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WHATCOM COUNTY
WASHINGTON

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7 **THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF WHATCOM**

9 CITY OF BELLINGHAM, a municipal
10 corporation,

11 Plaintiff,

12 v.

13 ERWIN ROMMEL,

14 Defendant.
15

NO. 22 2 01508 37

COMPLAINT FOR WARRANT OF
ABATEMENT OF PUBLIC
NUISANCE AND FOR INJUNCTIVE
RELIEF

LEE GROCHMAL

16
17 **I. PARTIES AND JURISDICTION**

18 1.1 Plaintiff City of Bellingham ("City") is a municipal corporation of the
19 first class organized and existing under the laws of the State of Washington and
20 doing business in Bellingham, Whatcom County, Washington.

21 1.2 Defendant, Erwin Rommel, is the owner of the property located at
22 4049 Deemer Rd, Bellingham, Washington legally described as follows:
23

24 **4049 Deemer Rd/Parcel No. 3803181574560000:**

25 "S 300 FT OF TR IN NE NW DAF-BEG AT N 1/4 SEC COR-TH N 89 DEG
26 53'35" W ALG N SEC LI 812.40 FT-TH S 00 DEG 22'54" E 653.04 FT ALG
27 A LI PAR WI N-S SEC C/L TO TPOB-TH CONT S 00 DEG 22'54" E 662.62
28 FT TO S LI OF NE NW-TH S 89 DEG 56'07" W 500.35 FT ALG SD S LI",

1 Situated in County of Whatcom, State of Washington. See Exhibit A
2 attached for full legal description.

3 1.3 This Court has jurisdiction over the parties and the subject property.
4 Venue is Whatcom County Superior Court.
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6 **II. FACTUAL ALLEGATIONS**

7 2.1 Defendant, Erwin Rommel, is prohibited from maintaining a nuisance
8 on his property, pursuant to the Bellingham Municipal Code and state law.

9 2.2 The 4049 Deemer Road property has a large encampment of
10 unhoused persons. The unhoused persons are trespassing upon the property. The
11 trespassers are abusing illegal drugs on the property, mainly fentanyl. In October
12 of 2022, there was an overdose death at the property. Further, 1,900 fentanyl pills,
13 a firearm, and \$16,900 were seized from a vehicle associated with the property.
14 Approximately 40-60 trespassers are living on the property.
15

16 2.3 Theft and other property crimes at nearby businesses have spiked
17 because of the trespassers illegally camping on the property. WinCo Foods, Home
18 Depot, and Target have reported a sharp increase in losses from theft. Trespassers
19 are given lists of items to steal in exchange for drugs. These transactions occur at
20 4049 Deemer Road and amount to a criminal enterprise.
21

22 2.4 On or about October 14, 2022, the City inspected the property at
23 4049 Deemer Rd. and found that the property was in violation of the City's
24 Nuisance Code, Bellingham Municipal Code ("BMC") 10.28.020, and state law
25 under RCW 7.48. The City, in its Municipal Code Violation Notice dated October
26 20, 2022, stated that there were numerous violations of the BMC nuisance code.
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1 The overall condition of the property and the numerous violations of local and state
2 law constitute a nuisance: the condition of the property annoys, injures, or
3 endangers the safety, health, comfort, or repose of the public; offends public
4 decency; and renders the public insecure in life or in the use of property.

5
6 2.5 Specifically, the property at 4049 Deemer Road is overrun with
7 garbage, refuse, waste material, non-operating motor vehicles, and litter. Said
8 condition is unsafe, unsanitary, and detrimental to the neighboring businesses and
9 the public at large. Piles of garbage, refuse, waste material, and litter can be seen
10 on the property and are getting bigger every day.

11
12 Additionally, the accumulation of drug contaminated trash, litter, and
13 garbage has been a detriment to the health of nearby businesses and the
14 community at large. Specifically, syringes and burnt aluminum foil used for smoking
15 fentanyl are scattered upon the 4049 Deemer Road property. Neighboring property
16 owners have also reported trash spillovers into their parking lots including syringes
17 and burnt aluminum foil that originated from 4049 Deemer Road.

18
19 2.6 Inspections of 4049 Deemer Road have revealed large areas
20 contaminated with human feces. The trespassers have used certain areas as
21 bathrooms resulting in offensive odors emanating from the property. The bathroom
22 area is on the down slope to Baker Creek meaning that human feces are running
23 off into the water.

24
25 2.7 The conditions at 4049 Deemer Road have also led to the
26 proliferation of rodents and other vectors, such as raccoons. The harborage of
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1 rodents at this address is a public health concern and a violation of the BMC and
2 the state health code.

3 2.8 The Bellingham Municipal Code 10.28 outlines the process for the
4 City to declare properties a public nuisance. The City followed that process by
5 notifying Defendant by letter on October 20, 2022, that his properties were declared
6 nuisances. To date, the Defendant has avoided service. The certified mail has been
7 marked return to sender. The City also emailed all the letters and notices to
8 glasairx@hotmail.com, which is an email address the Defendant has previously
9 used to communicate with the City.
10

11 2.9 In the October 20, 2022 letter and the November 1, 2022 letter, the
12 City advised the Defendant that he was required to abate the nuisances on his
13 property and if he failed to do so, the City would abate the nuisances, clean-up the
14 property, and charge Defendant for these costs. The City also advised it was willing
15 to clean-up the property with Defendant's consent, but at his expense.
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17 2.10 Pursuant to the BMC, Defendant was given seven (7) days to abate
18 the nuisance on his property or appeal the nuisance declaration. The seven (7)
19 days has expired, and Defendant failed to appeal.
20

21 2.11 Because Defendant failed to appeal or abate the nuisances on his
22 property, 4049 Deemer Road constitutes a nuisance under the Bellingham
23 Municipal Code.
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25 **III. CAUSES OF ACTION**

26 **A. Writ of Abatement, Lien and Costs**

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1 3.1 The City realleges and incorporates by reference the allegations set
2 forth in paragraphs 1.1 through 2.11 above.

3 3.2 Pursuant to the state constitution, the City is empowered to make and
4 enforce police and sanitary regulations in the City.

5 3.3 Pursuant to RCW 35.22.280(30), the City is empowered to declare
6 what shall be a nuisance and abate the same.

7 3.4 The City has declared what a public nuisance is in BMC 10.28 et.
8 seq. BMC 10.28.020 prohibits public nuisances. BMC 10.28.020 empowers the
9 City to abate a public nuisance.

10 3.5 RCW 7.48 et. seq. provides that the City is entitled to judgment
11 against a property owner who maintains a public nuisance and a warrant of
12 abatement to abate the public nuisance.

13 3.6 Pursuant to BMC Section 10.28.020, a public nuisance is defined as
14 permitting conditions that annoy, injure, or endanger the safety, health, comfort, or
15 repose of the public; offend public decency; and renders the public insecure in life
16 or in the use of property. Specific instances of public nuisances are identified in
17 BMC 10.28.030.

18 3.7 The City has no other adequate remedy at law, and the issues
19 presented in this action frame an actual and existing controversy between the
20 parties.

21 3.8 The condition of the property at 4049 Deemer Road, Bellingham,
22 Washington, constitutes a nuisance under BMC 10.28.020 because it annoys,
23 injures and endangers the safety, health, comfort and repose of the public. The
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1 condition of the property also offends public decency. Finally, the condition of the
2 property has rendered the public insecure in the life and the use of their property.

3 3.9 The condition of the property at 4049 Deemer Rd., Bellingham,
4 Washington, violates numerous provisions of the BMC. These violations include:
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6 **Title 9 – Health & Sanitation**

7 *BMC 9.28.050* - Property owner's duty to eradicate rodents on their property

8 **Title 10 – Criminal Code**

9 *BMC 10.28.020(D)* - Storage of non-operating motor vehicle visible from a public
10 place

11 *BMC 10.28.020(U)* - The release of offensive odors, noises, or substances, except
12 those which are permitted by law, which unreasonably disturb, or which are
13 detrimental to the health or safety of, the persons rising or working nearby, or the
14 public

15 *BMC 10.60.100(B)* - Deposit of litter in water prohibited

16 *BMC 10.60.120* - Deposit of litter on private property prohibited

17 *BMC 10.60.130* - Property owner's duty to keep premises litter-free

18 *BMC 10.60.140* – Deposit of litter on vacant lots prohibited

19 **Title 16 – Environment**

20 *BMC 16.60.080(A)(1)* – No clearing or removal of vegetation on undeveloped lots

21 3.10 Pursuant to BMC 10.28.030, BMC 16.60.090, and
22 Chapter 7.48 RCW, the City is entitled to the issuance of a Warrant of Abatement,
23 authorizing the City to enter Defendant's property located at 4049 Deemer Road,
24 Bellingham, Washington, by force if necessary, and abate the nuisances by any
25 means necessary. Without limiting the generality of the foregoing, the Order of
26 Abatement shall authorize the City and its contractors to enter the property to
27 remove the illegal encampment, including: removal of trespassers; removal and
28 immediate disposal of all personal property, garbage, waste, and contaminated
soils; and the placement of clean soils and revegetation.

1 **B. Injunctive Relief**

2 3.6 The City realleges and incorporates by reference the allegations set
3 forth in paragraphs 1.1 through 3.10 above.

4 3.7 Pursuant to Chapter 7.40.020 RCW, this court may issue an
5 injunction to prohibit Defendant from creating or maintaining a nuisance on his
6 properties.

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8 3.8 The City is entitled to such an injunction to ensure Defendant's
9 properties remain free of any nuisances.

10 **IV. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

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13 4.1 That the Defendant be permanently enjoined and restrained from
14 maintaining the above-described nuisance conditions on the property under his
15 ownership and/or control located at 4049 Deemer Road, Bellingham, Washington.

16 4.2 For a Warrant of Abatement issued to the City or its sub-contractor,
17 authorizing the City and/or its sub-contractor to enter onto the premises of 4049
18 Deemer Road, Bellingham, Washington, by force if necessary, to abate the
19 nuisances. The City requests that the Warrant of Abatement order the Defendant
20 to refrain from any conduct which might deter or interfere with the efforts of the City
21 or its sub-contractor in so entering and abating the nuisance, and order the City to
22 take all measures reasonable and necessary to abate the nuisances. The City
23 further requests that the Warrant of Abatement authorize: removal of trespassers;
24 removal and immediate disposal of all personal property, garbage, waste, and
25 contaminated soils; and the placement of clean soils and revegetation.
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4.3 For an order declaring Defendant legally responsible and liable for, and hold harmless, indemnify and defend the City from all aspects of the ownership, repair, construction and maintenance of Defendant's property while the Court order is in effect, including but not limited to claims or liabilities for construction or other costs required to abate the nuisance, claims for breach of abatement contracts, utilities, maintenance, taxes, or any other costs or liabilities which have or may become due in relation to Defendant's property, to the same extent as if such declaration had not been entered, which responsibilities shall be completely carried out in a timely manner by Defendant.

4.4 For judgment against Defendant for the City's costs of abatement, reasonable attorney's fees, and taxable Court costs as provided in RCW 7.48, and an order assessing such costs as a lien against Defendant's property.

4.5 For an order that the City be exempt from providing a bond, pursuant to RCW 4.92.080.

4.6 For an Order granting injunctive relief prohibiting Defendant from creating or maintaining a nuisance on his properties described herein.

4.7 For such other and further relief as the Court deems just and proper.

The City respectfully requests that this Court retain jurisdiction and, as to the extent necessary, to ensure and enforce compliance with its orders issued in this matter.

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Respectfully submitted this 22nd day of November, 2022.

CITY OF BELLINGHAM



Michael E. Good, WSBA #44857
Assistant City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTH 300.00 FEET OF A TRACT OF LAND IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WASHINGTON, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 18; THENCE NORTH $89^{\circ}53'35''$ WEST ALONG THE NORTH LINE OF SAID SECTION 18, A DISTANCE OF 812.40 FEET; THENCE SOUTH $00^{\circ}22'54''$ EAST, A DISTANCE OF 653.04 FEET ALONG A LINE PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF SAID SECTION 18 TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH $00^{\circ}22'54''$ EAST, A DISTANCE OF 662.62 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 18; THENCE SOUTH $89^{\circ}56'07''$ WEST, A DISTANCE OF 500.35 FEET ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 18; THENCE NORTH $00^{\circ}22'37''$ WEST, A DISTANCE OF 664.12 FEET ALONG THE WESTERLY LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 18; THENCE SOUTH $89^{\circ}53'35''$ EAST, A DISTANCE OF 500.30 FEET TO THE TRUE POINT OF BEGINNING; EXCEPTING THEREFROM THE EAST 30.00 FEET DEEDED FOR ROAD PURPOSES BY DEED RECORDED NOVEMBER 11, 1909, UNDER AUDITOR'S FILE NO. 135617, FILED IN VOLUME 105 OF DEEDS, PAGE 416, RECORDS OF WHATCOM COUNTY, WASHINGTON.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 18, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE-DESCRIBED TRACT OF LAND; THENCE NORTHERLY, A DISTANCE OF 110.00 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE WESTERLY LINE OF THE RIGHT OF WAY OF DEEMER ROAD, A DISTANCE OF 35.00 FEET NORTHERLY OF THE NORTHEAST CORNER OF THE ABOVE-DESCRIBED TRACT OF LAND; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF THE RIGHT OF WAY OF DEEMER ROAD, A DISTANCE OF 35.00 FEET TO THE NORTHEAST CORNER OF THE ABOVE-DESCRIBED TRACT OF LAND; THENCE WESTERLY ALONG THE NORTHERLY LINE OF THE ABOVE-DESCRIBED TRACT OF LAND, A DISTANCE OF 500.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

... END OF EXHIBIT "A" ...