

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

S. MICHAEL KUNATH,  
Plaintiff,  
v.  
CITY OF SEATTLE,  
Defendant.

CONSOLIDATED  
No. 17-2-18848-4 SEA

DEFENDANTS' ANSWER TO  
*BURKE* PLAINTIFFS' AMENDED  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

SUZIE BURKE, *et al.*,  
Plaintiffs,  
v.  
CITY OF SEATTLE, *et al.*,  
Defendant.

DENA LEVINE, *et al.*,  
Plaintiffs,  
v.  
CITY OF SEATTLE,  
Defendant.

Defendants City of Seattle, Seattle Department of Finance and Administrative Services,  
and Fred Podesta, Director of the Seattle Department of Finance and Administrative Services, in

1 his official capacity, (collectively the “City”) answers the *Burke* Plaintiffs’ Amended Complaint  
2 for Declaratory and Injunctive Relief (the “Complaint”) as follows:

3 **I. NATURE OF THE CASE**

4 1. The City admits that on July 10, 2017, the City Council passed Council Bill  
5 119002 as amended, also known as Ordinance 125339 (the “Ordinance”), which imposes a tax  
6 on the “Total Income” of every “Resident Taxpayer” in the City as those terms are defined in the  
7 Ordinance. The City admits that certain individual “Resident Taxpayers” with “Total Incomes”  
8 over \$250,000 per year and married couples filing “married filing jointly” with “Total Income”  
9 over \$500,000 per year, will have their “Total Income” above certain thresholds in the Ordinance  
10 taxed at a rate of 2.25%, while certain “Resident Taxpayers” with “Total Income” below those  
11 thresholds will be taxed at a rate of 0%. The City admits that the Ordinance applies to income  
12 received on or after January 1, 2018, and requires “Resident Taxpayers” whose “Total Income”  
13 is subject to a rate above zero percent to file a return, regardless of whether any tax is owed. The  
14 City further admits that failure to pay tax due under the Ordinance may result in monetary  
15 penalties or may be criminally punishable as a gross misdemeanor. The City denies the  
16 remaining allegations in paragraph 1.

17 2. The City admits that its taxing power must flow from constitutional or statutory  
18 authorization, and further admits that the legislature by statute has authorized the exercise of all  
19 powers of taxation for local purposes subject only to constitutional limitations and preemption  
20 under designated statutes. The City admits that the cited case of *City of Seattle v. T-Mobile West*  
21 *Corp.*, \_\_ Wn. App. \_\_, 2017 WL 2229926 (May 22, 2017) contains the quoted sentence and  
22 citation. The City denies the remaining allegations in paragraph 2.

23 3. The City admits that RCW 36.65.030 contains the quoted language. The City  
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1 denies the remaining allegations in paragraph 3.

2 4. The City denies the allegations in paragraph 4.

3 5. The City denies the allegations in paragraph 5.

4 6. The City denies the allegations in paragraph 6.

5 7. The City denies the allegations in paragraph 7.

6 8. The City denies the allegations in paragraph 8.

7 9. The City denies the allegations in paragraph 9.

8  
9 **II. PARTIES**

10 10. The City lacks sufficient knowledge and information to form a belief as to the  
11 truth of the allegations contained in paragraph 10, which shall have the effect of a denial.

12 11. The City admits the allegations in paragraph 11.

13 12. The City admits the allegations in paragraph 12.

14 13. The City admits the allegations in paragraph 13.

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16 **III. JURISDICTION AND VENUE**

17 14. The City admits the allegations in paragraph 14.

18 15. The City admits the allegations in paragraph 15.

19 **IV. FACTUAL ALLEGATIONS**

20 16. The City admits that on July 10, 2017, the City Council passed Council Bill  
21 119002 as amended, also known as Ordinance 125339, and that the title of the Ordinance  
22 contains the quoted language along with other language. The City admits the allegations in the  
23 second sentence of paragraph 16. The City admits that the Ordinance states that it “applies to  
24 income required to be included in total income under the Internal Revenue Code received on or  
25 after January 1, 2018.”  
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1           17.     The City lacks sufficient knowledge and information to form a belief as to the  
2 truth of the allegations contained in paragraph 17 as the paragraph contains apparently quoted  
3 language without attribution as to what is being quoted, and therefore the City denies the  
4 allegations.

5           18.     The City admits that the Ordinance imposes an annual “tax on the total income of  
6 every resident taxpayer in the amount of their total income multiplied by the applicable rates” in  
7 the Ordinance. The City further admits the Ordinance contains the quoted language in paragraph  
8 18, but denies the quotations are complete.

9           19.     The City denies the allegations in paragraph 19.

10           20.     The City admits that the Ordinance states in part: “All total income amounts in the  
11 table in subsection 5.65.030.B shall be adjusted annually on January 1, 2019, and on January 1 of  
12 every year thereafter by 100 percent of the average annual growth rate of the bi-monthly  
13 Consumer Price Index (CPI-U) for the Seattle-Tacoma-Bremerton area as published by the  
14 United States Department of Labor for the 12-month period ending in June of the prior year. To  
15 calculate the new total income amount, the prior year’s total income amount will be multiplied  
16 by the sum of one and the annual percent change in the CPI-U. If the average annual growth rate  
17 is negative, no adjustment shall be made for the year.” The City further admits that, as indicated  
18 in the chart in paragraph 20, certain individual “Resident Taxpayers” with “Total Incomes” over  
19 \$250,000 per year and married couples filing “married filing jointly” with “Total Income” over  
20 \$500,000 per year, will have their “Total Income” above certain thresholds in the Ordinance  
21 taxed at a rate of 2.25%, while certain “Resident Taxpayers” with “Total Income” below those  
22 thresholds will be taxed at a rate of 0%. The City denies the remaining allegations in paragraph  
23 20.  
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1           21.     The City admits the allegations in paragraph 21.

2           22.     The City admits that the Ordinance states in part: “A taxpayer who fails to pay tax  
3 owed under this Chapter 5.65 when due is liable, in addition to interest, to a penalty of one  
4 percent of the amount of the unpaid tax for each month or fraction of a month, not to exceed a  
5 total penalty of 25 percent of the unpaid tax. If any part of any underpayment of tax owed under  
6 this chapter is due to intentional disregard of this Chapter 5.65 or rules or regulations adopted by  
7 the Director under Section 5.65.190, but without intent to defraud, an additional penalty of \$10  
8 or 10 percent of the total amount of the deficiency in the tax, whichever is greater, shall be  
9 added. If any part of the underpayment is due to fraudulent intent to evade the tax imposed under  
10 this chapter, an additional penalty of 100 percent of the deficiency shall be added.” The City  
11 denies the remaining allegations in paragraph 22.  
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13           23.     The City admits that the Ordinance states in part:

14           “A. It shall be unlawful for any person subject to the provisions of this Chapter 5.65: 1.  
15 To violate or fail to comply with any of the provisions of this Chapter, or any rule or regulation  
16 adopted by the Director; 2. To make any false statement on any return; 3. To aid or abet any  
17 taxpayer in any attempt to evade payment of a tax owed under this Chapter 5.65; 4. To fail to  
18 appear or testify in response to a subpoena issued pursuant to Section 3.02.120 in any proceeding  
19 to determine compliance with this Chapter 5.65; 5. To testify falsely in any investigation, audit,  
20 or proceeding conducted pursuant to this Chapter 5.65; 6. In any manner to hinder or delay the  
21 City or any of its officers in carrying out the provisions of this Chapter 5.65.  
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23           B. Each violation of or failure to comply with the provisions of this Chapter 5.65 shall constitute  
24 a separate offense. Any person who willfully engages in an act or acts or willfully causes another  
25 to engage in an act or acts defined in subsection 5.65.250.A is guilty of a gross misdemeanor,  
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1 punishable in accordance with Section 12A.02.070. The provisions of Chapters 12A.02 and  
2 12A.04 apply to the offenses defined in subsection 5.65.250.A.”

3 The City further admits that a gross misdemeanor under SMC 12A.02.070 “may be  
4 punished by a fine not to exceed Five Thousand Dollars (\$5,000), or by imprisonment for a term  
5 not to exceed three hundred sixty-four (364) days, or by both such fine and imprisonment.” The  
6 City denies the remaining allegations in paragraph 23.

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8 24. The City lacks sufficient knowledge and information to form a belief as to the  
9 truth of the allegations contained in paragraph 24, which shall have the effect of a denial.

10 25. The City lacks sufficient knowledge and information to form a belief as to the  
11 truth of the allegations contained in paragraph 25, which shall have the effect of a denial.

12 26. The City lacks sufficient knowledge and information to form a belief as to the  
13 truth of the allegations contained in paragraph 26, which shall have the effect of a denial.  
14

15 **V. CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF BASED ON**  
17 **STATUTORY LIMITS OF CITY TAXING AUTHORITY**

18 27. The City incorporates its answers to Paragraphs 1 through 26 as if fully set forth  
19 herein.

20 28. The City admits the allegations in paragraph 28.

21 29. The City denies the allegations in paragraph 29.  
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23 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF BASED ON CITY**  
24 **CHARTER**

25 30. The City incorporates its answers to Paragraphs 1 through 29 as if fully set forth  
26 herein.  
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1 31. The City admits the allegations in paragraph 31.

2 32. The City denies the allegations in paragraph 32.

3 **THIRD CAUSE OF ACTION – DECLARATORY RELIEF BASED ON**  
4 **CONSTITUTIONAL CLAIMMS**

5 33. The City incorporates its answers to Paragraphs 1 through 32 as if fully set forth  
6 herein.

7 34. The City admits the allegations in paragraph 34.

8 35. The City denies the allegations in paragraph 35.

9 **FOURTH CAUSE OF ACTION – INJUNCTIVE RELIEF**

10 36. The City incorporates its answers to Paragraphs 1 through 35 as if fully set forth  
11 herein.

12 37. The City denies the allegations in paragraph 37.

13 38. The City denies the allegations in paragraph 38.

14 **VI. REQUEST FOR RELIEF**

15 The City denies all of the allegations in Plaintiffs’ request for relief, and denies that  
16 Plaintiffs are entitled to the requested relief or any other relief.

17 Any allegation set forth in the Complaint not specifically admitted in this Answer is  
18 denied.

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**CERTIFICATE OF SERVICE**

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years and not a party to this action. On the 29th day of August, 2017, I caused to be served a true copy of the foregoing document upon:

Matthew F. Davis  
3233 56th Place SW  
Seattle, WA 98116  
Phone: 206.778.6696  
Email: matt@davisleary.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email
- via electronic court filing
- via hand delivery

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