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SUPREME COURT  
OF THE STATE OF WASHINGTON

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JEWELS HELPING HANDS and BEN STUCKART

Petitioners,

vs.

BRIAN HANSEN,

and

CITY OF SPOKANE, SPOKANE COUNTY, and SPOKANE COUNTY  
AUDITOR VICKY DALTON,

Respondents.

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PETITION FOR REVIEW

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## I. INTRODUCTION

The primary question posed by this petition is whether citizens can use the *local* initiative or referendum process to circumvent the coordinated planning process and express delegations contained in *State* law.

Through the 2005 passage of the Homeless Housing and Assistance Act, and substantial 2018 and 2021 amendments, codified at RCW Chapter 43.185C (collectively the “Homeless Act”), the Legislature did all that is necessary to remove homelessness response from the scope of the local initiative power, under this Court’s well-established precedents. The Legislature expressly determined that homelessness housing policy, including encampment policy, is a Statewide issue, not a purely local one, and required all levels of government engage in coordinated planning. As this Court has repeatedly held, the local initiative and referendum process is “structurally inconsistent” with a statutory mandate of coordinated planning. *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 181, 149

P.3d 616, 625 (2006), *citing Whatcom Cty. v. Brisbane*, 125 Wn.2d 345, 884 P.2d 1326 (1994). Indeed, coordinated planning is meaningless if citizens can wait for statutory planning to play out and then use a local initiative or referenda process to veto its results.

The Legislature also lodged decision-making authority in the hands of regional task forces and local legislative authorities, precluding the local initiative process. “When the legislature enacts a general law granting authority to the legislative body (or legislative authority) of a city, that legislative body's authority is not subject to repeal, amendment, or modification by the people through the initiative or referendum process.” *Mukilteo Citizens for Simple Gov't*, 174 Wn.2d 41, 51, 272 P.3d 227, 233 (2012) (internal citations omitted).

Here, the City of Spokane carried out the planning and decision-making required by State law, and the Spokane City Council adopted a balanced policy on homeless encampments,



including a land use decision about *where* camping would be allowed. Respondent Brian Hansen was dissatisfied with the outcome of this process and sponsored the initiative to expand the locations where homeless camping is criminalized, ignoring the outcome of the planning process, and vetoing the Council's policy choices. Petitioners challenged the initiative as being outside the scope of the local initiative process. In a published decision ("decision"), Division III ignored this Court's precedents to hold that the initiative was within the scope of the local initiative process.

The issues raised by this petition are also of substantial public interest that have already impacted hundreds of thousands of Washington voters. In just the past several years, citizens in Seattle and Spokane have proposed ballot measure to criminalize homeless camping. The King County Superior Court Judge struck the Seattle measure from the ballot after finding that the Act precludes local initiatives on

homelessness.<sup>1</sup> Two years later, the Spokane Superior Court and Division III reached the opposite conclusion, holding that the Homeless Act does not limit the local initiative process.

If the decision is allowed to stand, initiative efforts to criminalize homelessness will likely become more common and extreme.<sup>2</sup> This will lead to setting homeless policy by soundbites and politics, rather than evidence and coordination as the Legislature clearly intends. The decision threatens other statutory schemes requiring coordinated planning and response, from public health to noxious weed control. The decision elevates purely local interests over those of the State as a whole and should be reviewed by the State Supreme Court.

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<sup>1</sup> *Seattle / King County Coalition on Homelessness v. Compassion Seattle*, King County Superior Court No. 21-2-10563-3, Order Granting Correction of Election Error (RCW 29A.68) and Declaratory and Injunctive Relief (August 30, 2021). Appendix 56-72. (CP 133 – 157).

<sup>2</sup> The two recent local initiatives addressed restricting or criminalizing homeless camping, but other anti-homeless campaigns have reportedly sought to prohibit feeding of the homeless and to authorize the use of force against homeless camping.

## II. IDENTITY OF PETITIONERS

Jewels Helping Hands is a homeless services organization that serves people experiencing homelessness in Spokane and Spokane county. The initiative will limit the organization's work by making it more difficult to locate and provide services to those living unsheltered. For example, Jewels Helping Hands provides basic needs to those surviving outside. Loss of items from "sweeps" due to this initiative would require the organization to replace those items. Further, when the organization's clients are unable to receive services, they become stuck in homelessness.

Ben Stuckart is the Executive Director of the Spokane Low Income Housing Consortium and a taxpayer.

Defendant, Brian Hansen, is sponsor of the Initiative.

Additional necessary parties include City of Spokane, a political subdivision of the State of Washington, Spokane County, a political subdivision of the State of Washington, and

Spokane County Auditor Vicky Dalton, named only in her official capacity.

### **III. COURT OF APPEALS' PUBLISHED DECISION**

On December 7, 2023, Division III of the Court of Appeals issued a published opinion that upheld the Spokane initiative's right to appear on the ballot. *Jewels Helping Hands v. Hansen*, \_\_ Wn.App. 2d \_\_, 539 P.3d 68, 2023 Wash. App. LEXIS 2289\*\* (2023) ("decision"). Appendix 1-18.

### **IV. ISSUES PRESENTED FOR REVIEW**

1. Does RCW Chapter 43.185C preclude the use of the local initiative and referendum process to set homelessness policy because it (1) contains a comprehensive decision-making scheme that does not include the local initiative process; (2) mandates a coordinated planning process; and (3) delegates decision-making authority to regional homelessness task forces and local legislative authorities?

2. Does an initiative interfere with the City Council's exclusive authority over zoning and land use matters by

criminalizing homeless camping (or another legal activity) *based upon proximity to other land uses* and for the express purpose of protecting adjacent land uses?

3. Is the initiative at issue beyond the scope of the local initiative process?

4. Can criminalizing homeless camping be justified as a "classic vagrancy ordinance" as Division III held?

## **V. STATEMENT OF THE CASE**

### **A. The legislature adopted a comprehensive statutory scheme for addressing the homelessness crisis and homeless encampments.**

The Homeless Act, codified at RCW Chapter 43.185C, creates a comprehensive planning and decision-making process that includes state and local government and involves stakeholders at multiple levels:

- Department of Commerce creates a five-year homeless housing strategic plan to address “performance measures and goals to reduce homelessness” and implementation strategies. RCW 43.185C.040(1).

- “To guide local governments in preparation of local homeless housing plans . . . the department shall issue . . . guidelines consistent with this chapter . . .” RCW 43.185C.040(3).
- Department provides annual and biennial reporting on its plan. RCW 43.185C.045.
- State and local government “must” establish program outcomes, performance measures, and goals “in collaboration.” RCW 43.185C.040(3).
- Task force of local stakeholders and experts recommend local plans that must be consistent with state plan. RCW 43.185C.010 (task force must include City and County and formerly homeless person); RCW 43.185C.160 (task force may include other stakeholders); RCW 43.185C.100(1) (state offers technical assistance on task force members).
- Task Force recommends guidelines for a range of housing options, ranging from permanent housing to shelters and temporary encampments.
- Local legislative body may make changes and then adopts local homelessness plan.<sup>3</sup> RCW 43.185C.050.

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<sup>3</sup> The Legislature authorized local legislative bodies to include a wide range of activities in their local homelessness plans, including “identification of goals, performance measures, strategies, and costs and evaluation of progress towards established goals,” RCW 43.185C.050. Appendix 20.

- The department reports to the Governor and Legislature on the “the performance of each participating local government in creating and executing a local homeless housing plan which meets the requirements of this chapter.” RCW 43.185C.040(4).
- Local government provides annual reports. RCW 43.185C.040.
- State funds allocated in part based upon local plans. RCW 43.185C.049, .070(3) (“The department may approve applications only if they are consistent with the local and state homeless housing program strategic plans.”); RCW 43.185C.090 (“The department shall allocate grant moneys from the homeless housing account to finance in whole or in part programs and projects in approved local homeless housing plans . . .”)

Further, in 2021, the Legislature tasked the William D. Ruckelshaus Center to conduct factfinding and work with a defined group of stakeholders, legislators, and the executive branch “for the purpose of identifying options and recommendations to develop and implement a long-term strategy to improve the outcome and services for persons at risk or experiencing homelessness and develop pathways to

permanent housing solutions.” Laws of 2021, ch. 214, §6 (codified as a note to RCW 43.185C.185). The recommendations must “clearly assign responsibilities of state and local government”. *Id.*

The coordinated planning process and expert fact-finding is designed *to drive policy* – not to be ignored or overruled by a local initiative. The 2021 law stated, “*The legislature intends for this examination to result in a widely accepted strategy for identifying how best to address homelessness* in ways that: (A) Address the root causes of the problem; (B) clearly assign responsibilities of state and local government to address those causes;. . . and (E) develop pathways to permanent housing solutions and associated services to break the cycle of housing insecurity and homelessness.”

The Homeless Act’s planning processes specifically delegates the establishment of encampment guidelines to local homelessness task forces. RCW 43.185C.060. The Legislature found that encampments can “serve as pathways for individuals



experiencing homelessness to receive services and achieve financial stability, health, and permanent housing.” Laws of 2020, ch. 223, §1; RCW 36.01.290. Meanwhile, the State Department of Commerce has made temporary encampments eligible for funding under the Homeless Act.<sup>4</sup>

In other words, homelessness planning and response generally, and encampments specifically, are not purely local issues, but are statewide and regional issues that must be addressed through the Homeless Act’s comprehensive planning and decision-making processes.

**B. Spokane’s homelessness planning and regulation of camping**

The City of Spokane is required to plan under the Homeless Act, and in doing so addressed the issue of homeless

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<sup>4</sup> WA State Dept. of Commerce, Guidelines for the Shelter Program Grant (Aug. 2020), <https://www.commerce.wa.gov/wp-content/uploads/2020/09/hau-ofah-shelter-guidelines-2020-2023.pdf>. Appendix 21-47.

camping.<sup>5</sup> The City’s homelessness plan included a section about “encampments,” noting that “[c]riminalizing acts of survival is not a solution to homelessness,” can prolong homelessness, “and results in unnecessary public costs for police, courts, and jails.” CP 298 (City of Spokane’s Strategic Plan to End Homelessness, 2015-2020, p. 31).

The City regulates camping in both the Unified Development Code, Spokane Municipal Code (“SMC”) Chapter 17C, and in Section 12.02.1010. In 2011, the City enacted SMC 17C.319 “to regulate the use and occupancy of recreational vehicles, tents, huts, and other temporary shelters on private property in all zones.” SMC 17C.319.200. This provision of the zoning code prohibits the use of such temporary shelters “for more than fourteen days in a consecutive twelve-month period.”

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<sup>5</sup> Like the State, Spokane has adopted a regional approach to addressing homelessness, requiring regional stakeholders to be involved in the development of its homelessness response policy, “without exception.” SMC 18.05.030 (B)(1).

SMC 17C.319.200. The purpose is to avoid “unsanitary, unsafe, or nuisance conditions.” SMC 17C.319.010.<sup>6</sup>

The City also regulates homeless camping in Chapter 12.02 of the SMC. Until 2022, SMC 12.02.1010 only addressed camping on public land, providing “No person may camp in or upon any public property . . . unless specifically authorized by declaration of the Mayor in emergency circumstances.” SMC 12.02.1010. However, in 2019, the Ninth Circuit issued its ruling in *Martin v. City of Boise*, which is generally interpreted to preclude enforcement of such camping bans when no shelter is available. 920 F.3d 584, 617 (9<sup>th</sup> Cir. 2019).

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<sup>6</sup> “Since the passage of the Comprehensive Plan in 2001, the process of adoption of development standards to implement the plan has been ongoing. The compilation of the latest development standards is found in Title 17 of the Spokane Municipal Code, the ‘Unified Development Code’ (UDC).” City of Spokane, Unified Development Code Maintenance Project (Sept 21, 2023, 2:30pm), <https://my.spokanecity.org/projects/unified-development-code-maintenance-project/>.

After years of debate about how to respond to *Martin*, Spokane's Mayor brokered a compromise. "The purpose of Ordinance C36272 was to bring the city of Spokane into compliance with *Martin*". Decision at 3. Ordinance C36272 retained the blanket prohibition against camping on public land, SMC 12.02.1010A.1, but followed *Martin* by making enforcement of that prohibition contingent on shelter availability. The Ordinance also establishes a zone where camping is always prohibited, regardless of shelter availability. SMC 12.02.1010A.3. See CP 123 (Ordinance C36272).

**C. The Initiative vetoes the City Council's land use and homelessness policies.**

The initiative fundamentally undoes the City Council's compromise by expanding the areas in the city where homeless camping is criminalized, regardless of shelter availability, and modifies the City's land use decision about *where in the city* homeless camping is allowed.

The initiative vetoes the City Council's homelessness policies but **did** not follow any of the processes required under RCW 43.185C.050. Appendix 20. It was written by its sponsor, not recommended by a housing task force that meets the statutory criteria of RCW 43.185C. It was not **designed** to meet state planning standards or be consistent with the State's five-year plan. And it was not put before the City's legislative authority for approval.

## **VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED.**

- 1. Division III's published opinion contradicts numerous Supreme Court precedents establishing state supremacy over the local initiative process.**

The **decision** upends a well-established **body** of law that precludes the use of the local initiative process when the state has **adopted** a statute that (1) **mandates** a comprehensive **decision-making** process that **does not include** the local initiative process; (2) requires **coordinated** planning, or (3)

delegates decision-making to specifically identified bodies and/or the local legislative authorities.

“Initiative and referendum procedures can be invoked at the local level only if their exercise is not in conflict with state law.” *Citizens Against Mandatory Bussing v. Palmason*, 80 Wn.2d 445, 450, 495 P.2d 657, 661 (1972).

**a. The Homeless Act creates a comprehensive planning process that precludes the use of local initiative.**

The Supreme Court held that local initiatives and referenda cannot be used where the Legislature has enacted a comprehensive decision-making scheme that does not include initiative and referenda. *Whatcom Cty. v. Brisbane*, 125 Wn.2d 345, 884 P.2d 1326 (1994). This is the case here.

The local initiative and referendum process cannot be used where the Legislature has adopted a comprehensive scheme for decision-making that does not contemplate local initiatives and referendum and/or where the use of the initiative

or referendum would frustrate the statutory purpose. *Whatcom Cnty. v. Brisbane*, 125 Wn.2d at 351-52 (“The absence of any mention of referenda [in the Growth Management Act] indicates the statute's rejection of referendum rights.”) (“The purpose of the Growth Management Act, RCW 36.70A, would be frustrated if the people of Whatcom County were permitted by referendum to amend an ordinance adopted to implement the goals of a comprehensive land use plan.”).

In *1000 Friends of Washington v. McFarland*, this Court decided that county ordinances enacted to implement Washington’s Growth Management Act were not subject to veto by local initiative or referendum. Recognizing that “[i]t would violate the constitutional blueprint to allow a subdivision of the State to frustrate the mandates of the people of the State as a whole.” 159 Wn.2d at 168.

**b. The Act requires coordinated planning, which precludes interference by local initiative.**

The express goal of this statutory scheme is coordinated planning. RCW 43.185C.005 (while housing is provided locally, “the legislature also recognizes the need for the state to play a primary coordinating, supporting, and monitoring role” with “clear assignment of responsibilities”), Appendix 19, establishes a “homeless housing program to develop *and coordinate* a statewide strategic plan aimed at housing homeless persons.” RCW 43.185C.020 (emphasis added).

This Court has repeatedly held that the local initiative and referendum process cannot be appended onto coordinated planning statutes. *See Whatcom Cty. v. Brisbane*, 125 Wn.2d at 325 (striking referendum because “the GMA seeks coordinated planning. ... allowing referenda is structurally inconsistent with this mandate”); *1000 Friends of Washington*, 159 Wn.2d at 180-181, 188 (holding use of a referendum “is inconsistent with integrated, comprehensive planning”). The coordinated system



of homelessness response decision-making, while implemented at the local level, is a matter of statewide concern and therefore is not subject to local initiative and referendum. *See, e.g., Snohomish County v. Anderson*, 123 Wn.2d 151, 159, 868 P.2d 116 (1994) (“Permitting the referendum would jeopardize an entire state plan and thus would extend beyond a matter of local concern”). Moreover, the threat is even greater where, like here, the local initiative seeks to carry out a line-item veto of the homelessness response plan. *See 1000 Friends of Washington v. McFarland*, 159 Wn.2d at 180-181 (“[R]eferendum in many jurisdictions does not merely act as a veto but in some counties can strike individual portions of ordinances. That is inconsistent with integrated, comprehensive planning.”).

The Act’s planning structure is not dissimilar to the coordinated planning under the Growth Management Act, which the Courts have held is not subject to local initiative. *See Whatcom Cnty. v. Brisbane*, 125 Wn.2d at 355; *Snohomish County v. Anderson*, 123 Wn.2d at 159. Like the GMA, the

Homeless Act requires development of state plans and guidelines to influence local planning; requires development of local plans by governments that are required to plan or opt into planning; provides state technical assistance for planning; requires regional cooperation; and gives local legislative authorities certain decision-making authority.

**c. The Legislature delegated authority to specific other bodies, precluding the use of Initiative.**

Where the Legislature has expressly or impliedly delegated planning or decision-making authority to specific bodies, such as the city council, the use of the local initiative process is prohibited. “When the legislature enacts a general law granting authority to the legislative body (or legislative authority) of a city, that legislative body's authority is not subject to repeal, amendment, or modification by the people through the initiative or referendum process.” *Mukilteo Citizens for Simple Gov't*, 174 Wn.2d at 51 (internal citations omitted). “Stated another way, ... the people cannot deprive the city legislative

authority of the power to do what the constitution and/or a state statute specifically permit it to do.” *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265, 138 P.3d 943, 950-51 (2006) (internal quotation marks omitted). This delegation does not need to be stated in any magic words. *See Motley-Motley, Inc. v. PCHB*, 127 Wash. App. 62, 74, 110 P.3d 812, 819 (2005) (finding that delegation may be implicit).

Here, the use of the initiative process in the realm of homelessness policy generally, and encampments specifically, undermines the Legislature’s express delegations.

First, the Homeless Act requires that homelessness policy, and homeless encampment policy specifically, begin in a collaborative process designed to create an informed and regional decision-making process. “*Each local homeless housing task force shall prepare and recommend to its local government legislative authority a five-year homeless housing plan for its jurisdictional area, which shall be not inconsistent with . . . the department's five-year homeless housing strategic plan.*” RCW

43.185C.050(1) (emphasis added). Appendix 20. The Homeless Act also delegates to the local homeless housing task forces the role of “establish[ing] guidelines consistent with the statewide homeless housing strategic plan” for a range of housing options, expressly including “temporary encampments” and related health and safety standards. RCW 43.185C.160(2).

Then, the Legislature gave the City Council final decision-making authority over homelessness planning. It required plan recommendations be submitted to the City Council, RCW 43.185C.050, and then confirmed the Council’s role in numerous places: *See e.g.*, RCW 43.185C.080(1) (“the city may by resolution of its legislative authority accept the county's homeless housing task force as its own and based on that task force's recommendations adopt a homeless housing plan specific to the city.”); *id.* at (2) (“All subcontracts shall be consistent with the local homeless housing plan adopted by the legislative authority of the local government”); RCW 43.185C.050 (“Local

plans may include specific local performance measures adopted by the local government legislative authority”). Appendix 20.

By expressly overriding the City Council’s decision making on homelessness issues, the Initiative impermissibly interferes with this statutory authority. In attempting to alter the City’s homelessness policy by initiative, the Initiative constrains the City’s exercise of its statutory authority. *Mukilteo Citizens for Simple Gov’t*, 174 Wn.2d at 51.

**d. The decision's standards are inconsistent with this Court’s precedent.**

The Homeless Act is an example of the Legislature trying to address a statewide crisis with a softer touch – mandating a decision-making process, rather than imposing substantive standards on local governments. The Court’s precedents protect this type of legislative strategy.

The decisions would instead protect the Legislature’s mandates only if they are dictatorial and heavy-handed. For example, the decision acknowledges that RCW

43.185C.160(2)(c) “requires each county's homeless housing task force to develop a five-year homelessness housing plan” including “‘guidelines’ for ‘[t]emporary encampments.’” But, according to the decision, this mandate is meaningless because “no part of this section requires cities or their legislative authority to implement the county task force guidelines.”

Decision at 14-15.

Similarly, the decision acknowledges that the Homeless Act requires planning, but allows a local initiative to circumvent such planning because the Act “does it mandate or circumscribe adoption of any homelessness regulation. . . . The chapter says nothing about what cities may or may not do about individuals who are currently unhoused.” Decision at 14.

Allowing the local initiative process to circumvent, ignore, and/or overrule coordinated planning whenever the Legislature takes a softer approach on substantive decision-making undermines Legislative authority and countless legislative schemes to address statewide issues.

2. **This Court should also accept review under RAP 13.4(b)(1) and (b)(4) because the decision implicates local legislative authorities' exclusive control over zoning and land use.**

The Court should also accept review to resolve the direct conflict between the holding of this case and the long line of Supreme Court cases that prevent local initiatives to modify the zoning code or regulate land use. *Lince v. City of Bremerton*, 25 Wn. App. 309, 312-13, 607 P.2d 329, 331 (1980) (finding that zoning ordinances and regulations are beyond the power of initiative or referendum in Washington); *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 390, 391, 93 P.3d 176, 180-81 (2004), *review denied*, 153 Wn.2d 1020 (2005) (“Yes for Seattle”) (holding that Growth Management Act prevents initiatives containing development regulations, which are “*a control placed on development or land use.*”)<sup>7</sup>

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<sup>7</sup> Compare *Sammamish Cmty. Council v. City of Bellevue*, 108 Wn. App. 46, 54 (2001) (ordinance was deemed not zoning because it did *not* regulate “the use of land, buildings, and structures”).

The decision creates a gaping exception to this well-established doctrine, holding that “[b]ecause the initiative seeks to regulate those who use the city's property, and not the property owner or holder, it is not a zoning ordinance.” Decision at 12.

If the decision stands, an initiative could freely veto or amend the Council’s land use decisions simply by targeting the landowner’s guests rather than the landowners. For example, if the City Council adopts a zoning code to allow churches in residential zones, the decision would allow an initiative to effectively veto that land use decision by criminalizing parishioners who visit churches in that zone. That is the nature of the initiative here. It does not criminalize all homeless camping; *it criminalizes camping in certain areas of the City* – even though the City Council allowed camping in those areas.

Deciding *where* a land use is allowed is the hallmark of a land use regulation. Indeed, the initiative is patterned on provisions of the zoning code prohibiting marijuana businesses



within 1,000 feet of playgrounds, childcare centers, and the like, and prohibiting adult businesses within 750 feet of schools and other “sensitive land uses to minimize the impact of their secondary effects upon such uses.” SMC 17C.305.010, .020, SMC 17C.347.030.A.1.b.

Once the city council exercised its land use authority to decide *where* land uses can occur, an initiative cannot use other powers to override that land use decision.

**3. This Court should accept review because the *process* for enacting homelessness policy is an issue of substantial public interest.**

Homelessness policy in our state will be forever changed if the decision stands and allows homelessness policy to be set by local ballot measures. If that happens, homelessness policy will be set by election soundbites, and the Legislature’s requirements of expert fact-finding, regional cooperation, and multi-tiered planning would become superfluous. Like here, all the evidence and coordinated planning could point in one policy direction, but a local initiative or referendum policy could be

used to enact the exact opposite policy. Evidence and planning could easily be overruled by a catchier or better-funded campaign. That is the antithesis of the evidence-based coordinated planning that the Legislature has required.

**4. Homelessness response cannot be justified based upon vagrancy.**

The decision holds that an initiative can criminalize homeless camping as a “classic vagrancy ordinance,” citing authority from the 1800s allowing cities to restrain and punish “vagrants, mendicants, prostitutes, and other disorderly persons.” Decision at 13 (citing RCW 35.22.280(34)). Our Courts have rejected the notion that cities can criminalize homeless persons as vagrants.<sup>8</sup> The Legislature has recognized

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<sup>8</sup> See *State v. Jones*, 9 Wn. App. 1, 5, 511 P.2d 74, 77 (1973) which upheld Washington’s vagrancy law because it criminalized *specific conduct*, noting that vagrancy laws are likely unconstitutionally if they “make one a vagrant purely on the basis of his passive status or condition, such as poverty or absence of employment.” Citing *Papachristou v. Jacksonville*, 405 U.S. 156, 31 L. Ed. 2d 110, 92 S. Ct. 839 (1972) (vagrancy

that “The state's homeless population . . . includes a large number of families with children, youth, and employed persons [and] that there are many causes of homelessness, including a shortage of affordable housing [and] a shortage of family-wage jobs which undermines housing affordability”. RCW 43.185C.005. Appendix 19. *Accord* 2021 c. 214 Sec. 2.

## **VII. Conclusion**

This Court should grant review and reverse the Court of Appeals’ decision.

I certify that this document contains 4,304 words.

Respectfully submitted this 21st day of February, 2024.

SMITH & LOWNEY, PLLC

By: /s/ Knoll Lowney  
Knoll D. Lowney  
WSBA No. 23457  
Katelyn Kinn  
WSBA No. 42686

Attorneys for Petitioners

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laws that do not specify prohibited conduct are void for vagueness).

## **CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the state of Washington that on February 21st, 2024, I caused plaintiffs' Petition for Review to be served in the above-captioned matter upon the parties herein via E-Service:

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Stated under oath this 21st day of February, 2024.

*Kai McDavid*  
\_\_\_\_\_  
Kai McDavid

# SMITH & LOWNEY

February 21, 2024 - 1:22 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 39924-9  
**Appellate Court Case Title:** Jewels Helping Hands, et al v. Brian Hansen, et al  
**Superior Court Case Number:** 23-2-03122-3

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# **APPENDIX**

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**FILED**  
**DECEMBER 7, 2023**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

JEWELS HELPING HANDS; and BEN	)	No. 39924-9-III
STUCKART,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
BRIAN HANSEN,	)	PUBLISHED OPINION
	)	
Respondent,	)	
	)	
CITY OF SPOKANE; SPOKANE	)	
COUNTY; and VICKY DALTON,	)	
in her official capacity,	)	
	)	
Defendants.	)	

PENNELL, J. — Jewels Helping Hands and Ben Stuckart (collectively Jewels) seek a judicial declaration invalidating an initiative placed on the November 2023 general election ballot in the city of Spokane. The initiative seeks to expand an existing ban on camping at certain locations within the city. Jewels argues the initiative: (1) improperly



seeks to exercise powers reserved solely to the Spokane City Council, (2) impermissibly conflicts with controlling state law, and (3) is outside the scope of the local initiative power because the measure is administrative, not legislative, in character. We disagree with these three arguments and therefore affirm the superior court.

### FACTS

In 2022, the city of Spokane adopted Ordinance C36272. The ordinance created several new sections in the portion of the Spokane Municipal Code (SMC) concerning protection of public lands and properties, and amended several existing sections within that same portion of the code.

Relevant to our purposes on review, Ordinance C36272 substantially expanded SMC 12.02.1010, which concerns unauthorized camping on public property. The existing section prohibited all camping on public property and provided a nonexhaustive exemplary list of prohibited locations. Ordinance C36272 expanded that list and also carved out specific provisions concerning camping at certain locations that would otherwise fall within the existing prohibition. Ordinance C36272 prohibited camping where it posed a substantial danger to any person, posed an immediate threat or unreasonable risk of harm to public health or safety, or posed a disruption to vital government services. Any campers caught violating one of those three prohibitions

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would be subject to expedited removal, regardless of the availability of shelter space. Ordinance C36272 provided the same for campers found underneath, or within 50 feet of, any railroad viaduct in downtown Spokane or within three blocks of any congregate shelter. With respect to the broad, original camping ban, Ordinance C36272 expressly limited its enforcement to times when overnight shelter space is available.

The purpose of Ordinance C36272 was to bring the city of Spokane into compliance with *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), *amended on reh'g*, 920 F.3d 584 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). The *Martin* decision has been characterized by courts, lawyers, and others as limiting cities' ability to enforce homeless camping bans when shelter space is unavailable.

Local voter Brian Hansen was not satisfied with the scope of Ordinance C36272. Mr. Hansen and his supporters desired further limitations on such camping regardless of the availability of shelter space. To that end, Mr. Hansen proposed a city-wide initiative expanding the list of no-camping-anytime locations to include:

In public within one thousand (1,000) feet of the perimeter of the grounds of a park (SMC Section 12.06A.030(B&D)), a day care center or child care facility (RCW 35.63.170(3-4)), or a public or private school (RCW 28A.150.010 and RCW 28A.195.010).

Clerk's Papers (CP) at 30.<sup>1</sup> Mr. Hansen and his supporters successfully gathered sufficient signatures to qualify the initiative for the November 2023 ballot.

Local homeless advocates Jewels sued to enjoin placement of the initiative on the ballot. They argued the initiative exceeds the scope of the local initiative power. Acting under tight statutorily-mandated timelines, the superior court found the initiative to be within the lawful scope of the local initiative power and dismissed Jewels's complaint for declaratory and injunctive relief.

Jewels appealed to this court and also asked this court to issue an emergency injunction prohibiting the initiative from appearing on the November ballot. Our court commissioner granted the emergency injunction, finding the likely harm from potentially placing an improper initiative on the ballot outweighed the potential harm of wrongfully

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<sup>1</sup> This was apparently the second proposed version of the initiative. The initial version was potentially thought to be unconstitutionally void for vagueness due to the lack of definitions. The version at issue here was substituted with the addition of the parenthetical citations to existing definitions.

Furthermore, while not a relevant factor for deciding this case, it is noted that SMC 12.02.1010 already prohibits camping on public property within 1,000 feet of any park, day care center, child care facility, or public or private school. The prohibition is implicit in the existing blanket ban on camping on "any public property." SMC 12.02.1010(A)(1). Thus, the practical effect of the initiative is simply to exempt the existing ban as to these locations from the requirement that overnight shelter space be available prior to enforcing the ban.

removing the initiative, given the potential remedy of ordering it to appear on a future ballot.

Due to the tight timelines under which everyone was operating under, our commissioner's ruling, granting a motion by Jewels for an emergency injunction pending appeal to keep the initiative off the November 2023 ballot, was issued with less than one day left before official ballots were required to be sent to print. Mr. Hansen immediately moved to modify the commissioner's ruling. In order to preserve the right of litigants to have their cases decided by a panel of elected judges, this court reviews de novo all commissioner rulings when requested by an aggrieved party. *See State v. Rolax*, 104 Wn.2d 129, 702 P.2d 1185 (1985). With less than one day before the ballot deadline, this court could not possibly perform its due diligence and reach the merits of the case prior to the printing of ballots. The emergency injunction was therefore lifted and the appeal was set for accelerated review.<sup>2</sup>

Election day occurred less than two weeks after oral argument in this case. We take judicial notice of the fact that the initiative passed by a large majority of the votes. ER 201. Our assessment of the parties' arguments is therefore essentially a

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<sup>2</sup> Concurrently, Mr. Hansen also filed a motion to dismiss review of this matter as nonappealable. Because Mr. Hansen prevails on the merits of his case, we deny his motion as moot.

post-election review.

## ANALYSIS

We review de novo as a question of law whether a proposed initiative is beyond the scope of the local initiative power. *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 7, 239 P.3d 589 (2010).

Courts may review the subject matter of local initiatives and referenda (either pre- or post-election) to determine whether “the proposed law is beyond the scope of the initiative power.” *Id.* (quoting *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746, 620 P.2d 82 (1980)).<sup>3</sup> Relevant here are three subject matter limitations. First, a local initiative may not involve “powers granted by the legislature to the governing body of a city [i.e., the city council or mayor], rather than the city itself [i.e., the electorate].” *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Const.*, 185 Wn.2d 97, 108, 369 P.3d 140 (2016) (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006)). Second, the local initiative must not conflict with state law. *Id.* And third, the subject matter must be legislative, rather than

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<sup>3</sup> A subject matter challenge to an initiative or referendum is distinct from a substantive challenge. A substantive challenge, such as a challenge to the constitutionality of a given initiative or referendum, may only be made post-election. *Coppernoll v. Reed*, 155 Wn.2d 290, 297-98, 119 P.3d 318 (2005).

administrative. *Id.* at 107. We address each in turn.

*1. Does the initiative seek to exercise powers delegated exclusively to the Spokane City Council?*

One of the criteria for exercising the local initiative power is the initiative must exercise a power granted to the municipality, as opposed to a power granted to the municipality's legislative body:

“If the grant of power is to the city as a corporate entity, direct legislation is permissible insofar as the statute is concerned. On the other hand, if the grant of power is to the legislative authority of the city, the initiative and referendum are prohibited.”

*Leonard v. City of Bothell*, 87 Wn2d 847, 852-53, 557 P.2d 1306 (1976) (quoting Philip A. Trautman, *Initiative & Referendum in Wash.: A Survey*, 49 WASH. L. REV. 55, 82-83 (1973)).

The parties' dispute over whether the initiative falls exclusively within the power of the Spokane City Council turns on how to characterize the initiative. According to Jewels, the initiative is a zoning ordinance that falls within the exclusive powers of the city's legislative body. *See Leonard*, 87 Wn.2d at 853. Mr. Hansen counters that the initiative is an exercise of police powers, which is an appropriate subject for the electorate's involvement. *See RCW 35.22.200*. We agree with Mr. Hansen.

*Scope of initiative*

Our first step in deciding how to characterize the initiative is determining its scope. The parties hotly contest whether the initiative would apply only to city-owned property or to all property, public and private. The initiative would add a subsection to SMC 12.02.1010(A)(3), consisting of a single sentence:

- c. In public within one thousand (1,000) feet of the perimeter of the grounds of a park (SMC Section 12.06A.030(B&D)), a day care center or child care facility (RCW 35.63.170(3-4)), or a public or private school (RCW 28A.150.010 and RCW 28A.195.010).

CP at 30. Read in isolation, this language makes no distinction between public and private property.

A review of the two preceding subsections also fails to provide any public or private context. The next level up specifies what activities are prohibited in the locations described in the new subsection (c). The provision states:

3. At all times . . . it is unlawful to camp or store personal property, including camp facilities and camp paraphernalia, or to have unauthorized encampments at any time in the following locations:

*Id.*

Moving up the next level in the code is similarly uninformative. It simply reads: “A. Prohibition.” *Id.* at 29. The section heading above “A” provides some indication of where the prohibitions in “A” are intended to apply: “[SMC] 12.02.1010 Unauthorized

Camping on Public Property—Violation.” *Id.*

The heading indicates the section applies only to public property. All of the title, chapter and article headings leading to SMC 12.02.1010 similarly indicate this provision of the code is intended to apply only to public property: Title 12 (“Public Ways and Property”), Chapter 12.02 (“Obstruction, Encroachment of Public Ways”), and Article VI (“Protection of Public Lands and Properties”).

Jewels, however, appropriately notes that section headings are ordinarily not considered to be part of a law. At the state level, this is often because a statute will specifically note that headings are not part of the law. *See, e.g.*, RCW 11.02.001; RCW 11.99.013; RCW 28B.900.050; RCW 29A.04.901; RCW 36.70A.902; RCW 42.17A.905; RCW 43.21C.911; RCW 47.98.030; RCW 48.32.920; RCW 70A.388.902; RCW 80.98.020; RCW 81.112.900; RCW 81.900.020. The same is true of the Spokane Municipal Code: “Chapter headings, section captions and similar catchlines . . . are not part of the code.” SMC 01.01.050. Thus, the section, chapter, and title headings are irrelevant to determining the scope of SMC 12.02.1010.

Although the section headings are not law, other provisions of the applicable municipal code make it clear SMC 12.02.1010 applies only to public property.

SMC 12.02.005 provides: “The purpose of this chapter is to regulate and control the



obstruction of public rights-of-way in the City so that those rights-of-way remain accessible and safe for their intended public use.” SMC 12.02.1000(B) provides: “It is the purpose of this chapter to set standards for the preservation of public lands and properties that prevent such harms from destroying these natural assets.”

While the initiative and SMC 12.02.1010 do not specify their geographic limitations, SMC 12.02.005 and SMC 12.02.1000(B) limit application of the initiative and SMC 12.02.1010 to city-owned property.

The history behind the adoption of SMC 12.02.1010(A)(2) and (3) also supports finding the proposed initiative would apply only to city-owned property by virtue of the initiative’s placement within subsection (A)(3). As discussed earlier, SMC 12.02.1010(A)(1) is the original blanket ban on camping on public property. SMC 12.02.1010(A)(1) specifically says it applies to only “public property.” In 2022, the Spokane City Council adopted Ordinance C36272, which created subsections (A)(2) and (A)(3) of SMC 12.02.1010, the bans on camping when it would pose a danger, or is under or near a downtown railroad viaduct, or near a congregate shelter. Subsections (A)(2) and (A)(3) do not expressly state they apply to only public property, unlike subsection (A)(1). However, the ordinances recitals (“whereas” clauses) make abundantly clear the city intended subsections (A)(2) and (A)(3) to apply to only individuals camping

on public property:

**WHEREAS**, City-owned public lands and properties are generally intended for the safe and sanitary use by the broader public . . .

**WHEREAS**, many individuals have resorted to using City park property, public sidewalks under or near downtown viaducts . . .

**WHEREAS**, City Park space is preserved and maintained to help benefit the physical and mental health and enjoyment of the public . . .

**WHEREAS**, camping interferes with . . . use of these protected public properties; and

**WHEREAS**, public rights of way (ROW), including sidewalks, are intended for safe and sanitary shared use . . .

CP at 48. Contrary to Jewels’s contention, the city clearly intended SMC 12.02.1010(A)(2) and (A)(3) to apply to only city property. And, while the ordinance did not say so specifically in its substantive provisions, it did not need to given the existing limitations imposed by SMC 12.02.005 and SMC 12.02.1000(B). While the city’s uncodified legislative intent behind subsections (A)(2) and (A)(3) does not carry over to the proposed initiative, SMC 12.02.005 and SMC 12.02.1000(B) apply just the same.

*Character of the initiative*

Given the initiative impacts the conduct of individuals occupying only public property, it is not a zoning ordinance. Zoning ordinances directly regulate the conduct of landowners, not land occupiers such as guests or trespassers. *See* 8 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §§ 25:18, at 79 (3d ed. 2020) (Persons, property and uses bound: “Generally all persons with an interest in property are bound by the

zoning of that property to the extent that they cannot authorize, permit or require any use of it contrary to zoning.”); 25:59, at 281 (Generally: “[Z]oning ordinances provide landowners with permitted uses, which allow a landowner to use his or her land, in said manner, as of right.”); 25:145, at 710 (Use control through zoning laws: “In construing a zoning ordinance, courts afford permitted uses the broadest interpretation so that a landowner may have the benefit of the least restrictive use and enjoyment of his or her land.”); 25:146, at 714 (Uses subject to control: “[Z]oning may prevent a person who owns real estate in a residence district from using it for any purpose unusual in such district.”). When a zoning ordinance is violated, it is the owner who suffers the penalties, not a guest, invitee, or even a trespasser.

The initiative here does not impose any penalties on any owner or holder of property who runs afoul of its provisions—no city official will suffer punishment if a member of the public violates the initiative’s provisions. The only people who could suffer penalties under the terms of the initiative are those whom the law would characterize as guests and trespassers. Because the initiative seeks to regulate those who use the city’s property, and not the property owner or holder, it is not a zoning ordinance.<sup>4</sup>

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<sup>4</sup> For this reason, the initiative also cannot be classified as addressing land use planning.

Rather than addressing zoning, the initiative here is a classic vagrancy ordinance, which is an exercise of the city’s general police powers. *See* 6A MCQUILLIN, *supra*, § 24:109, at 435 n.26 (3d ed. 2015) (Vagrancy: collecting cases upholding bans on “camping and storage of personal property in public areas”).<sup>5</sup> As Mr. Hansen astutely points out, the power to deal with “vagrants” and similar persons in Washington has been expressly granted to the city as a whole, not the local legislative authority. RCW 35.22.280(34)-(35).

Jewels’s initial challenge to the subject matter of the initiative therefore fails.

*2. Does the initiative interfere with state law on homeless response planning?*

“While the inhabitants of a municipality may enact legislation governing local affairs, they cannot enact legislation which conflicts with state law.” *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747. Jewels argues the initiative conflicts

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<sup>5</sup> For a century now, Washington’s Supreme Court has relied extensively on McQuillin’s treatise to answer questions of municipal governance, including the scope of the local initiative powers. *See, e.g., State ex rel. Harlin v. Superior Court*, 139 Wash. 282, 288-89, 247 P. 4 (1926), *overruled on other grounds by State ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 391, 494 P.2d 990 (1972). Our Supreme Court up to current times has liberally cited, quoted, and relied on this treatise.

with chapter 43.185C RCW, which is aimed at finding solutions to homelessness.<sup>6</sup>

We disagree.

Contrary to Jewels’s arguments, chapter 43.185C RCW does not vest homelessness regulation with any legislative authority, nor does it mandate or circumscribe adoption of any homelessness regulation. The chapter is primarily concerned with gathering data and creating performance metrics for measuring communities’ progress on housing the homeless. RCW 43.185C.030-.060. The chapter also governs several grant programs. *See, e.g.*, RCW 43.185C.080, .185, .210. The chapter says nothing about what cities may or may not do about individuals who are currently unhoused.

The only provision of chapter 43.185C RCW that remotely overlaps with the initiative is RCW 43.185C.160. This section requires each county’s homeless housing task force to develop a five-year homelessness housing plan. Among the items each plan must contain are “guidelines” for “[t]emporary encampments.” RCW 43.185C.160(2)(c). But no part of this section requires cities or their legislative authority to implement the

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<sup>6</sup> Jewels also argues the initiative conflicts with RCW 35A.21.360, which governs the ability of religious organizations to host homeless persons on property owned or controlled by the organization. Even assuming Title 35A RCW applies to Spokane as a charter city, there is no conflict because the initiative does not apply to private property.

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county task force guidelines.

The initiative does not conflict with state law set forth in chapter 43.185C RCW. Jewels therefore has not shown the initiative falls outside the scope of the second subject matter limitation.

*3. Is the initiative outside the local initiative power because it is administrative in nature?*

It is well settled that administrative, as opposed to legislative, matters are outside the scope of the local initiative power. *See, e.g., Neils v. City of Seattle*, 185 Wash. 269, 273, 53 P.2d 848 (1936). The line between an administrative and legislative action is blurred. Washington courts have adopted two tests for discerning the distinction.

The first test states:

“Actions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative.”

*Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wn.2d 339, 347, 662 P.2d 845 (1983) (quoting 5 MCQUILLIN, *supra*, § 16.55, at 194 (3d rev. ed. 1981).

The second test states:

“The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.”

*Id.*

Applying the first test, the initiative readily qualifies as legislative. The initiative is not a temporary measure; it is permanent. And it applies generally throughout the city of Spokane, not just to specific parcels of land. Nevertheless, even when an initiative passes the first test, it cannot be considered legislative unless it also passes the second test. *See Heider v. City of Seattle*, 100 Wn.2d 874, 876, 675 P.2d 597 (1984).

The second test is a much closer call, with its outcome depending on framing. On the one hand, the initiative is new in that it proscribes new geographic locations where camping is never permitted, regardless of shelter space. But on the other hand, the initiative also appears to amend the Spokane City Council's existing camping policy and its decision about how to balance public safety concerns against *Martin's* requirement that areas be open for camping if homeless shelter space is not available. This framing problem appears to be a feature (or flaw) of the second test. After all, cities rarely legislate on a blank canvas. Almost all legislation is an amendment of some sort of existing legislation.

The appropriate way to frame the character of the initiative is not resolved by case law. Unlike past decisions that have resolved the difficult question of whether an initiative is legislative or administrative in favor of the latter, the initiative here does not

implicate the details of a “highly regulated” public utility or program. *See Our Water-Our Choice!*, 170 Wn.2d at 12 (initiative implicating water fluoridation was administrative); *see also Spokane Entrepreneurial Ctr.*, 185 Wn.2d at 108 (initiative that would modify “processes for zoning and development decisions” was administrative). Thus, we must turn to other considerations to resolve the parties’ dispute.

We look to two guiding principles to resolve the parties’ dispute over whether the initiative should be characterized as legislative or administrative. First, is the importance of the right to vote on initiatives and referenda. “[C]ourts should not interfere in the electoral and legislative processes.” *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 746. Given the statutory right of Washington voters to directly participate in local initiatives, courts should be hesitant to frame an issue in a way that strips away this right. Doubts as to whether a matter is legislative or administrative should be resolved in favor of allowing the voters to have their say. Second is the burden of proof. Jewels, not Hansen, had the burden of proof in the trial court and continues to have the burden on appeal. *See 1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 183, 149 P.3d 616 (2006) (plurality opinion). When both parties’ cases are equally strong, the party with




the burden of proof cannot prevail.<sup>7</sup>

Both guiding principles favor finding the initiative is legislative, not administrative. Our deference to the democratic process counsels in favor of characterizing the initiative as legislative, rather than administrative. And given we are otherwise in equipoise, we properly assign to Jewels the failure to establish its claim that the initiative is improperly administrative. Jewels’s final challenge to the initiative’s subject matter therefore fails.

#### CONCLUSION

The order dismissing Jewels’s initiative challenge is affirmed.

  
\_\_\_\_\_  
Pennell, J.

WE CONCUR:

  
\_\_\_\_\_  
Lawrence-Berrey, A/C.J.

  
\_\_\_\_\_  
Staab, J.

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<sup>7</sup> When discussing the burden of proof, we typically refer to the burden of establishing certain facts. But when a litigant challenges the legality of a statute, the litigant has also been assigned a burden of proof. *See State v. Halstien*, 122 Wn.2d 109, 118, 857 P.2d 270 (1993). Given that a party challenging an initiative is contesting the legality of a proposed statute, it is proper to assign that party the burden of proof. *See 1000 Friends*, 159 Wn.2d at 183 (“In general, those who oppose an election on a referendum will have the burden.”).

**RCW 43.185C.005 Findings.** Despite laudable efforts by all levels of government, private individuals, nonprofit organizations, and charitable foundations to end homelessness, the number of homeless persons in Washington is unacceptably high. The state's homeless population, furthermore, includes a large number of families with children, youth, and employed persons. The legislature finds that the fiscal and societal costs of homelessness are high for both the public and private sectors, and that ending homelessness should be a goal for state and local government.

The legislature finds that there are many causes of homelessness, including a shortage of affordable housing; a shortage of family-wage jobs which undermines housing affordability; a lack of an accessible and affordable health care system available to all who suffer from physical and mental illnesses and chemical and alcohol dependency; domestic violence; and a lack of education and job skills necessary to acquire adequate wage jobs in the economy of the twenty-first century.

The support and commitment of all sectors of the statewide community is critical to the chances of success in ending homelessness in Washington. While the provision of housing and housing-related services to the homeless should be administered at the local level to best address specific community needs, the legislature also recognizes the need for the state to play a primary coordinating, supporting, and monitoring role. There must be a clear assignment of responsibilities and a clear statement of achievable and quantifiable goals. Systematic statewide data collection on homelessness in Washington must be a critical component of such a program enabling the state to work with local governments to count homeless persons and assist them in finding housing.

The systematic collection and rigorous evaluation of homeless data, a search for and implementation through adequate resource allocation of best practices, and the systematic measurement of progress toward interim goals and the ultimate goal of ending homelessness are all necessary components of a statewide effort to end homelessness in Washington by July 1, 2015. [2005 c 484 § 1.]

**RCW 43.185C.050 Local homeless housing plans.** (1) Each local homeless housing task force shall prepare and recommend to its local government legislative authority a five-year homeless housing plan for its jurisdictional area, which shall be not inconsistent with the department's statewide guidelines issued by December 1, 2018, and thereafter the department's five-year homeless housing strategic plan, and which shall be aimed at eliminating homelessness. The local government may amend the proposed local plan and shall adopt a plan by December 1, 2019. Performance in meeting the goals of this local plan shall be assessed annually in terms of the performance measures published by the department. Local plans may include specific local performance measures adopted by the local government legislative authority, and may include recommendations for any state legislation needed to meet the state or local plan goals.

(2) Eligible activities under the local plans include:

(a) Rental and furnishing of dwelling units for the use of homeless persons;

(b) Costs of developing affordable housing for homeless persons, and services for formerly homeless individuals and families residing in transitional housing or permanent housing and still at risk of homelessness;

(c) Operating subsidies for transitional housing or permanent housing serving formerly homeless families or individuals;

(d) Services to prevent homelessness, such as emergency eviction prevention programs including temporary rental subsidies to prevent homelessness;

(e) Temporary services to assist persons leaving state institutions and other state programs to prevent them from becoming or remaining homeless;

(f) Outreach services for homeless individuals and families;

(g) Development and management of local homeless plans including homeless census data collection; identification of goals, performance measures, strategies, and costs and evaluation of progress towards established goals;

(h) Rental vouchers payable to landlords for persons who are homeless or below thirty percent of the median income or in immediate danger of becoming homeless; and

(i) Other activities to reduce and prevent homelessness as identified for funding in the local plan. [2018 c 85 § 5; 2005 c 484 § 8.]

**Intent—Short title—2018 c 85:** See notes following RCW 43.185C.045.



Washington State  
Department of  
**Commerce**

## **Guidelines**

FOR THE

## **Shelter Program Grant**

**August 2020**

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## **1 Grant Basics**

### **1.1 Overview**

The Shelter Program Grant funds equitable and creative approaches to develop or expand shelter programs and bring people inside with the goal of exiting participants to permanent housing and positive destinations quickly.

Programs enact strategies to ensure racially equitable access and racially equitable outcomes at shelter exit, provide outreach to unsheltered individuals and provide housing stability focused services.

### **1.2 Program Purpose**

The Office of Family and Adult Homelessness in the Housing Assistance Unit at the Department of Commerce administers state and federal funds to support homeless crisis response systems in WA State.

The Shelter Program Grant is a critical resource in the crisis response system.

People living unhoused become stably housed when the system is low barrier, trauma informed, culturally responsive and Housing First oriented. People living unstably housed become stably housed when the system is oriented toward problem solving conversations and personal advocacy to help people identify practical solutions based on their own available resources.

We expect Commerce grantees, including county governments and nonprofits, to be leaders in their crisis response systems, facilitating partnership among service organizations and promoting evidence-based, anti-racist practices.

Grantees must respond to the disproportionality in access to services, service provision and outcomes and cannot simply rely on standard business practices to address inequity. Grantees have the responsibility to ensure all people eligible for services receive support and are served with dignity, respect and compassion regardless of circumstance, ability or identity.

This includes marginalized populations, Black, Native and Indigenous, People of Color, immigrants, people with criminal records, people with disabilities, people with mental health and substance use vulnerabilities, people with limited English proficiency, people who identify as transgender, people who identify as LGBTQ+, and other individuals that may not access mainstream support.

We are here to support your efforts. The Housing Assistance Unit provides access to continuous learning on trauma informed services, racial equity, LGBTQ+ competency and more. We can help you strategize outreach, coordinated entry and help you understand your data so we can meet Washington's vision that no person is left living outside.

### **1.3 Fund Source**

The Shelter Program Grant is funded by the Home Security Fund as appropriated by the Legislature.



## 2 Administrative Requirements of Lead Grantees

### 2.1 Training

Lead/subgrantees must identify staff for training. These staff should include staff that provide direct services and supervisors of direct service staff.

The following trainings are required at least every three years and attendance must be documented:

- ✓ Trauma Informed Services
- ✓ Racial Equity
- ✓ LGBTQ+ competency

Other recommended trainings include:

- ✓ Mental Health Training
- ✓ Supporting individuals harmed by domestic violence
- ✓ Local coordinated entry (CE) policies and procedures as required by lead CE entity
- ✓ Diversion and Problem-Solving
- ✓ Landlord Engagement in Rapid Rehousing
- ✓ Crisis intervention
- ✓ Professional boundaries
- ✓ De-escalation
- ✓ Case management

Online trainings including Progressive Engagement for Programs and Systems, Working With Survivors of Domestic Violence and Introduction to Problem Solving (Diversion) are accessible on the [Department of Commerce website](#).

In addition, lead/subgrantee staff are highly encouraged to attend the annual [Washington State Conference on Ending Homelessness](#).

Costs to attend trainings are an eligible program expense (see [Section 3.3 Operations](#)).

### 2.2 Grant Management

#### 2.2.1 Changes to Guidelines

Commerce may revise the guidelines at any time. All lead grantees will receive revised copies. Lead grantees are responsible for sending revisions to subgrantees in a timely manner.

#### 2.2.2 Commerce Monitoring

Commerce will monitor lead grantees' grant activities. Lead grantees will be given a minimum of 30 days' notice unless there are special circumstances that require immediate attention. The notice will specify the monitoring components.

#### 2.2.3 Subgrantee Requirements

All subgrantee agreements must be time-limited and have defined roles and responsibilities for each party, detailed budgets and performance terms. Commerce reserves the right to directly contact subgrantees at any time for data quality, monitoring, fiscal and other issues.

Lead grantees may enter into an agreement with any other local government, Council of Governments, Housing Authority, Community Action Agency, nonprofit community or neighborhood-based organization, federally recognized Indian tribe in the state of Washington or regional or statewide nonprofit housing assistance organizations who operate programs to end homelessness within a defined service area.

Lead grantees must provide Commerce with copies of subgrant agreements (upon request) and notify Commerce if subgrants are terminated during the grant period.

Lead grantees must notify Commerce of any changes in selection of subgrantees funded with the Shelter Program Grant.

### 2.2.3.1 Subgrantee Risk Assessment and Monitoring

Lead grantees are responsible for ensuring subgrantee compliance with all requirements identified in the Shelter Program Grant guidelines. The lead grantee must conduct a risk assessment and develop a monitoring plan for each subgrantee within six months of contracting Shelter Program Grant funds to the subgrantee. The risk assessment must inform the monitoring plan for each subgrantee. Monitoring plans must include monitoring dates, the type of monitoring (remote, on-site) and the program requirements being reviewed.

The lead grantee must maintain policies and procedures that guide the risk assessment, monitoring activities and monitoring frequency.

Commerce reserves the right to require lead grantees to undertake special reviews when an audit or other emerging issue demands prompt intervention and/or investigation.

## 2.3 Fiscal Administration

### 2.3.1 Reimbursement Rates

- ✓ Commerce will reimburse for new beds<sup>1</sup> created on and after January 1, 2020.
- ✓ Commerce will reimburse up to \$56 per day net additional person sheltered above the baseline of shelter occupancy prior to the award of funding.
- ✓ Commerce will reimburse up to \$10,000 per shelter bed prior to occupancy for costs associated with creating additional shelter capacity or improving existing shelters to improve occupancy rates and positive outcomes.

The following table compares the billable budget categories to the allowable expenses.

Budget Categories	Applicable Rates	Allowable Expenses
Pre-Occupancy	\$10,000 per bed prior to occupancy	Facility Support Capital
Post-Occupancy Operations	\$56 per day per bed	<i>Acquisition (pre-occupancy only)</i> Operations Admin

<sup>1</sup> Examples of new beds include tents converted to tiny shelters/homes, seasonal or temporary beds converted to permanent beds or nightly drop-in beds converted to 24-hour beds.

### **2.3.2 Reimbursements**

Lead grantees must bill Commerce monthly for reimbursement of allowable costs. Invoices are due on the 20<sup>th</sup> of the month following the provision of services. Final invoices for a biennium may be due sooner than the 20<sup>th</sup>. If the lead grantee fails to submit an invoice within a three-month period, without a reasonable explanation, Commerce may take corrective action as outlined in the lead grantee contracted Scope of Work. Exceptions to billing procedures can be negotiated with Commerce on a case-by-case basis.

Invoices must be submitted online using the Commerce Contract Management System (CMS) through Secure Access Washington (SAW).

#### **2.3.2.1 Back-up Documentation**

All invoices must include the Shelter Program Enrollment Report. Commerce may require a lead grantee to submit additional documentation. Lead grantees must retain original invoices submitted by their subgrantees.

### **2.3.3 Budget Revisions**

A contract amendment may be required when revisions (in one or cumulative transfers) reach more than 10 percent of the grant total.

## **3 Allowable Expenses**

### **3.1 Facility Support**

- ✓ Lease, master lease or rent payment on a building used to provide emergency shelter
- ✓ Hotel/Motel payments on a building or room used to provide emergency shelter
- ✓ Utilities
- ✓ Maintenance and repair
- ✓ Security and janitorial services
- ✓ Essential facility equipment and supplies
- ✓ On-site and off-site management costs
- ✓ Mortgage payments
- ✓ Other expenses as approved in advance by Commerce

### **3.2 Capital**

- ✓ Construction
- ✓ Capital improvements
- ✓ Other expenses as approved by Commerce

#### **3.2.1 Property Acquisition**

- ✓ Property acquisition (only billable to Pre-Occupancy)

### **3.3 Operations**

Operations expenses are directly attributable to the Shelter Program.

- ✓ Salaries and benefits for staff costs
- ✓ Office space, utilities, supplies, phone, internet, and training
- ✓ Equipment
- ✓ Shelter supplies

#### **3.3.1 Financial Assistance**

Financial assistance must be paid directly to a third party on behalf of the household.

##### **3.3.1.1 Move-in Costs**

One-time move-in costs may be paid to assist participants in moving into permanent or transitional housing destinations. Eligible costs include:

- ✓ First and last months' rent
- ✓ Housing security deposits
- ✓ Utility deposits
- ✓ Incentives paid to landlords
- ✓ Application fees, background check fees, credit check fees
- ✓ Other costs as approved in advance by Commerce

##### **3.3.1.2 Flexible Funding**

Flexible Funding is the provision of goods or payments of expenses which directly help a participant to obtain or maintain housing or meet essential household needs.

Essential household needs means personal health and hygiene items, cleaning supplies, transportation passes and other personal need items.

Flexible Funding payments must be paid directly to a third party on behalf of the household.

### 3.3.1.3 Ineligible Expenses

- ✓ Ongoing rent/utility payments
- ✓ Retailer or merchant gift cards, vouchers or certificates that can be exchanged for cash or that allow the recipient to purchase alcohol or tobacco products.

### 3.3.2 Program Expenses

- ✓ Intake and assessment
- ✓ Housing support services
- ✓ Outreach services
- ✓ Data collection and entry
- ✓ General liability insurance and automobile insurance
- ✓ Other costs as approved in advance by Commerce

### 3.3.3 Ineligible Expenses

- Replacement or operating reserves

## 3.4 Administration

Allowable administrative costs benefit the organization as a whole and cannot be attributed specifically to the Shelter Program.

- ✓ Executive director salary and benefits
- ✓ General organization insurance
- ✓ Organization wide audits
- ✓ Board expenses
- ✓ Organization-wide membership fees and dues
- ✓ General agency facilities costs (including those associated with executive positions) such as rent, depreciation expenses and operations and maintenance

All amounts billed to administration must be supported by actual costs. This means:

- ✓ Billed directly, such as IT services that are billed by the hour.
- ✓ Shared costs that are allocated directly by means of a cost allocation plan.
- ✓ Costs related to executive personnel such that a direct relationship between the cost and the benefit cannot be established must be charged indirectly by use of an indirect cost rate which has been appropriately negotiated with an approved cognizant agency or by use of the 10 percent de minimus rate.

## 4 Allowable Interventions

### 4.1 Emergency Shelter

Emergency shelter provides short-term temporary shelter (lodging) for people experiencing homelessness.

#### 4.1.1 Shelter Program Models

##### 4.1.1.1 Drop-In Shelters

Drop-In Shelters offer night-by-night living arrangements that allow households to enter and exit on an irregular or daily basis.

##### 4.1.1.2 Continuous-Stay Shelter

Continuous-Stay Shelters offer living arrangements where households have a room or bed assigned to them throughout the duration of their stay.

### 4.2 Service Delivery

Shelter Programs provide services oriented toward bringing people experiencing unsheltered homelessness inside, and exiting shelter participants to permanent housing and positive destinations quickly.

#### 4.2.1 Rules and Policies

Shelter Programs must have realistic and clear expectations. Rules and policies must be narrowly focused on maintaining a safe environment for participants and the community and avoiding exits to homelessness. Shelter programs must have flexible intake schedules and require minimal documentation. At the minimum, people must not be screened out based on the following criteria:

- ✓ Having little or no income
- ✓ Having poor credit or financial history
- ✓ Having poor or lack of rental history
- ✓ Having involvement with criminal justice system<sup>2</sup>
- ✓ Having active or a history of alcohol and/or substance use<sup>3</sup>
- ✓ Having been impacted or affected by crime
- ✓ The type or extent of disability-related services or supports that are needed
- ✓ Lacking identification or proof of U.S. Residency Status
- ✓ Other behaviors that are perceived as indicating a lack of “housing readiness”, including resistance to receiving services
- ✓ If a program serves households with children, the age of a minor child cannot be used as a basis for denying any household’s admission to the program

Shelters may not have stay limits. Participants must not be exited to homelessness solely due to the number of days residing in shelter.

<sup>2</sup> Shelter Programs serving families with children may screen participants for sex offenses.

<sup>3</sup> Sobriety/recovery focused Shelter Programs may limit enrollment to individuals seeking a sober/recovery focused environment.

Shelter Programs must not require participants to pay a share of rent or program fees.

Participants must not be terminated from the program for the following reasons:

- ✓ Failure to participate in supportive services or treatment programs
- ✓ Failure to make progress on a housing stability plan
- ✓ Alcohol and/or substance use in and of itself is not considered a reason for termination<sup>4</sup>

If a participant is terminated from the Shelter Program due to violating rules focused on maintaining a safe environment, there must be a process in place for the participant to re-enroll in the Shelter Program at a later date when the behavior has resolved.

#### **4.2.2 Housing Stability Focused Services and Planning**

Shelter Programs must offer housing stability focused services. Housing stability focused services are driven by the needs of the participant, are flexible, use a strengths-based approach and focus on obtaining stable housing.

Shelter Programs should assess each participant's needs and facilitate planning for stable housing. Assessments and housing stability planning should be documented.

Services may also include:

- ✓ Housing Identification Services: Recruit landlords to provide housing for Shelter Program participants and assist households with securing housing.
- ✓ Financial Assistance: Provide assistance to cover move-in costs and deposits.
- ✓ Case Management and Services: Provide services and connections to community resources<sup>5</sup> that help participants obtain housing.

#### **4.2.3 Diversion and Problem-Solving**

Shelter Programs must employ Diversion and Problem-Solving. Diversion is a creative problem-solving approach to help participants resolve their housing crisis, ideally before entering the crisis response system. Diversion uses exploratory conversations to help participants identify realistic housing options based on their own resources. Diversion is often accompanied with short-term services including one-time financial or move-in assistance.

Diversion approaches are utilized prior to Shelter Program enrollment and throughout a participant's shelter stay.

#### **4.2.4 Progressive Engagement**

Shelter Programs must employ a Progressive Engagement approach in service delivery. Progressive Engagement means:

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<sup>4</sup> Does not apply to sobriety/recovery oriented Shelter Programs.

<sup>5</sup> Community resources include behavioral health, chemical dependency, education or workforce training, employment services and permanent supportive housing.

- ✓ Initial assessment and services address the immediate housing crisis with the minimal services needed.
- ✓ Frequent re-assessment determines the need for additional services.
- ✓ Services are individualized and responsive to the needs of each participant.
- ✓ Participants exit to permanent housing or other positive destinations as soon as possible.
- ✓ Having already received assistance does not negatively impact a participant's eligibility if they face homelessness again.

#### **4.2.5 Street Outreach**

Street outreach is a strategy for engaging people experiencing homelessness who are otherwise not accessing services for the primary purpose of bringing them inside.

Shelter Programs must ensure street outreach is provided to people experiencing unsheltered homelessness with the goal of bringing them inside to the Shelter Program.

Street outreach must be linked to the county or regional CE by either performing mobile CE services (e.g. assessment) or by providing referrals to CE.

#### **4.2.6 Racially Equitable Access and Outcomes**

Shelter Programs must develop and implement strategies to prevent racial inequities in who is served and program outcomes. At a minimum, strategies must include:

- ✓ Hiring and promoting both frontline and management staff who reflect the racial, cultural and language demographics of the population being served.
- ✓ Implementing inclusive programming by intentionally seeking and utilizing input from the population being served.

Additional recommended strategies to promote equity in services:

- ✓ Affirmatively market the program.
- ✓ Outreach to and develop meaningful connections with Tribal communities, farmworkers and other marginalized communities.
- ✓ Provide interpretation services to ensure effective communication with people who have limited English proficiency.
- ✓ Translate all documents and marketing information (including website) into the most common languages spoken in the community.
- ✓ Offer flexible intake processes such as mobile, virtual and outreach-based intake.
- ✓ Ensure direct service staff have relevant cultural competency training and educational materials.



#### 4.2.7 Coordinated Entry

Shelter Programs are not required but may elect to participate in the county or regional CE process.<sup>6</sup> To support effective partnerships, grantees should actively create and maintain relationships with CE. Additionally, Shelter Programs should refer clients to CE when their needs cannot be met by the project.

Shelter Programs that elect to participate in the county or regional CE process must have a procedure that documents the referral process and comply with the [Washington State Coordinated Entry Guidelines](#).

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<sup>6</sup> If the county or regional CE requires Emergency Shelters and Drop-in Shelters to participate in the county or regional CE process, Emergency Shelters and Drop-in Shelters funded by the Shelter Program Grant must participate in the county or regional CE process by accepting referrals and must fill openings exclusively through the CE process.

## 5 Facility Requirements

### 5.1 Facility Types

#### 5.1.1 Emergency Shelter Facility

An Emergency Shelter Facility is defined as a building locally permitted to provide emergency shelter for people experiencing homelessness. This includes re-use of existing buildings and new buildings. This designation requires a certificate of occupancy issued by the local jurisdiction.

#### 5.1.2 Temporary Shelter Site

A Temporary Shelter Site is defined as structure(s) or a location locally permitted to provide temporary shelter for people experiencing homelessness. Tents, mitigation sites or hosted encampments are examples of Temporary Shelter Sites. This designation requires use approval, as required by the local jurisdiction. This could be conditional or temporary use permits, or a zoning letter stating approvals required.

Temporary shelter structures referred to as “tiny shelters” or “tiny homes” are allowable facility types, in addition to other models approved by Commerce.

#### 5.1.3 Other Facility Types

Hotels, motels, dormitories and efficiency dwelling units or apartments are allowable types of shelter facilities. Local permitting and occupancy requirements must be followed, as applicable.

Shelter Programs utilizing hotel/motels must ensure access to beds each day the program is operational.

### 5.2 COVID-19 Safety Measures

All shelters must implement applicable recommendations provided by the [Washington State Department of Health](#) and [Centers for Disease Control and Prevention](#) Guidance for Shared or Congregate Housing. Shelter facilities must obtain approval by the relevant local public health jurisdiction, Public Health Officer, County Medical Director or Department of Public Health Director prior to occupancy of the shelter.

### 5.3 Health and Safety

All shelter facilities must be structurally sound to protect occupants from the elements and not pose any threat to health or safety. Space and privacy in sleeping areas must ensure privacy and dignity.

Shelter facilities must be accessible for people who use wheelchairs or mobility devices and must provide reasonable accommodations, as needed.

All shelter facilities must provide:

- ✓ Access to hygiene facilities, including toilets, handwashing and garbage containers, all of which are serviced frequently
- ✓ Access to storage for the belongings of shelter guests
- ✓ Janitorial service/cleaning which ensures shelter space is hygienic and comfortable

- ✓ A bed for each participant that is in good condition with a clean and comfortable mattress, including bed linens<sup>7</sup>
- ✓ Cribs, bassinets and infant formula for participants with minor children, as needed

Shelter facilities should also provide:

- ✓ Personal hygiene products
- ✓ Access to kitchen facilities including a sink, refrigerator, stove, garbage containers and eating and cooking utensils
- ✓ Food and beverages and food that is in accordance with the participant's religious and cultural beliefs and personal practices
- ✓ Access to laundry facilities

#### **5.4 Lead Based Paint**

To prevent lead poisoning in young children, lead/subgrantees must comply with the Lead-Based Paint Poisoning Prevention Act of 1973 and its applicable regulations found at 24 CFR 35, Parts A, B, M and R.

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<sup>7</sup> Not required for hosted encampments. Sites utilizing tents must include clean, comfortable and warm sleeping accommodations, such as a sleeping bag and pad or cot.

## 6 Additional Requirements

### 6.1 HMIS

Shelter Programs must enter participant data into the Homeless Management Information System (HMIS) in accordance with the most current [HMIS Data Standards](#).

#### 6.1.1 Data Quality

Shelter Programs are required to provide quality data to the best of their ability. Maintaining good data quality is important for effective program evaluation. Data quality has four elements: completeness, timeliness, accuracy and consistency.

For detailed data quality requirements see [Appendix E: HMIS Data Quality](#).

#### 6.1.2 Consent for Entry of Personally Identifying Information

##### 6.1.2.1 Identified Records

- ✓ Personally identifying information (PII)<sup>8</sup> must not be entered into HMIS unless all adult household members have provided informed consent.
- ✓ Informed consent must be documented with a signed copy of the *Client Release of Information and Informed Consent Form* in the client file. If electronic consent has been received, a copy does not need to be printed for the client file but must be available in HMIS. If telephonic consent has been received, complete the consent form the first time the participant is seen in person.

##### 6.1.2.2 Anonymous Records

The following types of records must be entered anonymously:

- ✓ Households in which one adult member does not provide informed consent for themselves or their dependents
- ✓ Households entering a domestic violence program or currently fleeing or in danger from a domestic violence, dating violence, sexual assault, human trafficking or a stalking situation
- ✓ Minors under the age of 13 with no parent or guardian available to consent to the minor's information in HMIS
- ✓ Households in programs which are required by funders to report HIV/AIDS status

##### 6.1.2.3 Special Circumstances

If the reporting of the HIV/AIDS status of participants is not specifically required, the HIV/AIDS status must not be entered in HMIS.

If a combination of race, ethnicity, gender, or other demographic data could be identifying in your community, those data should not be entered for anonymous records.

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<sup>8</sup> PII includes name, social security number, birthdate, address, phone number, email and photo.

## **6.2 Ineligible Use of Funds**

Lead/subgrantees must inform Commerce if grant funds are spent on ineligible expenses. Reasonable attempts must be made to prevent ineligible use of funds.

## **6.3 Personal Identifying Information**

Personal identifying information must never be sent electronically unless sent via a secure file transfer. Request secure file transfer login credentials from Commerce.

## **6.4 Grievance Procedure**

Lead/subgrantees must have a written grievance procedure for households seeking or receiving services which includes the participant's right to review decisions and present concerns to program staff not involved in the grievance.

This procedure must:

- ✓ Clearly describe how participants can request a review or report concerns
- ✓ Be accessible to all participants seeking or receiving services

## **6.5 Termination and Denial of Service Policy**

Lead/subgrantees must have a termination and denial policy.

This policy must:

- ✓ Describe the reasons a household would be denied services and/or terminated from program participation
- ✓ Describe the notification process
- ✓ Ensure participants are made aware of the grievance procedure

## **6.6 Records Maintenance and Destruction**

Lead/subgrantees must maintain records relating to this grant for a period of six years following the date of final payment.

Paper records derived from HMIS which contain personally identifying information must be destroyed within seven years after the last day the household received services from the lead/subgrantee.

## **6.7 Nondiscrimination**

Lead/subgrantees must comply with all federal, state, and local nondiscrimination laws, regulations and policies.

Lead/subgrantees must comply with the Washington State Law against Discrimination, RCW 49.60, as it now reads or as it may be amended. RCW 49.60 currently prohibits discrimination or unfair practices because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability.

Lead/subgrantees must comply with the Federal Fair Housing Act and its amendments as it now reads or as it may be amended. The Fair Housing Act currently prohibits discrimination because of race,

color, national origin, religion, sex, disability or family status. The Fair Housing Act prohibits enforcing a neutral rule or policy that has a disproportionately adverse effect on a protected class.

Lead/subgrantees serving households with children must serve all family compositions. If a program operates gender-segregated facilities, the program must allow the use of facilities consistent with the participant's gender expression or identity.

Local nondiscrimination laws may include additional protected classes.

## **6.8 Accessibility**

Lead/subgrantees must ensure effective communication with people with disabilities, including access to all appropriate auxiliary aids and services necessary (e.g. braille, large type, assistive listening devices and sign language interpreters).

Lead/subgrantees must ensure effective communication with people who speak other languages, have limited English proficiency, and/or have limited literacy abilities, as is locally appropriate.

## **6.9 Providing Move-In Assistance**

Lead/subgrantees providing move-in assistance must ensure participants receiving move-in assistance have rental agreements in place prior to move-in and provide information on the Washington Residential Landlord Tenant Act. See [Appendix D: Requirements for Providing Move-In Assistance](#) for detailed requirements.

## 7 Appendices

### 7.1 Appendix A: Required Policies and Procedures

- ✓ Coordinated Entry Procedure, if applicable ([Section 4.2.7](#))
- ✓ Grievance Procedure ([Section 6.4](#))
- ✓ Termination and Denial of Service Policy ([Section 6.5](#))

### 7.2 Appendix B: Performance Goals

#### 7.2.1 Overview

Performance measures help evaluate the effectiveness of the Shelter Program Grant. The current contract period will serve to gather baseline data and may inform renewal of Shelter Program Grant funding.

**Projects are not required to meet or make progress towards performance targets as a condition of funding for the current contract period. Project performance data will impact community and state level performance measures.**

Commerce has identified the following as the most critical performance measures for the Shelter Program:

- ✓ Increasing Exits to Permanent Housing
- ✓ Increasing Percent Exits to Positive Outcomes
- ✓ Reducing the Length of Stay
- ✓ Equitable Access and Outcomes

#### 7.2.2 Housing Outcome Performance Goals

Lead/subgrantees should aim to improve the housing outcomes of Shelter Program Grant participants. For each intervention type funded by the Shelter Program Grant, lead/subgrantees should adopt the following performance goals.

Intervention Type	Performance Goal	HMIS Calculation	Performance Target <sup>9</sup>
Emergency Shelter	<b>Increase Percent Exits to Permanent Housing</b>	Of people in the ES project who exited, those who exited to permanent housing destinations	50%
Drop-in Emergency Shelter <sup>10</sup>	<b>Increase Percent Exits to Positive Outcomes</b>	Of people in the ES project who exited, those who exited to Positive Outcome destinations	50%
Temporary Shelter	<b>Increase Percent Exits to Positive Outcomes</b>	Of people in the Other project who exited, those who exited to Positive Outcome destinations	50%

<sup>9</sup> The target is the level of desirable performance and is an indicator of a high performing project.

<sup>10</sup> Drop-in Emergency Shelters offer night-by-night living arrangements that allow households to enter and exit on an irregular or daily basis and often use a Night-By-Night tracking method in HMIS.

Site <sup>11</sup>			
All	<b>Reduce Average Length of Stay</b>	Of the people active in the project, the days homeless as measured by each client's start, exit and bed night dates strictly as entered into HMIS	Not established

### 7.2.3 Exit Destinations

<b>Exit Destinations Options</b>	<b>Positive Outcome:</b> The following destinations are considered Positive exits from Drop-in ES and Temporary Shelter Sites	<b>Permanent Housing:</b> The following destinations are considered Permanent exits from Emergency Shelters
Emergency shelter, including hotel or motel paid for with emergency shelter voucher, or RHY-funded Host Home shelter	Positive Outcome	Negative Outcome
Foster Care home or foster care group home	Positive Outcome	Negative Outcome
Hospital or other residential non-psychiatric medical facility	Removed from denominator	Removed from denominator
Hotel or Motel paid for without emergency shelter voucher	Positive Outcome	Negative Outcome
Jail, prison or juvenile detention facility	Negative Outcome	Negative Outcome
Place not meant for habitation (e.g., a vehicle, an abandoned building, bus/train/subway station/airport or anywhere outside)	Negative Outcome	Negative Outcome
Psychiatric hospital or other psychiatric facility	Positive Outcome	Negative Outcome
Residential project or halfway house with no homeless criteria	Removed from denominator	Negative Outcome
Safe Haven	Positive Outcome	Negative Outcome
Staying or living with family, temporary tenure (e.g. room, apartment or house)	Positive Outcome	Negative Outcome
Staying or living with friends, temporary tenure (e.g. room, apartment or house)	Positive Outcome	Negative Outcome
Substance abuse treatment facility or detox center	Positive Outcome	Negative Outcome
Transitional housing for homeless persons (including homeless youth)	Positive Outcome	Negative Outcome

<sup>11</sup> A Temporary Shelter Site is defined as structure(s) or a location locally permitted to provide temporary shelter for people experiencing homelessness. Tents, mitigation sites or hosted encampments are examples of Temporary Shelter Sites.



Long-term care facility or nursing home	Positive Outcome	Removed from denominator
Host Home (non-crisis)	Positive Outcome	Permanent Housing
Owned by client, no ongoing housing subsidy	Positive Outcome	Permanent Housing
Owned by client, with ongoing housing subsidy	Positive Outcome	Permanent Housing
Permanent housing (other than RRH) for formerly homeless persons	Positive Outcome	Permanent Housing
Rental by client, no ongoing housing subsidy	Positive Outcome	Permanent Housing
Rental by client, with GPD TIP housing subsidy	Positive Outcome	Permanent Housing
Rental by client, with other ongoing housing subsidy	Positive Outcome	Permanent Housing
Rental by client, with VASH housing subsidy	Positive Outcome	Permanent Housing
Staying or living with family, permanent tenure	Positive Outcome	Permanent Housing
Staying or living with friends, permanent tenure	Positive Outcome	Permanent Housing
Rental by client, with RRH or equivalent subsidy	Positive Outcome	Permanent Housing
Rental by client, with HCV voucher (tenant or project based)	Positive Outcome	Permanent Housing
Rental by client, with HCV voucher (tenant or project based)	Positive Outcome	Permanent Housing
Deceased	Removed from denominator	Removed from denominator
Client doesn't know	Unknown / Negative Outcome	Unknown / Negative Outcome
Client refused	Unknown / Negative Outcome	Unknown / Negative Outcome
Data not collected	Unknown / Negative Outcome	Unknown / Negative Outcome
No exit interview completed	Unknown / Negative Outcome	Unknown / Negative Outcome
Other	Unknown / Negative Outcome	Unknown / Negative Outcome

## 7.2.4 Equitable Access and Outcomes

Lead/subgrantees should ensure equitable access to the Shelter Program and equitable housing outcomes of Shelter Program participants.

### Equitable Access

Equitable access means that the race and ethnicity of people entering the Shelter Program are similar to the community demographics. Equitable access is measured by comparing the percent of people in poverty by race and ethnicity to the percent of people entering the Shelter Program by race and ethnicity.

#### Access Data Example:

	Percent of Total in Poverty in Community X	Percent of Total enrolled in Shelter Program
American Indian and Alaska Native	5%	<b>1%</b>
Asian	4%	4%
Black or African American	10%	<b>1.2%</b>
Hispanic or Latinx (of any race)	30%	<b>5%</b>
Native Hawaiian and Other Pacific Islander	1%	0.8%
White (Non-Hispanic / Non-Latinx)	50%	88%

This example data indicates that access to the Shelter Program is not racially equitable. American Indian and Alaska Native, Black or African American and Hispanic or Latinx community members are not accessing the Shelter Program at the expected rate.

### Equitable Housing Outcomes

Equitable housing outcomes means that the outcomes of the Shelter Program participants should be similar, regardless of race or ethnicity.

#### Outcome Date Example:

	Percent of exits to Permanent Housing
<i>All Program Participants</i>	55%
American Indian and Alaska Native	<b>43%</b>
Asian	58%
Black or African American	<b>40%</b>
Hispanic or Latinx (of any race)	54%
Native Hawaiian and Other Pacific Islander	<b>50%</b>
White (Non-Hispanic / Non-Latinx)	60%

This example data indicates that Shelter Program outcomes are not racially equitable. American Indian and Alaska Native, Black or African American, and Native Hawaiian and Other Pacific Islander shelter participants are exiting to permanent housing at a significantly lower rate than White shelter participants.

## 7.3 Appendix C: HMIS Data Quality

Shelter Programs are required to provide quality data to the best of their ability. Maintaining good data quality is important for effective program evaluation. Data quality has four elements: completeness, timeliness, accuracy and consistency.

### 7.3.1 Completeness

Completeness of data is measured by the percentage of incomplete fields in required data elements.

Shelter Programs are expected to collect **first name, last name, date of birth, race and ethnicity** from participants that give consent on the [HMIS consent form](#). **Shelter Programs will never require a participant to provide this information even if they have consented, but should gather it to the best of their ability.**

All participants, consenting and non-consenting, must have complete **prior living situation and exit destination** data.

#### *Examples of incomplete entries:*

Incomplete Entries	
Data Element	Incomplete if...
<b>Name*</b>	[Quality of Name] field contains Partial, Street name, or Code name, Client doesn't know, Client refused or Data not collected; or [First Name] or [Last Name] is missing.
<b>Date of Birth*</b>	[Quality of DOB] field contains Approximate, Partial DOB reported, Client doesn't know, Client refused or Data not collected; or [Date of Birth] is missing.
<b>Race*</b>	[Race] field contains Client doesn't know, Client refused, Data not collected, or is missing.
<b>Ethnicity*</b>	[Ethnicity] field contains Client doesn't know, Client refused, Data not collected, or is missing.
<b>Prior Living Situation</b>	[Prior Living Situation] is client doesn't know, client refused, data not collected, or is missing.
<b>Destination</b>	[Destination] is Client doesn't know, Client refused, No exit interview completed, Data not collected, or is missing.

\*Only measured for consenting participants.

#### *Expected completeness measures for project types:*

Data Element	Emergency Shelter	Night-by-Night/Drop-in Emergency Shelter
<b>Name*</b>	85%	80%
<b>Date of Birth*</b>	85%	80%
<b>Race*</b>	85%	80%
<b>Ethnicity*</b>	85%	80%
<b>Prior Living Situation</b>	85%	80%
<b>Destination</b>	80%	50%

\*Only measured for consenting participants.

### 7.3.2 Timeliness

Participant data should be entered into HMIS as close to the date of collection as possible. Entering data as soon as possible supports data quality by avoiding backlogs of pending data and allowing near real time analysis and reporting.

Shelter Programs must enter/update project participant data in HMIS **within 14 calendar days** following the date of project enrollment/exit.

Counties not using the State HMIS (data integration counties), must work with the HMIS Manager to provide full CSV exports every six months. When Commerce is able to accept monthly imports, Counties must upload data to the State's HMIS using XML or CSV schema compliant with current HUD HMIS Data Standards. Uploads must occur no later than the 30th calendar day following the end of each month. Counties not able to export and upload data to the State HMIS using an approved format must use the State HMIS for direct data entry.

### 7.3.3 Accuracy

Data entered into HMIS must reflect the real situation of the participant as closely as possible.

Accurate data is necessary to ensure any project reporting fairly represents the work of the project and each participant's story.

#### *Examples of data accuracy:*

Elements of Data Accuracy	
<b>Date of Birth and Project Start Date</b>	Ensure the two are not the same dates.
<b>Prior Living Situation data elements</b>	Ensure responses for Prior living situation, Length of stay in prior living situation, Approximate date homelessness started, Number of times the client has experienced homelessness in the last 3 years, and Number of months experiencing homelessness in the last 3 years do not conflict with each other.
<b>Disabling Condition</b>	Ensure the Yes/No answer does not conflict with the specific types of disabling conditions.
<b>Health Insurance</b>	Ensure the Yes/No answer does not conflict with the specific types of health insurance.
<b>Monthly Income</b>	Ensure the Yes/No answer does not conflict with the specific sources of monthly income.
<b>Non-Cash Benefits</b>	Ensure the Yes/No answer does not conflict with the specific sources of non-cash benefits.
<b>Relationship to Head of Household</b>	Ensure there is only one Head of Household for any given household (including clients served individually) and that this element is entered and accurate for all household members.
<b>Veteran Status</b>	Ensure individuals under 18 years of age are not identified as veterans.
<b>Project Population Specifics</b>	Ensure that projects only serving individuals only enroll individuals and not multi-person households. Ensure that projects only serving families with children only enroll families with children. Ensure that projects only serving clients of a specific age range only enroll clients of that age range.

#### 7.3.4 Consistency

Consistent data helps ensure that any reporting generated by a project is understood. Data consistency is important for effectively communicating the processes and outcomes of a project.

All data will be collected, entered and stored in accordance with the [Agency Partner Agreement](#).

All data elements and responses will be entered per the [HUD data Standards Manual](#). To avoid inconsistency, agencies should use language on intake forms that closely matches the elements and responses in HMIS.

Participants who refuse consent must be made anonymous per [Department of Commerce Guidance](#) and the [consent refused client entry guide](#).

### 7.4 Appendix D: Requirements for Providing Move-In Assistance

#### 7.4.1 Washington Residential Landlord-Tenant Act

Lead/subgrantees must provide information on the Washington Residential Landlord Tenant Act ([RCW 59.18](#)) to participants receiving rent assistance.

For more information on this law, visit Washington Law Help, housing page, tenant rights at [www.washingtonlawhelp.com](http://www.washingtonlawhelp.com).

#### 7.4.2 Washington State's Landlord Mitigation Law

Washington State's Landlord Mitigation Law ([RCW 43.31.605](#)) became effective on June 7, 2018 to provide landlords with an incentive and added security to work with tenants receiving rental assistance. The program offers up to \$1,000 to the landlord in reimbursement for some potentially required move-in upgrades, up to fourteen days' rent loss and up to \$5,000 in qualifying damages caused by a tenant during tenancy. A move in/move out condition report is required for a landlord to receive reimbursement.

For more information, please visit the Commerce Landlord Mitigation Program [website](#).

#### 7.4.3 Lead Based Paint

For ALL properties constructed prior to 1978, landlords must provide tenants with:

- ✓ Disclosure form for rental properties disclosing the presence of known and unknown lead-based paint;
- ✓ A copy of the "Protect Your Family from Lead in the Home" pamphlet.

Both the disclosure form and pamphlet are available on the [EPA's website](#).

It is recommended that Shelter Programs providing move-in assistance also share this information with participants.

## **7.4.4 Rental Agreements**

Shelter Programs must ensure one of the following types of agreements are in place if move-in assistance is paid on behalf of a participant: Intent to Rent, Lease or Certification of Payment Obligation.

### **7.4.4.1 Intent to Rent**

At a minimum, an Intent to Rent form must contain the following:

- ✓ Name of tenant
- ✓ Name of landlord
- ✓ Address of rental property
- ✓ Rent rate
- ✓ Signature of landlord/date

### **7.4.4.2 Lease**

At a minimum, the lease or rental agreement between the participant and the landlord must contain the following:

- ✓ Name of tenant
- ✓ Name of landlord
- ✓ Address of rental property
- ✓ Occupancy (who gets to live at the rental)
- ✓ Term of agreement (lease start and end date)
- ✓ Rent rate and date due
- ✓ Deposits (if any and what for/term)
- ✓ Signature of tenant/date
- ✓ Signature of landlord/date

### **7.4.4.3 Certification of Payment Obligation**

A *Shelter Program Certification of Payment Obligation Form* is required for rent subsidies paid to a friend or family member who is not in the business of property management.

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

SEATTLE/KING COUNTY COALITION  
ON HOMELESSNESS, ACLU OF  
WASHINGTON,  
and TRANSIT RIDERS UNION.

Plaintiffs,

vs.

COMPASSION SEATTLE, KING  
COUNTY, and JULIE WISE, in her official  
capacity.

Defendants.

No. 21-2-10563-3 SEA

ORDER GRANTING CORRECTION OF  
ELECTION ERROR (RCW 29A.68) AND  
DECLARATORY AND INJUNCTIVE  
RELIEF

This matter comes before the Court on Plaintiffs Seattle/King County Coalition on Homelessness's, ACLU of Washington's, and Transit Riders Union's affidavit and motion for an order to prevent election errors under RCW 29A.68 and for declaratory and injunctive relief. Having considered Plaintiffs' affidavit, motion, and the authorities and declarations submitted therewith, Defendants' responses, Plaintiffs' reply, and the parties' oral arguments, the Court finds the Plaintiffs' requested relief should be granted.

The Court hereby declares that Compassion Seattle's proposed amendment 29 to the City of Seattle Charter ("CA 29"), is beyond the power of the local initiative process, null and void, for the following reasons.

1 CA 29 interferes with multiple powers that the Legislature delegated to the Seattle City  
2 Council. “An initiative is beyond the scope of the initiative power if the initiative involves powers  
3 granted by the legislature to the governing body of a city, rather than the city itself. ... When the  
4 legislature enacts a general law granting authority to the legislative body (or legislative authority) of  
5 a city, that legislative body's authority is not subject to repeal, amendment, or modification by the  
6 people through the initiative or referendum process.” *Mukilteo Citizens for Simple Gov't v. City of*  
7 *Mukilteo*, 174 Wn.2d 41, 51 (2021) (internal citations omitted). “Stated another way, the people  
8 cannot deprive the city legislative authority of the power to do what the constitution and/or a state  
9 statute specifically permit it to do.” *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265, 138 P.3d 943  
10 (2006).

11 The Court finds that this body of caselaw is applicable to any exercise of direct democracy  
12 under a city or county charter, whether it's the charter's initiative, referendum, or charter amendment  
13 process. This doctrine has been applied to Seattle charter amendments. *Benton v. Seattle, Electric*  
14 *Company*, 50 Wash. 156 (1908) (declaring a Seattle charter amendment invalid because state law  
15 delegated authority to regulate street car to the “legislative authority of the city,” which “means the  
16 mayor and city council,” and the people's right to amend the charter “cannot be construed to mean  
17 that the charter can be so amended as to override a statute of the legislature which was intended to  
18 and does deal directly and specifically with the subject-matter in question.”). And, in turn, *Benton*  
19 has been relied upon by later cases limiting the local imitative process. *See King County v.*  
20 *Taxpayers of King Cty.*, 133 Wn.2d 584, 610 (1997).

21 The limited powers under the charter derive from the supremacy of state law over local law.  
22 “While the inhabitants of a municipality may enact legislation governing local affairs, they cannot  
23 enact legislation which conflicts with state law.” *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d  
24



1 740, 747 (1980) (citing Wash. Const. art XI, § 10). “The fundament proposition which underlies the  
2 powers of municipal corporations is the subordinations of such [municipal] bodies to supremacy” of  
3 state law. *Id.*

4 Further, many cases limiting the local initiative process arise from charter cities like Seattle  
5 and Spokane or counties, where the city or county charter creates the right of initiative and  
6 referendum. These decisions are based upon the limited strength of the local charter vis a vis state  
7 law. *See Save Our Park v. Bd. Of Clallam*, 74 Wn. App. 637, 644 (1994) (initiative power conferred  
8 in county home rule charter limited to compliance with state law).

9 Thus, the Supreme Court applies the black-letter law limiting the local initiative and  
10 referendum power to charter amendments. *Spokane Entrep. Ctr. v. Spokane Moves*, 185 Wn.2d 97,  
11 104 (2016). Sponsors try to differentiate the Spokane and Seattle charters, but the Supreme Court did  
12 not rely upon the nuance of the Spokane Charter in its *Spokane Entrepreneurial* decision. It relied  
13 upon the same body of caselaw upholding the supremacy of state law over local law, even noting the  
14 “limited powers of initiatives *under city or county charters*.” *Id.* (emphasis added).

15 CA 29, Sec. 2 would interfere with the City Council’s power over land use. It states:

16 During a declared civil emergency related to homelessness, and to accelerate the production  
17 of emergency and permanent housing serving homeless individuals (“projects”) as required  
18 by this Article IX, it is City policy to and the City shall, to the full extent permitted by state  
19 law, (a) waive land use code and regulation requirements as necessary to urgently site  
20 projects, (b) waive all City project-related permitting fees for projects and, (c) process the  
21 application for project-related permits as first-in-line in order to expedite the permitting  
22 process.

20 CA 29, Sec. 2.

21 **Land use and zoning.** Power to modify the zoning code belongs exclusively to the City  
22 Council and is beyond the power of the initiative. *Leonard v. Bothell*, 87 Wn.2d 847, 853 (1976)  
23 (“[Z]oning ordinances and regulations are beyond the power of initiative or referendum in  
24

1 Washington because the power and responsibility to implement zoning was given to the legislative  
2 bodies of municipalities, not to the municipalities as a whole.”). CA 29 extends beyond the  
3 initiative power also by waiving permitting fees and changing the permitting process, which are also  
4 regulated by the zoning code. *See e.g.*, SMC 23.76.006 (timing of permit decisions); 23.76.008 *et*  
5 *seq.* (permit application process); 23.76.010.C (requiring applications be accompanied by payment of  
6 the applicable filing fees). An initiative that undoes a council act taken under its statutory authority is  
7 outside of the scope of the initiative power. *Protect Public Health v. Freed*, 192 Wn.2d 477, 486  
8 (2018).

9 In addition, CA 29 would amend the charter to state “there is no right to camp in a particular  
10 place,” which could invalidate the City’s existing transitional encampment ordinance, a zoning  
11 regulation under which the City may bestow a temporary right to camp in a particular place. SMC  
12 23.42.056.B.3 (transitional encampments permitted on public property).

13 **Budgeting.** CA 29 purports to budget by initiative, earmarking 12% of the general fund for  
14 human services, which is also beyond the scope of the initiative process. In *Protect Public Health*,  
15 the Supreme Court held that “the ability to set the budget . . . is a specific delegation by the  
16 legislature to the county’s legislative authority,” and therefore “outside of the scope of the local  
17 initiative power.” 192 Wn.2d at 486-487. Likewise, the Legislature granted the Seattle City Council  
18 exclusive authority to establish the level of funding for all city functions and programs and adopt a  
19 budget. In cities such as Seattle that have adopted a biennial budget process, “*the legislative body*  
20 *shall make such adjustments and changes as it deems necessary or proper and, after determining the*  
21 *allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in*  
22 *its final form and content.”* RCW 35.34.120 (emphasis added). *See also* RCW 35.34.010 (“The  
23 legislature hereby recognizes that the development and adoption of a budget by a city or town is a  
24

1 lengthy and intense process designed to provide adequate opportunities for public input and  
2 sufficient time for deliberation and enactment by the legislative authority”); RCW 35.34.030  
3 (“‘Legislative body’ includes *the council, commission, or any other group of officials* serving as the  
4 legislative body of a city or town” (emphasis added)).

5 CA 29 exceeds the scope of the initiative power by attempting to control the City Council’s  
6 budgetary authority. The measure provides:

7 There is hereby established in the City Treasury a Human Services Fund to support the  
8 human services and homeless programs and services of the City. ***There shall be placed***  
9 ***in the Human Services Fund such moneys as may be budgeted annually for such***  
10 ***programs including not less than 12 percent of the City’s annual general fund***  
11 ***revenues; grants, gifts and bequests for human service purposes received from the***  
12 ***general public, businesses and philanthropy; and such other moneys as may be provided***  
13 ***by ordinance, without delaying or disrupting full restoration of general fund support***  
14 ***for the Department of Parks and Recreation to facilitate repair and restoration of***  
15 ***parks and as required by the Interlocal Agreement authorized by City Ordinance***  
16 ***124468.***

17 CA 29, Sec. 3 (emphasis added). Under *Protect Public Health*, CA 29 is invalid for this intrusion  
18 into the City’s budgeting process.

19 **Homelessness planning.** CA 29 also interferes with the City Council’s role in homelessness  
20 planning. Chapter 43.185C RCW requires many inputs to local homelessness planning – including  
21 from state planning and local stakeholders – but gives the “local government legislative authority”  
22 (the City Council or County Council) the exclusive authority to enact local homeless housing plans:

23 (1) *Each local homeless housing task force shall prepare and recommend to its local*  
24 *government legislative authority a five-year homeless housing plan for its jurisdictional area,*  
which shall be not inconsistent with the department’s statewide guidelines issued by  
December 1, 2018, and thereafter the department’s five-year homeless housing strategic plan,  
and which shall be aimed at eliminating homelessness. *The local government may amend the*  
*proposed local plan and shall adopt a plan by December 1, 2019.* Performance in meeting the  
goals of this local plan shall be assessed annually in terms of the performance measures  
published by the department. *Local plans may include specific local performance measures*  
*adopted by the local government legislative authority,* and may include recommendations for  
any state legislation needed to meet the state or local plan goals.

1 RCW 43.185C.050 (emphasis added). Elsewhere, the Legislature confirmed this exclusive  
2 delegation. *See* RCW 43.185C.080(1) (“the city may by resolution of its legislative authority accept  
3 the county’s homeless housing task force as its own and based on that task force’s recommendations  
4 adopt a homeless housing plan specific to the city”); *id.* at (2) (“subcontracts shall be consistent with  
5 the local homeless housing plan adopted by the legislative authority of the local government . . .”).

6 The content of CA 29 overlaps with the content of local homelessness plans and, as a charter  
7 amendment, would unlawfully dictate those plans, interfering with the City Council’s statutory  
8 authority.

9 CA 29 is also inconsistent with the statutory scheme for homelessness planning adopted by  
10 the Legislature under chapter 43.185C RCW. Local initiatives and referenda cannot be used in this  
11 context, where the Legislature has enacted a comprehensive decision-making scheme that does not  
12 include initiative and referenda. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 351 (1994). In  
13 addition, the statutory scheme requires coordinated planning, precluding the use of the initiative and  
14 referendum process. *See Brisbane*, 125 Wn.2d 345 (striking referendum because “the GMA seeks  
15 coordinated planning. . . allowing referenda is structurally inconsistent with this mandate”); *1000*  
16 *Friends of Washington v. McFarland*, 159 Wn.2d 165, 180-181, 188 (2006) (holding use of a  
17 referendum “is inconsistent with integrated, comprehensive planning”). Finally, adopting a static  
18 six-year plan for homelessness response and homeless housing through charter amendment is  
19 inconsistent with the statutory requirement for planning on a five-year horizon with annual  
20 updates. RCW 43.185C.040(1) (state must prepare and publish a “five-year homeless housing  
21 strategic plan” by 2019 and “every five years thereafter”); RCW 43.185C.045(1) (requiring  
22 annual “update on the state’s homeless housing strategic plan”).

1           **Administrative matters.** Finally, the Court finds that CA 29 interferes with administrative  
2 matters. The “power to administer the law, and administrative matters, particularly local  
3 administrative matters, are not subject to initiative or referendum.” *City of Port Angeles v. Our*  
4 *Water-Our Choice!*, 170 Wn.2d 1, 8 (2010) (“*Our Water*”). “Generally speaking, a local government  
5 action is administrative if it furthers (or hinders) a plan the local government or some power superior  
6 to it has previously adopted.” *Our Water*, 170 Wn.2d 1, 8. Here, Seattle and King County have  
7 adopted ordinances entering a binding interlocal agreement that commits them to jointly planning,  
8 funding, and implementing homelessness response through the King County Regional Homelessness  
9 Authority. Since its establishment in 2019, the Regional Authority has been funded and staffed and  
10 is taking over these responsibilities.

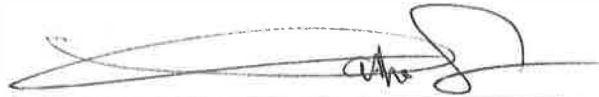
11           Through enacting Ordinance 126021 and entering into the ILA, the City Council moved  
12 homelessness response into the administrative realm. CA 29’s attempt to modify the coordinated  
13 regional policy and implement its own homelessness response program exceeds the scope of the  
14 initiative power. *Our Water*, 170 Wn.2d 1, 81; *Spokane Entrep. Ctr.*, 185 Wn.2d at 108.

15           The Court also notes that Plaintiffs have submitted evidence to support their standing, which  
16 Defendants did not challenge.

17           For the foregoing reasons, the Court DECLARES that CA 29 exceeds the scope of the  
18 initiative power, is invalid, null, and void.

19           The Court further ENJOINS AND PROHIBITS King County and King County Auditor Julie  
20 Wise from placing CA 29 on the November 2021 general election ballot (or subsequent election  
21 ballots), tabulating votes on CA 29, and otherwise furthering an election on CA 29.

1 SO ORDERED this 30th day of August, 2021.

2  
3  
4 

5 The Honorable Catherine Shaffer  
6 King County Superior Court Judge

7 Presented by: s/Knoll Lowney  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

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SEATTLE/KING COUNTY COALITION ON	)	
HOMELESSNESS, ACLU OF WASHINGTON, and	)	
TRANSIT RIDERS UNION,	)	No. 21-2-10563-3 SEA
Plaintiffs,	)	<u>8-27-21</u>
vs.	)	
COMPASSION SEATTLE, KING COUNTY, and	)	
JULIE WISE, in her official capacity,	)	
Defendants.	)	

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VERBATIM TRANSCRIPT OF PROCEEDINGS

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Heard before the Honorable Judge Catherine Shaffer, at King County Courthouse, 516 Third Avenue, Dept. 11, Seattle, Washington.

APPEARANCES:

KNOLL LOWNEY, ESQ., representing the Plaintiffs;  
THOMAS F. AHEARNE, ESQ., representing the  
Defendant, Compassion

REPORTED BY: Kevin Moll, RMR, CRR, CCP



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**EXHIBITS**

NO.

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1 Seattle, Washington; Friday, August 27, 2021

2 2:30 P.M.

3 --oOo--

4 (Court's ruling)

5 THE COURT: Thank you, Mr. Lowney. All right. I want  
6 to say a few things about procedure here, because I've  
7 got lots and lots of people on this Zoom call who are  
8 listening in, and I don't think it's possible, with our  
9 technology, to reflect all the folks who are here on the  
10 Zoom call.

11 I will also tell you that it's not our practice to  
12 record the names of people who attend court, in  
13 actuality, so I'm not inclined to do something like take  
14 a screenshot of the screen we have here. But I will tell  
15 anybody who's here in the court, looking at the screen  
16 that's up on my court, that only a few of the people who  
17 are actually attending are represented on that screen.  
18 There are a lot more people that I know are interested  
19 and listening. And I want you to know that your presence  
20 is noted, though, obviously, as I said, I won't be  
21 recording your names.

22 Let me also talk just kind of in general about the  
23 concepts involved here. It was interesting for me to get  
24 this case and review it, because it took me back a long,  
25 long time, to 20 years ago, plus, when I ran for judge --

1 it was a long time ago -- that I spent a lot of time out  
2 there talking to voters. And I have to say that among  
3 the questions that I got asked about most often when I  
4 was meeting people was what would I do on hot-button  
5 issues.

6 At the time I got asked a lot about what would happen  
7 if I got a case involving abortion rights, or what would  
8 happen if I got a case involving capital punishment. And  
9 I thought that was a really interesting question.

10 And I ended up talking to these people about what  
11 judges do, and what we do is we put our own personal  
12 views to one side, whatever they may be, and we apply the  
13 law as it stands. If we feel that we can't do that for  
14 some reason, then we really don't belong on the bench.

15 So that came back to me when I was reviewing your  
16 materials here, because I have to tell you, frankly, if I  
17 think about this case as a voter, there's lots of things  
18 to like, from my point of view, about Charter Amendment  
19 29. I might well be one of those people out there who  
20 would vote in favor of it, if it was a measure put to me.  
21 But my favorable view of what the charter amendment  
22 proposes and what the charter amendment proponents are  
23 trying to accomplish is kind of irrelevant to what's  
24 before me.

25 What's before me instead, as Mr. Ahearne has touched

1 on much in his argument, is supremacy and how our system  
2 of government works. And I actually think that one of  
3 the most interesting comments that I saw in all the  
4 Supreme Court decisions I reviewed here -- and I'm  
5 talking now about Washington Supreme Court decisions,  
6 because that's pretty much almost entirely what the court  
7 ended up reviewing, in looking at the briefing and  
8 preparing for this hearing -- was a decision by Justice  
9 Chambers, now deceased Justice Chambers, in *1,000 Friends*  
10 *of Washington Versus McFarland*, a decision that was  
11 handed down as amended in 2007.

12 The justice returned to basic principles when he  
13 talked about the review in that case of a challenge to  
14 the Growth Management Act via the referendum process.  
15 That effort failed when it came before Judge Robinson, on  
16 my court, and the Supreme Court looked at the appeal from  
17 her decision, saying that this wasn't a proper subject  
18 for referendum.

19 Justice Chambers says, "Our state constitution sets  
20 forth the blueprint for the structure of our state  
21 government. Central to that structure is the sovereignty  
22 of the people of Washington, because political power is  
23 inherent in the people, and governments derive their just  
24 powers from the consent of the governed and are  
25 established to protect and maintain individual rights."

1 "But" -- Justice Chambers said -- "even though the people  
2 of the state are sovereign, and local subdivisions,  
3 including, for example, King County, are subject to that  
4 greater sovereignty of the people of the state, within  
5 that constraint the counties and citizens have latitude  
6 to rule and regulate themselves."

7 The justice said, "When the people of the state  
8 require action from a local legislature or executive  
9 body, these actions are not subject to a veto via a  
10 referendum. It would violate the constitutional  
11 blueprint to allow a subdivision of the state to  
12 frustrate the mandates of the people of the state as a  
13 whole."

14 The justice reminded us all, "Though the electorate  
15 plays a vital role in checking the exercise of power by  
16 elected officials through the initiatives and referendum  
17 process, the people of the state, as a whole, are the  
18 proper electorate to check the legislative action at  
19 issue in those cases by way of a statewide vote on that  
20 underlying legislation."

21 Now, he was dealing with the Growth Management Act, a  
22 comprehensive statute regulating how growth is to occur  
23 within every subpart of the state. And what Justice  
24 Chambers was talking about, in ringing terms, I think, is  
25 the basic structure of our government, that when the

1 state legislature acts to pass a law like the Growth  
2 Management Act, it is speaking for the people of the  
3 state. And the only way to reverse what the state  
4 legislature has decided to do is for the people of the  
5 state, as a whole, to exercise their statewide power.

6 Justice Chambers also pointed out that, "When the  
7 state legislature instructs a local body by a legislation  
8 like the Growth Management Act to implement state policy,  
9 the power and the duty to do so is vested in the  
10 legislative or executive entity of that local government  
11 body, not the municipality as a corporate entity."

12 So that's where we begin here. Certainly the people  
13 of our state are sovereign, and, therefore, we respect  
14 the decisions that their representatives, the state  
15 legislature, makes, but the state legislature passes  
16 legislation, including legislation which delegates or  
17 authorizes or requires local bodies, like the local city  
18 council or the local county council or the local mayor or  
19 the local executive, to take action. And when the  
20 legislature does that, the only way to turn that back is  
21 to either change up the state legislature, which can then  
22 change its own laws, or move to the statewide procedures,  
23 like statewide initiatives and referendums. This is the  
24 fundamental idea of supremacy here.

25 The sovereignty of the state, of the people of

1 Washington, as expressed through their legislature, can't  
2 be checked by local initiative or referendum. So that's  
3 one place I just sort of want to begin, is reminding us  
4 of what we're looking at here.

5 This is a charter amendment that proposes to do what  
6 many other initiatives and referendums have proposed to  
7 do over the course of time in Washington, which is to  
8 reverse or change matters that are delegated to local  
9 legislative authority, whether the local council or the  
10 local executive, or both. And that is problematic.

11 I am going to turn to the main argument that I'm  
12 hearing from the proponents of this legislation, which is  
13 that somehow this is different because they are looking  
14 to implement the measures they have included in this  
15 charter amendment by way of an amendment to the City of  
16 Seattle's charter, and somehow that's not the same as any  
17 other kind of initiative or referendum that might be put  
18 to the people of Seattle.

19 That argument was foreclosed a long time ago in *Benton*  
20 *v. Seattle Electric Company*, which is a Washington  
21 Supreme Court case from 1908 involving the same city  
22 charter we're dealing with here, and the same law that  
23 we're dealing with here.

24 That was a case where there was a legislation, general  
25 legislation, authorizing cities to construct and maintain

1 and operate street railways and electric railways upon  
2 the streets of cities, which in 1908 was a pretty big  
3 deal. And the legislature had passed a law in 1903  
4 relating to electric railroads and street and other  
5 electric railways.

6 As the court said, the proposition that was being put  
7 to them was that the statutes vested in the legislative  
8 authority of the city power to prescribe the terms and  
9 conditions upon which electric railroads and railways  
10 could be maintained and operated and constructed. And by  
11 that, the legislative authority of the city, the  
12 proponent said, what was meant was the mayor and city  
13 council, and the Supreme Court said that's undoubtedly  
14 correct. That's exactly what's meant, is the mayor and  
15 city council.

16 The court said, in addition, looking at the question  
17 of whether or not the direct amendment statute had to  
18 give way to the extent it conflicted with state law  
19 involving street railways, that the court agreed, it did  
20 have to give way. The court said, "While the direct  
21 amendment statute vests power in the city to amend its  
22 charter, yet this cannot be construed to mean that the  
23 charter can be so amended as to override a statute of the  
24 legislature, which was intended to and does deal directly  
25 and specifically with the subject matter in question."

1           Now, maybe that sounds like too much legalese, but  
2           this is pretty direct language by the Washington Supreme  
3           Court, saying you can't amend a city charter to conflict  
4           with state law. Why can't you do that? For the same  
5           reasons that Justice Chambers talked about in his  
6           decision. That would be local folks seeking to overturn  
7           the will of the state population as expressed through our  
8           state representatives and legislation. And that's not  
9           how it works.

10           Now, having said that you can't take this route of  
11           amending a city charter to do what is forbidden to do by  
12           way of the initiative and referendum process, let me turn  
13           to the specific inquiry that the court always looks at  
14           when I look at a challenged initiative or referendum.  
15           And courts do look at this.

16           The first thing we always look at when we're looking  
17           at preelection review -- and I know that proponents here  
18           and their able counsel are keenly aware of the fact that  
19           our Supreme Court has said, over and over again, that  
20           trial courts err in declining to take initiatives that  
21           exceed the initiative power off the ballot -- they have  
22           said quite clearly to trial courts, "You must conduct  
23           preelection review, it's entirely appropriate to conduct  
24           preelection review." It is error to decline to do that  
25           and leave a measure that exceeds the initiative's power



1 or the referendum power on the ballot.

2 So in figuring out whether or not I should be looking  
3 at this measure and whether it exceeds the initiative  
4 power, I look first to see whether or not the plaintiffs  
5 have standing. That is unchallenged in this case. There  
6 hasn't been a whisper of an objection to plaintiffs'  
7 standing, and that's because, on the face of it, the  
8 plaintiffs in this case do have standing under prior case  
9 law from the Washington Supreme Court.

10 The next question before me, the big question before  
11 me, is whether or not Charter Amendment 29, which cannot  
12 by way of amendment do what is forbidden to do by way of  
13 initiative or referendum, whether it exercises powers  
14 delegated to the city's legislative authority.

15 I'll circle back again to why this is true. As the  
16 Supreme Court said in *Mukilteo Citizens For Simple*  
17 *Government*, "An initiative is beyond the scope of an  
18 initiative power if the initiative involves powers  
19 granted by the state legislature to a governing body of  
20 the city rather than the city itself. When the  
21 legislature makes a general law granting authority to a  
22 legislative body or legislative authority of a city, that  
23 legislative body's authority is not subject to repeal,  
24 amendment, or modification by the people, through the  
25 initiative or referendum process."

1           This is exactly the reasoning of the Washington  
2 Supreme Court in *Benton v. Seattle Electric*. People in  
3 the local governmental entity, whether it's a county or a  
4 city, can't overturn the will of the state legislature,  
5 which has delegated its authority to the local  
6 legislative body or legislative authority.

7           There are multiple ways in which proposed Charter  
8 Amendment 29 exceeds the authority of the people of the  
9 local jurisdiction and is improper. First, it's the city  
10 council that has exclusive authority over land use.  
11 There are many measures contained in Charter Amendment 29  
12 which interfere directly with the city council's  
13 determinations of land use, and, in particular, by way of  
14 multiple efforts to tamper with zoning and the zoning  
15 code.

16           The zoning code is under the control of the city  
17 council, and whether by way of initiative, referendum, or  
18 charter amendment, the people of the City of Seattle  
19 can't act through a measure submitted to them to enter  
20 into the field of zoning and land use authority. And  
21 there's a lot of Supreme Court case law on that topic.

22           Secondly, Charter Amendment 29 interferes with the  
23 city council's exclusive authority over the budget. This  
24 is a specific delegation by the legislature, like the  
25 authority to regulate land use, to the city's legislative

1 authority. And when the state legislature delegates  
2 power specifically to the local government's legislative  
3 authority, it's outside the scope of the local initiative  
4 power no matter in what form it's exercised, whether by  
5 way of initiative, referendum, or charter amendment.

6 There's direct efforts in Charter Amendment 29 to  
7 control the city authority's budgetary authority, and  
8 that is not disputed in this record any more than the  
9 efforts to control zoning and land use is disputed. It's  
10 not. These are measures specifically required by Charter  
11 Amendment 29, and they both are outside the scope of a  
12 proper initiative in a way that is not even close. There  
13 are so many prior Supreme Court cases on both those  
14 topics.

15 Furthermore, we have an existing statutory scheme here  
16 from the state legislature. It is a comprehensive  
17 statutory scheme for homelessness response planning by  
18 our state legislature, and the planning requirements and  
19 the planning authority has been delegated expressly by  
20 our state legislature to our local government legislative  
21 authority. Even if nothing else about this case put it  
22 on all fours with *Benton v. Seattle Electric Company*,  
23 this certainly does.

24 Once again, we have a comprehensive statute, looks  
25 very much like the comprehensive statute, the Growth

1 Management Act, attacked by way of local initiative and  
2 referendum, in multiple cases that made their way to the  
3 State Supreme Court, and the message from the courts, the  
4 Washington Supreme Court, has been uniform. You can't do  
5 that.

6 When the legislature enacts a comprehensive scheme and  
7 it puts authority for implementing that scheme in the  
8 hands of the local legislative authority, the local  
9 citizens cannot reverse that, change that, or otherwise  
10 do anything about it by way initiative or referendum,  
11 even if it's phrased as a charter amendment.

12 I do not need to repeat the briefing here by  
13 plaintiffs that sets forth the specific requirements that  
14 the legislature has imposed on local legislative  
15 authority to enact local homeless housing plans. And  
16 it's undisputed on this record, as well, that the local  
17 legislative authority has acted on that requirement and  
18 they have moved forward with the scheme that the state  
19 legislature has passed and required the local legislative  
20 authority.

21 Charter Amendment 29 directly contradicts and is  
22 inconsistent in all respects with the legislature's  
23 comprehensive scheme. It cannot move forward, because  
24 the local people cannot overcome the will of the people  
25 of the state of Washington as expressed through state

1           legislation.

2           And, finally, because the local authority by way of  
3           enacting an ordinance and entering into an interlocal  
4           agreement, has already taken action under the  
5           comprehensive state legislative scheme for homelessness,  
6           Charter Amendment 29 impermissibly interferes with the  
7           city's power to administer the law and move forward with  
8           administrative matters.

9           A local government action is administrative if it  
10          furtheres or hinders a plan the local government or some  
11          power superior to it has previously adopted.

12          Now, when the city council adopts an ordinance and  
13          enters into an interlocal agreement, it has moved forward  
14          with a plan that it has adopted, and you cannot then, as  
15          a proponent of an initiative, a referendum, or an  
16          initiative or referendum that's phrased as a charter  
17          amendment, enter into, interfering with the  
18          administration of the measures that the local authority  
19          has undertaken. Again, there is a plethora of Supreme  
20          Court decisions saying that.

21          In summary, I like this charter amendment as a voter,  
22          but, as a judge, it cannot stand, and I am required to  
23          strike it from the ballot.

24          I'll enter your proposed detailed order, Mr. Lowney.  
25          I want Mr. Ahearne to get a look at it to see if there

1 are any tweaks he wants to make to it. But as soon as I  
2 have it presented to me in a form that both of you have  
3 looked at carefully, which I'm hoping will be no later  
4 than Monday, the court will electronically sign it and  
5 enter it, and then you can move forward, if you wish, to  
6 request Court of Appeals review. Thanks, everybody.

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## C E R T I F I C A T E

STATE OF WASHINGTON    )  
                                      ) ss.  
COUNTY OF KING         )

I, Kevin Moll, Certified Court Reporter, in and  
for the State of Washington, do hereby certify:

That to the best of my ability, the foregoing is  
a true and correct transcription of my shorthand notes  
as taken in the cause of Seattle/King County Coalition  
on Homelessness, et al. v. Compassion Seattle, et al.,  
on the date and at the time and place as shown on page  
one hereto;

That I am not a relative or employee or attorney  
or counsel of any of the parties to said action, or a  
relative or employee of any such attorney of counsel,  
and that I am not financially interested in said action  
or the outcome thereof;

Dated this 2nd day of September 2021.

-----  
KEVIN MOLL,  
King County Official Court Reporter

# SMITH & LOWNEY

February 21, 2024 - 1:22 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 39924-9  
**Appellate Court Case Title:** Jewels Helping Hands, et al v. Brian Hansen, et al  
**Superior Court Case Number:** 23-2-03122-3

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