

Municipal Regulation of Homeless

Darby N. DuComb, Schlemlein, Fick & Scruggs, PLLC



Municipal Regulation of Homeless

- Case Law Update
- Car Camping
- Tiny Houses and Sanctioned Encampments
- From the Frontlines

Balancing Land Use, Housing Standards, and the Constitution

- **Tent City 3 – Seattle v. El Centro De La Raza (2002)**
 - Parties enter into 10 year settlement agreement over land use code violations.
- **Jones v. Los Angeles (2006), vacated.**
 - Unlawful to criminalize homelessness at all times in all public places.
- **Tent City 4 – Woodinville v. Northshore United Church of Christ (2009)**
 - City's moratorium placed undo burden on church which was excused from permit process due to City's refusal to process the permit.
- **Lavan v. City of Los Angeles (2012)**
 - Unlawful to summarily seize and destroy personal property belonging to homeless persons.
- **Bell v. City of Boise (2014)**
 - Unlawful to criminalize homelessness at all times in all public places
- **Hooper v. Seattle (2017), Active**
 - Plaintiff's request for Temporary Restraining Order against Seattle and WSDOT denied.

Case Law Update from Seattle

- ***Hooper v. Seattle* (2017 -)**
 - Plaintiff's request for Temporary Restraining Order against Seattle and WSDOT denied.
 - Appealed to the Ninth Circuit No. 18-35053, *Kayla Willis, et al. v. City of Seattle, et al.* (2018)
 - Briefing is complete, Oral Argument was February 4, 2019
 - Plaintiffs included the Episcopal Diocese of Olympia, Trinity Parish Seattle, Real Change, Homeless Rights Advocacy Project, Civil Procedure Professors, Disability Rights Washington, Columbia Legal Services, Legal Voice, National Law Center on Homelessness and Poverty
- ***Long v. Seattle* (2018 -)**
 - King County Superior Court RALJ Appeal says, "A homeless man's truck is his home."
 - "This ruling is legally wrong and unworkable." – Seattle City Attorney's Office
 - Court of Appeals, Division One, No. 78230-4-I.
 - Briefing to be completed in February 2019.

Case Law Update from Across the Nation

- **Lehr v. City of Sacramento (2009)**
 - Held that the Eighth Amendment is inapplicable where enforcement of ordinance prohibiting camping did not punish homelessness status.
- **Sullivan v. City of Berkeley (2018)**
 - Denied Plaintiff's motion for preliminary injunction and order prohibiting City of Berkeley and BART (city transit) from removing them from their location and seizing their property.
- **New Life Evangelistic Center v. City of St. Louis (2018)**
 - City Board denied the church's request for a permit and license to operate a homeless shelter in the city.
- **United States v. Stitt (2018)**
 - Prior Violent Felony includes Burglary of Vehicle adapted or customarily used for overnight accommodations.

Car Camping, also known as, Vehicle Residency

The Criminalization of Vehicle Residency and the Case for Judicial Intervention via the Washington State Homestead Act

By T. Ray Ivey

Seattle University Law Review Vol. 42, Issue 1 (2018)

Homestead Act, RCW Chapter 6.13, as the Vehicle for Relief Against Local Government

- **Homestead Act Goals**

- To prevent homeowners from becoming homeless in the event of extreme financial hardship. Individuals in danger of foreclosure may declare a limited portion of property as “homestead” and thus off-limits to creditors.

- **RCW 6.13.010**

- Homestead defined simply “real or *personal property* that the owner uses as a residence” and the owner must intend to use the property as their principal residence

- **Homestead Act**

- Homestead status attaches automatically to any personal property that is used as a person’s primary place of residence
- Homestead is presumed valid unless successfully contested in court
- WA allows a maximum exemption of \$125K, but doesn’t specify a maximum acreage

The Local Government's View of Homestead Act Protection for Vehicle Residences

- **City Attorney's Brief in *City of Seattle v. Long* :**
- Appealed the Superior Court's conclusion that the Municipal Court violated the Excessive Fines Clause and Homestead Act.
- Argued that payment plan for the impound did not violate the Eighth Amendment.
- City has substantial interest in enforcing parking laws and courts cannot consider individual's financial circumstances.
- Argued that city has a meaningful purpose in removing vehicles from streets for public safety.
- Argued that an impound is not a "fine" as a matter of law because impounding a vehicles does not constitute a "payment" and is not a permanent deprivation of anyone's property.
- Homestead Act doesn't apply to this case because nothing in the Act gives any person living in a vehicle the unrestricted ability to park that vehicle on City property for as long as they want.
- Homestead protection does not extend to the City property.

Tiny House Villages

- Tiny Houses by Low Income Housing Institute (LIHI)
 - <https://lihi.org/tiny-houses/>
 - <http://www.seattle.gov/sdci/vault/transitional-encampments>
 - <http://www.seattle.gov/sdci/vault/transitional-encampments/documents>
- City of Seattle owns the land, LIHI sponsors the camps
- Each tiny house has electricity, overhead light, heater
- Each village has kitchen and restroom facilities, onsite showers and laundry, a counseling office, and a welcome/security hut where donations are collected

10 Tiny House Villages in Seattle, Washington

Northlake

Interbay

Othello

Camp Second

Change

Georgetown

Licton Springs

Whittier Heights

True Hope

Lake Union

Tiny Houses Use Seattle's Regulation of Church Temporary Encampments

SMC 23.42.054

- **Allow no more than 100 persons to occupy the encampment site as residents of the encampment.**
- **Comply with fire safety and health standards:**
 - Fire extinguishers, 100-person first aid kit, access aisles, power protection, no litter or garbage accumulation, designated smoking areas, information sharing, no open flames
- **Provide toilets, running water, and garbage collection**
 - Chemical toilets, running water, and regular garbage service
- **Cooking facilities, if they are provided, may be located in either an indoor location or outdoors**
 - Sink with running water, nonabsorbent preparation counter, refrigerate perishables, cleaning products for all cooking facilities
- **Government access and inspections**
- **No minors without a parent or guardian**

Tiny Houses Use Seattle's Regulation of Secular Temporary Encampments

SMC 23.42.056

- **Community Outreach Requirements**
- **Allowed in most zones other than Residential**
 - Property must be 25-feet from residentially-zoned lot
 - Exception provided if use is set back from residential use and adequately screened
- **Property is within ½ mile of transit stop**
- **Property is 1 mile from other encampments, property is 5,000 square feet or larger and provides 100 square feet per camper**
- **Property does not contain an environmentally critical area or wetland, and does not create parking or setback violations for existing permitted use**
- **Property is not an unopened right-of-way, park, playground, or public trail**
- **Encampment Operations Plan**
- **Indemnity from Operator to City for all encampments on City property**

Seattle Temporary Encampment Rules Applicable to Tiny House Villages

- “Transitional Encampment” defined in Land Use Code 23.84A.038 refers to tents or similar shelter.
- A Tiny House is regarded as a similar shelter if the structure is less than 120 sq. ft.
- Temporary use permits require that use of the site have no permanent structures,
- SDCI must consider that the use:
 - is not materially detrimental to the public welfare;
 - does not result in substantial injury to the property in the vicinity; and
 - is consistent with the spirit and purpose of the code

Don't Let This Happen To You

The Two-Year San Diego Hepatitis A Outbreak

Kills 20 people, Sickens over 600 people

- *Remember Last Year's Hepatitis A Outbreak? This Year It's So Much Worse.*
 - https://www.huffingtonpost.com/entry/hepatitis-a-outbreak-this-year-much-worse_us_5b204e83e4b09d7a3d7829bd
- *Hepatitis A: One year later*
 - <http://sdcitybeat.com/news-and-opinion/news/hepatitis-a-one-year-later/>
- *San Diego hepatitis A outbreak ends after 2 years.*
 - <https://www.apnews.com/cc40b8c476ef469ebdc2228772176b03>
- *San Diego County Took Too Long to Ramp Up Vaccine Efforts Amid Hepatitis A Outbreak: State Audit*
 - <https://www.nbcsandiego.com/news/local/State-Audit-San-Diego-Hep-A-Response-to-be-Released-503232351.html>

On the Frontlines in Seattle

- KOMO News Special: *Seattle is Dying*
 - <https://komonews.com/news/local/komo-news-special-seattle-is-dying>
- *In Seattle's Sodo district, frustration mounts amid RVs, drugs and skyrocketing crime*
 - <https://www.seattletimes.com/seattle-news/crime/rvs-drugs-and-skyrocketing-crime-push-seattles-sodo-district-from-sleepy-to-creepy/>
- *Seattle Under Seige*
 - <https://www.city-journal.org/seattle-homelessness>
- *Report: Seattle has nation's largest homeless population outside of New York, Los Angeles*
 - <https://komonews.com/news/local/report-seattle-has-nations-largest-homeless-population-outside-of-new-york-los-angeles>
- *System Failure, Report on Prolific Offenders in Seattle's Criminal Justice System*
 - <https://www.documentcloud.org/documents/5750713-SYSTEM-FAILURE-Prolific-Offender-Report-February.html>
- *Seattle businesses, neighborhood groups push Durkan to fix criminal justice 'failure'*
 - <https://www.seattletimes.com/seattle-news/crime/seattle-businesses-neighborhood-groups-push-durkan-to-fix-criminal-justice-failure/>

Anti-Displacement and SEPA Seattle Council Bill 119469

- **What CB 119469 Would Do:**
 - Modify the City SEPA Ordinance to amend policies to authorize additional displacement mitigation for projects that involve the removal of affordable units.
 - Aims to curb displacement by requiring that developers comply with additional mitigation measures if they seek to demolish a property that is affordable at or below eighty-percent of area median income (AMI).
- In terms of additional mitigation, the bill requires developers to either:
 - Replace the units affordable to households with incomes at or below 80% of the area median income (AMI); or
 - Comply with the Mandatory Housing Affordability – Residential (MHA-R) program at higher payment or performance amounts equal to the requirements for zones within the area with an M2 suffix (M2 is the highest required payment level).

Follow the Money

Is it getting you the results you want?

- Non-profit housing and homeless shelter providers
- Employees, agents, accountants, and board of directors
- Media personalities, donors
- State and Local elected officials, auditors, attorneys
- City departments, funders

Or is everyone just focused on their individual roles, not collaborating? [Darby's just pay the rent story]

Resources

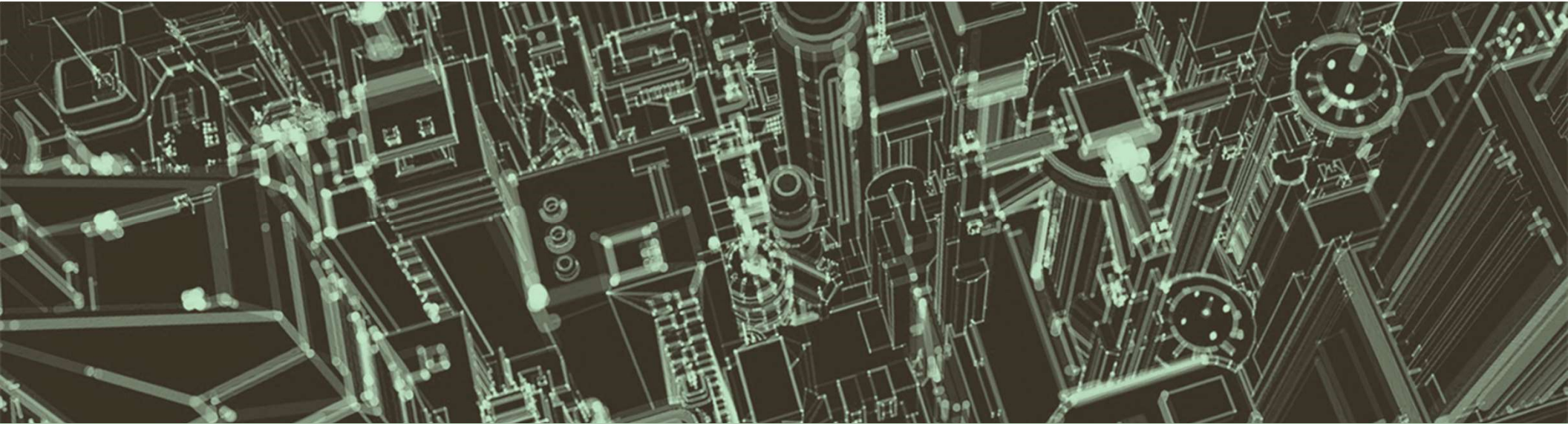
Municipal Research and Services Center (MRSC)

Homelessness

<http://mrsc.org/Home/Explore-Topics/Planning/Specific-Planning-Subjects-Plan-Elements/Homeless-Housing.aspx>

Homeless & Housing toolkit for cities

<http://mrsc.org/getmedia/4785af3e-35c7-42ef-8e8e-a44c8d0786c4/Homelessness-And-Housing-Toolkit-For-Cities.pdf.aspx?ext=.pdf>



Darby N. DuComb
dnd@soslaw.com
(206) 268-3391

