offering alternative shelter (Section 7), without outreach (Section 8), without segregating personal property (Section 9), and without post-removal notice details such as whether and where personal property was stored and how to claim it (Section 10).

At a minimum, a carefully tailored approach to disturbing unhoused people's private affairs when they are not presenting an immediate hazard, true obstruction, or other emergent situation or law enforcement context not addressed here, would require: (1) notice, as provided for in FAS 17-01 Section 6.0; (2) offer of alternative locations or shelter for unhoused people, as provided for in FAS 17-01 Section 7.0; (3) reasonable steps to

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segregate unhoused people's personal property, as provided for in FAS 17-01 Section 9.0; and (4) post-removal notice, including notice as to whether personal property was taken, where it is stored, and how to claim it, as provided for in FAS 17-01 Section 10.0. These provisions—notice, shelter offer, and property segregation and a claim process—allow unhoused people time to preserve their homes and belongings and to reclaim them when taken, and thus would constitute a carefully tailored approach allowing the City to disturb private affairs in circumstances when unhoused people are not an immediate hazard, true obstruction, or in the absence of other emergent situations or law enforcement contexts not addressed here. Given that the City can remove non-obstructing tents and persons without the safeguards the Rules provide, essentially vitiating those safeguards and erasing the distinction between obstructing and non-obstructing tents and persons, the Rules are not carefully tailored to meet the City's valid governmental interests in public safety and health and interference with the public's ability use public property for its intended purposes.

iii. The Rules require more than disclosure than is reasonably necessary.

It follows from the above that, as obstruction is defined, the intrusions require more disclosure of one's private affairs than is reasonably necessary. The intrusion is greater than is reasonably necessary, because the City can intrude on private affairs of individuals residing in non-obstructing tents without any of the safeguards listed above, including, significantly, without offering alternative shelter, making no distinction between a tent in a park greenbelt and one spanning an entire sidewalk. The Rules require more disclosure of one's private affairs than is reasonably necessary.

The Rules are unconstitutional on their face under Washington Constitution Article I, section 7, because unhoused people have a right not to be disturbed in their private affairs when they make their homes in tents and other less-than-permanent structures, the City

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disturbs that right when it removes unhoused people under authority of law in the form of the Rules, the Rules' obstruction definition is not carefully tailored to meet the City's valid governmental interests, and that definition requires more disclosure of one's private affairs than is reasonably necessary. Because the obstruction definition on its face applies to unhoused people on public property, without limitation, and because the absence of those limitations eliminates the Rules' safeguards concerning notice, offer of shelter, and property segregation and property reclamation procedures, the Rules violate Article I, section 7.

The Court is not authorizing warrantless police investigative searches for evidence of alleged crimes. The parties make a number of arguments related to the applicability or inapplicability of police search warrant law. Plaintiffs argue that "[a]rticle I, section 7 undoubtedly protects the tent homes and other structures in which houseless people live, as well as the property kept in those dwellings and nearby, even when on public property, Dkt. 179 at 24," and the City argues that the Rules "do not implicate a protected privacy interest," Dkt. 161 at 23. The Court concluded above that unhoused people have an article I, section 7 privacy right. To abridge unhoused people's privacy rights, Plaintiffs argue that the City would need a search warrant or, outside the police investigative search warrant context, to satisfy a compelling-interest standard. Dkt. 179 at 28. The City argues that the Rules "do not involve warrantless investigatory police searches, conducted without notice," Dkt. 161 at 24, and further argues that, assuming that unhoused people have an article I, section 7 privacy interest (the Court concludes they do), the Rules need only satisfy a rational basis test, versus the compelling-interest standard Plaintiffs advocate for, *id.* at 25. In concluding that there is an article I, section 7 privacy right and in selecting rational basis as the standard, the Court is not authorizing warrantless police investigative searches for evidence of alleged crimes on the persons of unhoused people, in their belongings, or in their tents or other structures. Nor is the Court precluding the use of police investigative search warrants or

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searches under recognized warrant exceptions. The Court is only ruling that unhoused people have an article I, section 7 right in the intimate and discrete details of their personal lives, and that the City may invade that right to address the City's valid governmental interest in addressing threats to public health and safety and interference with the public's use of public property, provided the City's approach is carefully tailored to address these valid governmental interests, requiring no more disclosure of the intimate and discrete details of unhoused people's personal lives than is reasonably necessary.

D. The Rules Are Unconstitutional on Their Face Under Washington Constitution Article I, section 14

1. Article I, section 14 is at least as protective as the Eighth Amendment.

The Washington Constitution is at least as protective as the Eighth Amendment. The Washington Constitution provides: "Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." Wash. Const. art. I, § 14. "[T]he Washington State Constitution's cruel punishment clause often provides greater protection than the Eighth Amendment," *State v. Roberts*, 142 Wn.2d 471, 506, 14 P.3d 713 (2000), and that "established principle[ ] of state constitutional jurisprudence" means that "a *Gunwall* analysis is not required," *id.* at 506 n.11. However, "[e]ven where it is already established that the Washington Constitution may provide enhanced protections on a general topic, parties are still required to explain why enhanced protections are appropriate in specific applications." *State v. Ramos*, 187 Wn.2d 420, 454, 387 P.3d 650 (2017) (citation omitted). The parties and the Court have not identified any authority specific to the alleged facts in this matter supporting greater protections in Washington Constitution article I, section 14 than in the Eighth Amendment, and the Court considers the Eighth Amendment authority discussed below as the constitutional floor.

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2. Article I, section 14 prohibits criminal and civil penalties leading to criminal penalties where unhoused people are not presenting an immediate hazard or actual obstruction and have nowhere else to go.

Washington Constitution article I, section 14's prohibition on cruel punishment prohibits criminal penalties and civil penalties which can result in criminal penalties against unhoused people when there is no other place for them to go, absent an immediate hazard, true obstruction, or other emergent situation or law enforcement context not addressed here. A city "cannot, consistent with the Eighth Amendment," enforce ordinances and rules against unhoused people "when there is no other place in the City for them to go." *Johnson v. City of Grants Pass*, --- F.4th ----, Nos. 20-3572, 20-35881, 2023 WL 4382635, *1, *22 (9th Cir. July 5, 2023). In 2019, the United States Court of Appeals for the Ninth Circuit held that a government "may not criminalize the state of being homeless in public spaces." *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019). More recently, in *Johnson*, the court held that a government "cannot avoid [*Martin's*] ruling by issuing civil citations that, later, become criminal offenses." *Johnson*, 2023 WL 4382635 at *18; *id.* ("Imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances' Eighth Amendment infirmity."). Consistent with the Eighth Amendment as the floor for analogous protections in Washington Constitution article I, section 14, a government cannot impose criminal penalties or civil penalties leading to criminal penalties on unhoused people in connection with moving them from public property when they have nowhere else to go, absent an immediate hazard, true obstruction, or other emergent situation or law enforcement context not addressed here.

The Rules are subject to *Martin* and *Johnson* because they provide for criminal and civil penalties. Under the Rules, the City may "request police action to exclude individuals from any City-owned or City-controlled property or to enforce the trespass laws," and "[i]ndividuals who are not subject to a charge of trespass on City-controlled rights-of-way

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may be subject to the applicable provisions of Titles 11, 12A, and 15 of the Seattle Municipal Code." MDAR 17-01 § 4.3. These "applicable provisions" do not seem to have been specified. SMC Title 11 relates to Vehicles and Traffic, and provides, for example, for civil citations. SMC 11.32.020. SMC Title 12A is the City's Criminal Code. SMC Title 15 relates to Streets and Sidewalks. MDAR 17-01 Section 5.3.2.1 cites to SMC 15.04.010, which in turn requires permits for using certain public spaces, and violation of that requirement "shall be enforced under the citation or criminal provisions," SMC 15.91.002(A)(1). Finally, the entirety of MDAR 17-01 Section 5 includes a number of "Violation" instances applying to parks and other spaces, concerning structures, tents, other shelters, and camping. MDAR § 5.0. Given that the Rules provide for criminal and civil enforcement, they are subject to the Washington Constitution's prohibition on cruel punishment.

3. The Rules are not cruel punishment where they require a shelter offer to those not presenting immediate hazards, actual obstructions, or presenting other emergency situations or law enforcement contexts not addressed here.

The Rules do not amount to cruel punishment under Washington Constitution article I, section 14 to the extent that they require an offer of shelter in situations where there is no immediate hazard or true obstruction or other emergent situation or law enforcement context not addressed here. FAS 17-01 provides that, except for immediate hazards and obstructions: (1) 72 hours' notice is posted, FAS 17-01 § 6.3, listing "contact information for an outreach provider that can provide shelter alternatives," FAS 17-01 § 6.1; (2) "[p]rior to removing encampment, the City shall offer alternative locations for individuals in an encampment or identify available housing or other shelter for encampment occupants," FAS 17-01 § 7.1; (3) "[o]utreach personnel shall be present at the commencement of removal activities on the date an encampment removal is scheduled to start according to the posted

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notice and shall be available to offer shelter alternatives," FAS 17-01 § 8.2; and (4) after moving unhoused people, notice shall be posted with "contact information for outreach personnel who can assist individuals with shelter alternatives or other services," FAS 17-01 § 10.2. To the extent that these shelter offers are made to unhoused people not presenting an immediate hazard, true obstruction, or other emergent situation or law enforcement context not addressed here, they are facially valid under Washington Constitution article I, section 14.

Addressing immediate hazards, true obstructions, or other emergent situations or law enforcement contexts not addressed here without a shelter offer will not necessarily amount to cruel punishment under Washington Constitution article I, section 14. Neither the Eighth Amendment nor Washington Constitution article I, section 14 entirely prohibit governments from enforcing prohibitions on the use of public space. For example, "[w]hen there is space available in shelters, jurisdictions are free to enforce prohibitions on sleeping *anywhere* in public." *Johnson*, 2023 WL 4382635 at *38 (emphasis in original). Significantly, "[w]hen an individual has access to shelter, such as through a city's offer of temporary housing, that person is not involuntarily homeless and anti-camping ordinances may be enforced against that person." *Id.* at 39 (quotation marks omitted). "And emphatically, when an involuntarily homeless person refuses a specific offer of shelter elsewhere, that individual may be punished for sleeping in public." *Id.* at 38. Moreover, even "[w]hen there is no shelter space, jurisdictions *may still enforce limitations on sleeping at certain locations*." *Id.* (emphasis added). Thus, "an ordinance barring the obstruction of public rights of away or the erection of certain structures" "might well be constitutionally permissible." *Martin*, 920 F.3d at 617 n.8. It follows that an "assertion that jurisdictions must now allow involuntarily homeless persons to camp or sleep on every sidewalk and in every playground is plainly wrong." *Id.* at *38. Under FAS 17-01 Section 4.0, the City

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may still address true obstructions as well as immediate hazards without, for example, offering alternative shelter under FAS 17-01 Section 7.0, and the Court here does not attempt to imagine every possible emergent situation or law enforcement context in which the City might seek to move unhoused people without offering shelter, and whether the City's actions in these unknown scenarios might be constitutional.

4. The Rules are facially invalid under Washington Constitution article I, section 14 to the extent that they allow for removing unhoused people not presenting immediate hazards, actual obstructions, or presenting other emergency situations or law enforcement contexts, without a shelter offer.

The Rules are facially invalid under Washington Constitution article I, section 14's cruel punishment prohibition to the extent that they rely on the FAS 17-01 Section 3.4 obstruction definition allowing for moving unhoused people in a park or on a sidewalk, irrespective of whether the unhoused people are truly an obstruction, without offering shelter. MDAR 17-01 provides for criminal and civil enforcement, MDAR 17-01 Section 4.3, and incorporates the procedures in FAS 17-01, MDAR 17-01 Section 4.1. As the Court explained above, because FAS 17-01 Section 3.4 defines obstruction to include people, tents, and personal property anywhere in a park and anywhere on a sidewalk, regardless of actual obstruction, the Rules allow the City under FAS 17-01 Section 4.1 to remove non-obstructing persons, tents, and personal property without offering shelter under FAS 17-01 Section 7.0. Thus, the City is incorrect when it argues that "the City's trespass laws can be applied in harmony with *Martin* where affected individuals are offered shelter, or when the City seeks to prevent camping at specific locations." Dkt. 161 at 16. Given that MDAR 17-01 and its enforcement provisions incorporates FAS 17-01, it follows that the Rules allow the City to levy criminal and civil sanctions against unhoused people who are not actual obstructions, without an offer of shelter, this is not consonant with *Martin*, and that amounts to cruel punishment forbade by Washington Constitution article I, section 14.

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As reflected above, the Court concludes that there are no genuine issues of material fact precluding summary judgment resolution of the facial constitutionality of the Rules, and the Court partially grants and partially denies the City's Motion for Partial Summary Judgment Regarding Plaintiff's Facial Challenges, Dkt. 161, and partially grants and partially denies Plaintiffs' Motion for Summary Judgment of Liability, Dkt. 179.

E. The Court Denies Summary Judgment as to the As-Applied Claims

1. Applicable law.

"An as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional." *City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004) (citation omitted). Damages are not available for Ream's and Kitcheon's as-applied claims, and Plaintiffs acknowledge that "damages are not directly available for violations of the Washington Constitution." Dkt. 213 at 41; *see also Blinka v. Wash. State Bar Ass'n*, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001) ("Washington courts have consistently rejected invitations to establish a cause of action for damages based upon constitutional violations.") (citation omitted). Instead of money damages, "[h]olding a statute unconstitutional as-applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated." *Moore*, 151 Wn.2d at 669 (citation omitted).

2. The Court denies summary judgment on the as-applied claims.

The Court finds that there are genuine issues of material fact as to whether Ream and Kitcheon were removed from public property as obstructions without notice, a shelter offer, and property segregation and reclamation procedures, when they were not actual obstructions, and thus whether the Rules violated Washington Constitution article I,

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sections 7 and 14, as applied to Ream and Kitcheon. Therefore, the Court denies summary judgment as to Ream's and Kitcheon's as-applied claims.

F. Some Conversion Claims are Viable; the Court Denies Summary Judgment as to the Conversion Claims

1. Ream and Kitcheon complied with statutory notice requirements.

The law required Ream's and Kitcheon's property claims to be presented to the City prior to initiating suit for conversion. RCW 4.96.020(2) ("All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced."); SMC 5.24.005(A) ("No action shall be commenced against the City in which monetary damages are being claimed until a written Claim for Damages has been presented to and filed with the City Clerk."). Thus, if Ream and Kitcheon submitted damages claims to the City, they will have complied with notice requirements.

Here, it is undisputed that Ream and Kitcheon submitted claims for damages to the City, and thus those claims can proceed. Ream produced a: (1) "City of Seattle Claim for Damages" alleging a property intrusion on or about April 10, 2019, Dkt. 165 at 417; (2) "City of Seattle Claim for Damages" alleging a summer 2018 property intrusion, *id.* at 421; and (3) "City of Seattle Claim for Damages "alleging a property intrusion on or about June 27 or 29, 2019, *id.* at 425. Likewise, Kitcheon produced a: (1) "City of Seattle Claim for Damages" alleging a June 11, 2019 property intrusion, *id.* at 102; (2) "City of Seattle Claim for Damages" alleging a June 19-23, 2019 intrusion, *id.* at 105; and (3) "City of Seattle Claim for Damages" alleging a June 30, 2019 property intrusion, *id.* at 108. Given that Ream and Kitcheon complied with the statutory notice requirements, these claims can proceed.

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2. The City may be liable for conversion if it retained Ream's or Kitcheon's property without lawful authority.

If the City's basis for allegedly taking Ream's or Kitcheon's property was unlawful, the City may be liable for conversion. "Conversion involves three elements: (1) willful interference with chattel belonging to the plaintiff, (2) by either taking or unlawful retention, and (3) thereby depriving the owner of possession." *Burton v. City of Spokane*, 16 Wn. App. 2d 769, 773, 482 P.3d 968 (2021) (citation omitted). "Wrongful intent is not an element of conversion, and good faith is not a defense." *Id.* (citation omitted). Given that the Court has already concluded that unhoused people have a privacy right, and given that the Court has already concluded that the Rules are facially unconstitutional to the extent that they are applied irrespective of actual obstruction, it follows that if the City, in reliance on FAS 17-01 Sections 3.4, 4.1, and 9.2, took Ream's or Kitcheon's property where Ream or Kitcheon were not presenting actual obstructions, without notice, an offer of shelter, and without segregating that property and offering a reclamation procedure, the City may have willfully interfered with Ream's or Kitcheon's property without lawful authority, thus depriving them of that property.

3. The Court denies summary judgment on the conversion claims.

The Court finds that there are genuine issues of material fact as to whether the City willfully interfered with Ream's and Kitcheon's property, unlawfully took or retained any such property, and deprived Ream and Kitcheon of any such property. Thus, the Court denies summary judgment as to Ream's and Kitcheon's conversion claims.

III. CONCLUSION

The Court: (1) partially grants and partially denies the City's Motion for Summary Judgment Regarding Plaintiffs' Facial Challenges, Dkt. 161; (2) partially grants and partially denies Plaintiffs' Motion for Summary Judgment of Liability, Dkt. 179; and (3)

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partially grants and partially denies the City's Motion for Summary Judgment Re: Individual Plaintiffs' As-Applied and Conversion Claims, Dkt. 159.

IT IS SO ORDERED.

DATED July 13, 2023.

_____

David S. Keenan
Judge

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Case Title:	KITCHEON ET AL VS CITY OF SEATTLE
Document Title:	ORDER RE SUMMARY JUDGMENT
Signed By:	David Keenan
Date:	July 13, 2023

Judge： David Keenan

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