



July 14, 2016

Via Electronic Mail

Mayor Jensen and Longview City Councilmembers
Longview City Hall
1525 Broadway Street
Longview WA 98632

Dear Mayor Jensen and Members of the Longview City Council:

Re: Planning Commission's Proposed Code Revisions for Siting Emergency Shelters

Homeless Rights Advocacy Project of Seattle University Law School (HRAP), Columbia Legal Services, the Interfaith Task Force on Homelessness, and the National Law Center on Poverty and Homelessness write to express their concern that the City of Longview's proposed code revisions governing the siting of emergency shelters violate the Fair Housing Act and the state and federal Constitutions. We respectfully urge you to reject the recommendation of the Planning Commission for the reasons set forth below.

The proposal of the Planning Commission severely constrains where emergency shelters can be sited in Longview. The proposed ordinance bans homeless shelters from the Downtown Commerce District. The proposal limits shelters to the Office Commercial District, and part of the General Commercial District, subject to buffer zones of varying, and unexplained lengths from parks¹, schools, other shelters, and residences. If passed, the ordinance would limit new homeless shelters to roughly a twelve block area.

That small area gives a potential shelter provider few options for available property to purchase or rent, and the constraint on options could allow sellers to raise the asking price—reflecting the artificial limit on supply created by the city's proposed zoning. It is self-evident that shelter providers are vulnerable to even minor escalations in real estate pricing.

Moreover, within the unduly confined twelve-block area, shelters face additional barriers. The proposal requires shelter providers to apply for a special use permit—an expensive and time consuming process.

Furthermore, the proposed ordinance requires shelter providers to submit a management plan for the approval of the Board of Appeals as a condition precedent for the special use permit. The contents of the management plan are poorly sketched out in the language of the ordinance. The management plan would require the shelter provider to identify potential impacts to nearby land uses and propose mitigation measures. Enormous discretion is left to the Board of Appeals

¹ The buffer applies to parks of half-acre or more.

in determining whether the management plan suffices for the shelter provider to receive the special use permit. The proposed ordinance provides no standards. Worse still, any violations of the management plan, however defined and judged, could result in revocation of the special use permit five days² after notice of the alleged violation.³ The management plan could quite conceivably require the shelter provider to prevent any waiting or standing outside of the facility. If so, one homeless person who shows up early for admittance to a permitted shelter could trigger revocation of the special use permit, and ultimately close the shelter.

The cumulative effect of the layers of prohibitions and conditions imposed by ordinance strongly suggests that the Planning Commission's intention is to make siting a new homeless shelter in Longview so onerous that providers will give up. This is neither a lawful nor humane way to treat those with so little.

The Ordinance is Unconstitutionally Vague and Violates Substantive Due Process

The management plan provision, and other requirements of the special use process contemplated in the proposed ordinance are vague and undefined. The proposed ordinance fails to lay out for shelter providers what criteria they must meet to procure the special use permit, and what operational measures will be required to maintain the permit. The discretion the proposed ordinance accords city staff, the Board of Appeals and the Appeal Board of Adjustment is unfettered. A minor infraction of the management plan or terms of the special use permit could prompt the City to revoke the permit. The ordinance fails to establish standards for either. This vacuum means that infractions could be based on little more than unverified community complaints. Determinations might be grounded less on actual threats to public health and safety, rather than prejudices against the visibly poor, political preferences, or favoritism to business or neighborhood interests.

This vagueness puts the proposed ordinance at risk of being deemed unconstitutional. "A statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violated the first essential of due process law." *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 612 (2008).

The proposed ordinance also arbitrarily establishes an elaborate buffer system⁴ between other shelters, residences, parks, and schools—without any visible rationale. Why are homeless

² LMC 19.12.130.

³ The proposed revision reads in pertinent part: "If the emergency shelter is found to be in violation of the approved plans, conditions of approvals, or the terms of the permit or management plan, and the owner has failed to correct the violation after proper notice thereof; then the Appeal Board of Adjustment may revoke the special property use permit per 19.12.130."

⁴ The proposed ordinance, LMC 19.44.100A (2) bans emergency shelters:

(a) Within 325 feet of a single-family residential district such as the R-1 Residential and the Traditional Neighbor Residential districts;(b) Within 650 feet of an established elementary or secondary school whether public or private; (c) Within 325 feet of a public park that is 0.5 acre or more in size;(d) Within

shelters subject to buffers when marijuana stores are not? The Longview code imposes no buffers on marijuana stores, bars, and nightclubs—although none of these establishments could be said to advance public morality. Moreover, such stores are permitted outright—without any special use permit requirement—in many zones throughout the city. See LMC Table 19.44.020-1, Permitted Uses in Commercial Zones. Marijuana stores can locate anywhere in the General Commercial District (as well as others). By contrast, shelters are precluded from an entire section of the General Commercial District in the proposed ordinance without any stated reason. This difference amounts to disparate treatment which puts Longview’s proposed ordinance at odds with substantive due process. Washington’s stringent protection for substantive due process bars any regulation that is not aimed at a legitimate public purpose, employs unreasonable means, and proves “unduly oppressive to the person regulated.” *Presbytery of Seattle v. King County*, 114 Wn.2d 320 (1990). The mind strains to conceive of what legitimate public health and safety concerns might justify zoning that allows outright marijuana stores, bars, taverns, and nightclubs and bars in most commercial districts but not shelters serving homeless families and individuals. See LMC Table 19.44.020-1.

The Ordinance Violates the Fair Housing Act

The Fair Housing Act prohibits discriminatory housing practices based upon race, gender, sex, religion, family status, or the presence of a handicap.⁵ Handicapped people include those who have a physical or mental impairment which “substantially limits one or more...major life activities”, a history of such an impairment, or those who are seen as having such an impairment.⁶ This definition of handicapped embraces residents of homeless shelters.⁷ Homeless individuals and families are disproportionately people of color.⁸ Moreover, the Substance Abuse and Mental Health Services Administration estimates that 20 to 25% of homeless Americans suffer from some form of severe mental illness.⁹ People who are former addicts to alcohol or drugs also fall within the definition.¹⁰ Nor does the law require that all occupants of a homeless shelter must fall within a protected class for the protections of the FHA to apply.¹¹

The FHA bans discriminatory municipal zoning practices.¹² We wish to bring to Longview’s attention a Washington FHA case striking down zoning measures that illegally constrained the siting of group homes for “troubled” children, *Children’s Alliance v. City of*

1,500 feet of another emergency shelter; (e) Any area zoned General Commercial that is located generally west of 26th Avenue, Nichols Boulevard and Pacific Way.

⁵ 42 U.S.C. §3601, *et seq.* (2002).

⁶ *Id.* at § 3602(h).

⁷ 24 C.F.R. § 100.201.

⁸ <http://www.endhomelessness.org/pages/faqs>

⁹ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, CURRENT STATISTICS ON THE PREVALENCE OF SUBSTANCE ABUSE AMONG THE HOMELESS (2011), http://homeless.samhsa.gov/ResourceFiles/hrc_factsheet.pdf; NAT’L COALITION FOR THE HOMELESS, SUBSTANCE ABUSE AND HOMELESSNESS (2009), <http://www.nationalhomeless.org/factsheets/addiction.pdf>.

¹⁰ 42 U.S.C. §3602(h)

¹¹ *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 945 (9th Cir. 1996).

¹² *Gamble v. City of Escondido*, 104 F.3d 300 (9th Cir. 1997); *Children’s Alliance v. City of Bellevue*, 950 F. Supp. 1491 (1997).

Bellevue.¹³ The facts of that case raise significant concerns about Longview’s proposed ordinance.

Children’s Alliance arose out of a challenge to an ordinance that Bellevue passed creating two classes of group homes with different requirements, after the city had failed in earlier efforts to ban group homes for children. Under the ordinance, Class I homes included group homes for adults and the handicapped, as well as domestic violence shelters and foster family homes. Class II homes included homes for “troubled” children. The *Children’s Alliance* Court found that the children who lived in group homes were “abandoned, abused, or neglected; have mental health problems or developmental disabilities; required treatment for drug or alcohol abuse; or are finishing their sentence for a juvenile offense.”¹⁴ In short, the group homes for children served a challenging population. Operating on the assumption that the challenges of that population would cause more disturbances to the community, Bellevue’s ordinance imposed more stringent requirements on operating Class II homes than for Class I homes which did not serve “troubled” children. For example, the ordinance required Class II homes in a residential area to have resident staff and not accept short-term residents, even though other commercial establishments, like bed and breakfasts, were not similarly encumbered. Similarly, the ordinance imposed buffers between group homes and single family residences; disparate occupancy limits between Class I and Class II homes; and other restrictions on the operation of Class II homes.¹⁵ Finding the cumulative impact of these buffers, restrictions, and obligations indefensible, the Court dismissed Bellevue’s concerns about disturbances and out-of-character uses stating that the “asserted benefits of the restrictions must outweigh the burdens, and restrictions cannot rely on stereotypes of children who reside in group homes.”¹⁶

Longview’s proposed ordinance appears to be similarly influenced by negative stereotypes of homeless individuals.¹⁷ The proposed ordinance leaves only a twelve block area available for siting a new shelter—Bellevue’s illegal ordinance, by contrast, was less restrictive. Furthermore, Longview’s ordinance would impose yet unspecified special use permit conditions, and a nebulous management plan requirement on new shelters, rendering any shelter’s operation dependent upon the discretion of city officials. Without any standards, city officials could conceivably require expensive operating standards, such as staffing and security requirements, which inevitably will discourage potential shelter providers from locating in Longview. Moreover, the proposed ordinance treats homeless shelters differently from other residential care facilities for seniors, day care facilities, and residences for the general public (above the first floor) which are permitted outright in most commercial districts. See LMC Table 19.44.020-1.

In sum, the proposed ordinance contains discriminatory provisions, like the buffers struck down in the Bellevue ordinance, and potentially onerous and arbitrary provisions, like the management plan that run afoul of the FHA.

¹³ *Children’s Alliance*, *supra* at 1491-93.

¹⁴ *Id.*

¹⁵ *Id.* at 1496-97.

¹⁶ *Id.*

¹⁷ <http://bloximages.chicago2.vip.townnews.com/tdn.com/content/tncms/assets/v3/eedition/2/58/25847b2d-7f7f-54e8-91ca-595fb768e15e/562728d91a0df.pdf.pdf>

Eighth Amendment Concerns Raised by the City's Failure to Provide Enough and Adequate Shelter to Meet the Need

Homelessness persists in Cowlitz County,¹⁸ and appears to have increased over the past year.¹⁹ Zoning that effectively bans new shelters for people without homes leaves them little choice but to live on the streets and in public parks. Nearly a year ago, HRAP and the American Civil Liberties Union of Washington sent to Longview's City Attorney a copy of the United States Department of Justice's (DOJ's) Statement of Interest in *Bell v. City of Boise et al.*²⁰ We are enclosing a copy of that letter for your consideration since the potential for the proposed ordinance to effectively exclude homeless shelters and services from locating in Longview, despite increased homelessness in Cowlitz County,²¹ implicates the constitutional concerns raised by the DOJ on behalf of people experiencing homelessness.

The DOJ's brief explains that cities which prosecute people who are homeless for sleeping or camping in public places, when there is insufficient shelter space, violate the Eighth Amendment prohibition on cruel and unusual punishment. The DOJ grounded its reasoning on *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136-37 (9th Cir. 2006), *vacated per settlement*, 505 F.3d 1006 (9th Cir. 2007). *Jones* struck down a Los Angeles ordinance that prohibited sitting, lying, or sleeping in public because of the lack of shelters and other services, leaving the homeless individuals impacted no option but to sleep and lie in public spaces. Accordingly, a city that fails to provide adequate and accessible emergency shelter spaces, and the zoning for them, cannot enforce its ordinances that prohibit camping and sleeping in public against homeless families and individuals.

When reviewing the proposed ordinance which will inevitably constrain if not preclude new shelter spaces and services to the poor and homeless, we ask you to consider carefully the statutory and constitutional implications of Longview's decisions. Longview has a responsibility under the Growth Management Act to provide adequate, affordable housing to its residents—irrespective of wealth.²² While it works to meet that goal, Longview at least must provide

¹⁸ The 2015 Point in Time Count showed that Cowlitz County was home to 456 sheltered homeless people and 206 unsheltered homeless people. 96 minors were unsheltered.

http://www.commerce.wa.gov/Documents/PIT_2015_Rollup_Summary.pdf.

¹⁹ <http://klog.com/point-in-time-count/>

²⁰ United States District Court for the District of Idaho, Civil Action No. 1:09-CV-540.

²¹ *Supra* at 21.

²² The Growth Management Act (GMA) (RCW 36.70A), requires communities to plan for their share of anticipated population growth as provided by the state and county population allocation process by creating a 20-year Comprehensive Plan. Comprehensive Plans must be consistent with guiding regional documents, including Countywide Planning Policies (CPPs) (WAC 365-196-305). The GMA specifies a Housing Goal to “encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.” To meet this goal, communities must include a Housing Element in their comprehensive plan that: a) includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families,

adequate shelter and services to its homeless population, and adopt the appropriate zoning. The proposed ordinance fails to meet that responsibility.

Thank you for your attention. If you have questions or wish to discuss this matter further, please do not hesitate to contact Suzanne Skinner of HRAP at 206-605-0461.

Very truly yours,

Seattle University School of Law's Homeless Rights Advocacy Project
National Law Center on Homelessness and Poverty
Columbia Legal Services
Interfaith Task Force on Homelessness

Cc: City Attorney James McNamara

Enc. Department of Justice Statement of Interest; Advocates' letter of August 31, 2015

manufactured housing, multifamily housing, and group homes and foster care facilities; and d) ***makes adequate provisions for existing and projected needs of all economic segments of the community.***