Sammamish City Council,

At your Special Meeting/Study Session last night it’s reported that you passed an ordinance “adopting a six month moratorium on the acceptance, processing, and/or approval of temporary use permits or other approvals for temporary homeless encampments; providing for severability; declaring an emergency and establishing effective date.”

There are so many problems attaching to this action that I hardly know where to start. Let’s begin with the Supreme Court of the State of WA. I attach a decision that occurred due to Woodinville’s moratorium on all development. The Court determined, and you can cut to the chase by going to page 14….

“…rather than seeking to impose reasonable conditions on the Church’s project to protect the safety and peace of the neighborhood, the City categorically prevented the Church from exercising what the City concedes is religious practice.”

Clearly Federal and State law did not make its way before you. I fault your City Attorney for that, and perhaps those of us, me included, in the faith community who did not address you prior to your decision. Begin with RLUIPA, attached.

(1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

What this means, bottom line, is that faith community practice cannot be denied. A jurisdiction may indeed “further a compelling governmental interest” by using “the least restrictive means of furthering that compelling governmental interest.” In short, declining the ability of a faith community to host a tent city is illegal federally.

You may quickly reply that ordinances around the County restrict this, in many cases to once a year, and so on. I can only say be grateful that the faith community does not have full-time attorneys to sue.
AN ACT

To protect religious liberty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Religious Land Use and Institutionalized Persons Act of 2000'.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS-
   (1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--
      (A) is in furtherance of a compelling governmental interest; and
      (B) is the least restrictive means of furthering that compelling governmental interest.
   (2) SCOPE OF APPLICATION- This subsection applies in any case in which--
      (A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;
      (B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or
      (C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION-
   (1) EQUAL TERMS- No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
   (2) NONDISCRIMINATION- No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.
   (3) EXCLUSIONS AND LIMITS- No government shall impose or implement a land use regulation that--
(A) totally excludes religious assemblies from a jurisdiction; or
(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE- No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--
   (1) is in furtherance of a compelling governmental interest; and
   (2) is the least restrictive means of furthering that compelling governmental interest.

(b) SCOPE OF APPLICATION- This section applies in any case in which--
   (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
   (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION- A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION- If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) FULL FAITH AND CREDIT- Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) ATTORNEYS' FEES- Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended--
   (1) by inserting 'the Religious Land Use and Institutionalized Persons Act of 2000,' after 'Religious Freedom Restoration Act of 1993,'; and
   (2) by striking the comma that follows a comma.

(e) PRISONERS- Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).
(f) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT- The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) LIMITATION- If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 5. RULES OF CONSTRUCTION.

(a) RELIGIOUS BELIEF UNAFFECTED- Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) RELIGIOUS EXERCISE NOT REGULATED- Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) CLAIMS TO FUNDING UNAFFECTED- Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED- Nothing in this Act shall--

   (1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or
   (2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE- A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) EFFECT ON OTHER LAW- With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not
establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) BROAD CONSTRUCTION- This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) NO PREEMPTION OR REPEAL- Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) SEVERABILITY- If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the `Establishment Clause'). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term `granting', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS- Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended--
   (1) in paragraph (1), by striking `a State, or a subdivision of a State' and inserting `or of a covered entity';
   (2) in paragraph (2), by striking `term' and all that follows through `includes' and inserting `term `covered entity' means'; and
   (3) in paragraph (4), by striking all after `means' and inserting `religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.'.

(b) CONFORMING AMENDMENT- Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking `and State'.

SEC. 8. DEFINITIONS.

In this Act:
   (1) CLAIMANT- The term `claimant' means a person raising a claim or defense under this Act.
   (2) DEMONSTRATES- The term `demonstrates' means meets the burdens of going forward with the evidence and of persuasion.
(3) FREE EXERCISE CLAUSE- The term 'Free Exercise Clause' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) GOVERNMENT- The term 'government'--
   (A) means--
   (i) a State, county, municipality, or other governmental entity created under the authority of a State;
   (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
   (iii) any other person acting under color of State law; and
   (B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION- The term 'land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY- The term 'program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(7) RELIGIOUS EXERCISE-
   (A) IN GENERAL- The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.
   (B) RULE- The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.
on their behalf.

Additionally, Washington State law ESHB 1956 (eff 6/10/10) confirms this law in more specific terms. Essentially, health and safety concerns may be governed but declining a hosting violates religious practice. It may alarm you, and there is no indication that Tent City 4/Mary Queen of Peace seek this, but even a “standard” of 90 days has been solely due to the goodwill of the camp and host.

The City of Seattle understood this. As it needed to succeed its expiring Consent Decree (a court ordered permit technique due to their initial reluctance to follow federal law), the City examined RLUIPA and 1956, and produced what I attach as the Seattle Faith tent City ordinance. The shorthand is, as many tent cities on faith owned/controlled property as can be operated safely, for as long as they want to stay. There are health and safety guidelines. Their ordinance fully complies with Federal and State law. It is the only one I know that does. At present there are the equivalent of 4 tent cities in Seattle. That you likely do not know this reveals that it does not cause the crisis you may wish to avoid.

As a matter of procedure, I am curious how any jurisdiction can pass an ordinance that has not made its way through committee, accommodated public input prior to the passage, and so on. Perhaps it is I who is confused. I see a Public Comment date of March 4, so does that mean this is not effective until that time?

Finally, I do have some experience in this and some advice. I was Co-Chair of the Citizens Advisory Commission on Homeless Encampments (2004), and co-authored the King County Encampment Ordinance and presented said draft to the County Council for approval. I sat with Northshore UCC and Tent City as the Woodinville case made its way through the Courts. I have given counsel to many King and Snohomish County faith communities and jurisdictions (e.g., helping Lynnwood draft a tent city ordinance even though I told them it would be unlikely it would be used there due to the absence of a managing host like SHARE/WHEEL). Here’s the advice: Set aside the ordinance. Meet with Father Kevin, with Pastor John at Sammamish Hills, and others from the faith community. Be willing to extend the Tent City 4 stay week-by-week, or 2 weeks-by-2 weeks until a next site is found. Then begin your ordinance discussion. When you do, invite me and others in. Talk to Seattle. Read the documents I’ve sent. Do your homework and be the blessing every City is meant to be.

I serve with the Eastside Homelessness Advisory Committee (EHAC). We work with ARCH, Housing Development Consortium, Hopelink, and many others who seek to develop/sustain affordable housing for those whose pay or lack thereof prevents adequate housing. We have followed Sammamish housing planning. We want Sammamish as an informed ahead-of-the-curve partner. One jurisdiction remains flat out hostile (e.g. considerably east of Sammamish yet within King County) rather than work collegially. I can assure you everyone involved with tent city, to include what I know are the hundreds supporting it, to include even some of the famous (a Seattle Seahawks tight end, GO HAWKS!).

If you want to talk, call me. But do the right thing. If there is no place for TC4 to go, do not kick them out. Talk, compromise. Keep neighbors informed and calm their fears, most often projected rather than based on any actual threat. Trust your public safety folks. Act in good faith, in every regard.

Peace,
The Rev. Bill Kirlin-Hackett
Director, The Interfaith Task Force on Homelessness
In residence at St. Luke’s Lutheran Church
3030 Bellevue Way NE, Bellevue WA 98004
425.442.5418  www.itfhomeless.org
ITFH on Facebook

Ring the bell that still can ring! Forget your perfect offering!
There is a crack, a crack in everything.
That's how the light gets in.
            Leonard Cohen
CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1956

Chapter 175, Laws of 2010

61st Legislature
2010 Regular Session

HOMELESS PERSONS--SHELTERS--RELIGIOUS ORGANIZATIONS

EFFECTIVE DATE: 06/10/10

Passed by the House March 6, 2010
Yeas 57  Nays 38

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 2, 2010
Yeas 40  Nays 5

BRAD OWEN
President of the Senate
Approved March 23, 2010, 2:19 p.m.

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 1956 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
March 23, 2010

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to the housing of homeless persons on property owned or controlled by a church; adding a new section to chapter 36.01 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature finds that there are many homeless persons in our state that are in need of shelter and other services that are not being provided by the state and local governments. The legislature also finds that in many communities, religious organizations play an important role in providing needed services to the homeless, including the provision of shelter upon property owned by the religious organization. By providing such shelter, the religious institutions in our communities perform a valuable public service that, for many, offers a temporary, stop-gap solution to the larger social problem of increasing numbers of homeless persons.

This act provides guidance to cities and counties in regulating homeless encampments within the community, but still leaves those entities with broad discretion to protect the health and safety of its
citizens. It is the hope of this legislature that local governments
and religious organizations can work together and utilize dispute
resolution processes without the need for litigation.

NEW SECTION. Sec. 2. A new section is added to chapter 36.01 RCW
to read as follows:

(1) A religious organization may host temporary encampments for the
homeless on property owned or controlled by the religious organization
whether within buildings located on the property or elsewhere on the
property outside of buildings.

(2) A county may not enact an ordinance or regulation or take any
other action that:

(a) Imposes conditions other than those necessary to protect public
health and safety and that do not substantially burden the decisions or
actions of a religious organization regarding the location of housing
or shelter for homeless persons on property owned by the religious
organization;

(b) Requires a religious organization to obtain insurance
pertaining to the liability of a municipality with respect to homeless
persons housed on property owned by a religious organization or
otherwise requires the religious organization to indemnify the
municipality against such liability; or

(c) Imposes permit fees in excess of the actual costs associated
with the review and approval of the required permit applications.

(3) For the purposes of this section, "religious organization"
means the federally protected practice of a recognized religious
assembly, school, or institution that owns or controls real property.

(4) An appointed or elected public official, public employee, or
public agency as defined in RCW 4.24.470 is immune from civil liability
for (a) damages arising from the permitting decisions for a temporary
encampment for the homeless as provided in this section and (b) any
conduct or unlawful activity that may occur as a result of the
temporary encampment for the homeless as provided in this section.

NEW SECTION. Sec. 3. A new section is added to chapter 35.21 RCW
to read as follows:

(1) A religious organization may host temporary encampments for the
1 homeless on property owned or controlled by the religious organization
2 whether within buildings located on the property or elsewhere on the
3 property outside of buildings.

4 (2) A city or town may not enact an ordinance or regulation or take
5 any other action that:

6 (a) Imposes conditions other than those necessary to protect public
7 health and safety and that do not substantially burden the decisions or
8 actions of a religious organization regarding the location of housing
9 or shelter for homeless persons on property owned by the religious
10 organization;
11 (b) Requires a religious organization to obtain insurance
12 pertaining to the liability of a municipality with respect to homeless
13 persons housed on property owned by a religious organization or
14 otherwise requires the religious organization to indemnify the
15 municipality against such liability; or
16 (c) Imposes permit fees in excess of the actual costs associated
17 with the review and approval of the required permit applications.

18 (3) For the purposes of this section, "religious organization"
19 means the federally protected practice of a recognized religious
20 assembly, school, or institution that owns or controls real property.
21 (4) An appointed or elected public official, public employee, or
22 public agency as defined in RCW 4.24.470 is immune from civil liability
23 for (a) damages arising from the permitting decisions for a temporary
24 encampment for the homeless as provided in this section and (b) any
25 conduct or unlawful activity that may occur as a result of the
26 temporary encampment for the homeless as provided in this section.

NEW SECTION. Sec. 4. A new section is added to chapter 35A.21 RCW
28 to read as follows:

29 (1) A religious organization may host temporary encampments for the
30 homeless on property owned or controlled by the religious organization
31 whether within buildings located on the property or elsewhere on the
32 property outside of buildings.

33 (2) A city or town may not enact an ordinance or regulation or take
34 any other action that:

35 (a) Imposes conditions other than those necessary to protect public
36 health and safety and that do not substantially burden the decisions or
actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization;

(b) Requires a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on property owned by a religious organization or otherwise requires the religious organization to indemnify the municipality against such liability; or

(c) Imposes permit fees in excess of the actual costs associated with the review and approval of the required permit applications.

(3) For the purposes of this section, "religious organization" means the federally protected practice of a recognized religious assembly, school, or institution that owns or controls real property.

(4) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for (a) damages arising from the permitting decisions for a temporary encampment for the homeless as provided in this section and (b) any conduct or unlawful activity that may occur as a result of the temporary encampment for the homeless as provided in this section.

NEW SECTION. Sec. 5. Nothing in this act is intended to change applicable law or be interpreted to prohibit a county, city, town, or code city from applying zoning and land use regulations allowable under established law to real property owned by a religious organization, regardless of whether the property owned by the religious organization is used to provide shelter or housing to homeless persons.

NEW SECTION. Sec. 6. Nothing in this act supersedes a court ordered consent decree or other negotiated settlement between a public agency and religious organization entered into prior to July 1, 2010, for the purposes of establishing a temporary encampment for the homeless as provided in this act.

Passed by the House March 6, 2010.
Passed by the Senate March 2, 2010.
Approved by the Governor March 23, 2010.
Filed in Office of Secretary of State March 23, 2010.
Sammamish OKs moratorium on homeless camps

By ALEXA VAUGHN
*Seattle Times* staff reporter

At the end of last week it looked as if Tent City 4 might extend its first stay in Sammamish at another one of the city’s churches. Good Samaritan Episcopal Church had unanimously approved taking in the homeless encampment after its 90-day stay at Mary, Queen of Peace expires Friday.

But Tuesday night — a day after Good Samaritan announced, without explanation, that it could not take the encampment after all — the Sammamish City Council approved an emergency six-month moratorium on homeless encampments.

Tent City 4 members say they plan to follow the rules and move Friday, but they don’t know where they’ll go.

Church-property options are limited throughout the Eastside by city ordinances that prevent encampments from staying in some cities more than once per year and at one location for more than 90 days a year.

In their plea to stay in Sammamish longer, Tent City 4 member Anna Low told the council the encampment is trying to find site alternatives but has been unsuccessful.

“We wish someone else would invite us, but no one else has offered,” said Low. “We are at risk of scattering.”

The encampment of 40 to 60 people was invited to stay in Sammamish in October under a temporary-use permit that was extended from 60 to 90 days to help get its members through the holidays.

Donations and volunteering to help the encampment were at an all-time high in Sammamish, said Tent City 4 member Red Manchester.

Kathi Rowley, a volunteer-projects coordinator for Mary, Queen of Peace, said she was so overwhelmed by people wanting to help the encampment that she had to get creative.

So many people — including Seahawks tight end Luke Wilson — offered to buy and serve meals that the encampment, instead of getting just dinner, usually had free lunches and breakfasts, she said.

Parish administrator Rich Shively said the encampment didn’t create any problems in the area and successfully policed its own problems.

Council members supporting the moratorium said the community deserves proper notice when such encampments move in nearby and that the six-month period would help the city develop a permanent process for welcoming homeless encampments again.

The Sammamish City Council will hold a public hearing on the ordinance at its March 4 meeting.

*Alexa Vaughn: 206-464-2515 or avaughn@seattletimes.com. On Twitter @AlexaVaughn.*
AN ORDINANCE relating to land use and zoning; amending Sections 23.43.040, 23.50.012, and 23.84A.038 of the Seattle Municipal Code; and adding new Sections 23.42.054, 23.44.053, 23.45.595, and 23.47A.036; to permit transitional encampments for homeless individuals as a use accessory to religious facilities in all zones.

Status: Passed as amended
Date passed by Full Council: October 3, 2011
Vote: 9-0
Date filed with the City Clerk: October 13, 2011
Date of Mayor's signature: October 13, 2011
(about the signature date)

Date introduced/referred to committee: September 12, 2011
Committee: Housing, Human Services, Health, and Culture
Sponsor: LICATA
Committee Recommendation: Pass
Date of Committee Recommendation: September 28, 2011
Committee Vote: 3 (Licata, Clark, Rasmussen) - 0

Index Terms: RELIGIOUS-INSTITUTIONS, HOMELESS, LAND-USE-REGULATIONS, ZONING, PUBLIC-REGULATIONS, CAMPS

Fiscal Note: Fiscal Note to Council Bill 117288

Electronic Copy: PDF scan of Ordinance No. 123729

Text

AN ORDINANCE relating to land use and zoning; amending Sections 23.43.040, 23.50.012, and 23.84A.038 of the Seattle Municipal Code; and adding new Sections 23.42.054, 23.44.053, 23.45.595, and 23.47A.036; to
permit transitional encampments for homeless individuals as a use accessory to religious facilities in all zones.

WHEREAS, there is a well-documented history of homelessness in Seattle and a demonstrated need for additional facilities to address the issue; and

WHEREAS, faith-based communities have proven effective in providing shelter and support for homeless persons, including providing space on their property for transitional encampments that do not include permanent structures; and

WHEREAS, faith-based communities have made support of homeless persons an integral part of their religious mission, and their transitional encampment activity is incidental to their religious facilities; and

WHEREAS, transitional encampments may currently be allowed as a temporary use, in any zone, without specific health and safety standards in the Seattle Land Use Code; and

WHEREAS, this ordinance does not change the current code provision that allows entities, including secular entities, to continue to host transitional encampments after obtaining a temporary use permit according to
existing procedures in the Seattle Land Use Code; and

WHEREAS, RCW 35.21.915, permits cities regulating homeless encampments on property owned or controlled by a religious organization to impose conditions necessary to protect the health and safety of the public; and

WHEREAS, adding specific transitional encampment health and safety standards to the Code, including limits to numbers of occupants and provisions for cooking and utilities, provides clear guidance to religious facilities and protects the health and safety of the public; and

WHEREAS, agreements between religious facilities and transitional encampment operators may address encampment rules that extend beyond zoning standards, including prohibiting alcohol, drugs, weapons and sex offenders; or establishing rules for children in encampments; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 23.42.054 of the Seattle Municipal Code is adopted to read as follows:

23.42.054 Transitional Encampments Accessory to Religious
Facilities or to Other Principal Uses Located on Property Owned or Controlled by a Religious Organization

A. Transitional encampment accessory use. A transitional encampment is allowed as an accessory use on a site in any zone, if the established principal use of the site is as a religious facility or the principal use is on property owned or controlled by a religious organization, subject to the provisions of subsection 23.42.054.B. A religious facility site includes property developed with legally-established parking that is accessory to the religious facility. Parking accessory to a religious facility or located on property owned or controlled by a religious organization that is displaced by the encampment does not need to be replaced.

B. The encampment operator or applicant shall comply with the following provisions:

1. Allow no more than 100 persons to occupy the encampment site as residents of the encampment.

2. Comply with the following fire safety and health standards:

   a. Properly space, hang, and maintain fire
extinguishers within the encampment as required by the Fire Department;

b. Provide and maintain a 100-person first-aid kit;

c. Establish and maintain free of all obstructions access aisles as required by the Fire Department.

d. Install appropriate power protection devices at any location where power is provided;

e. Designate a smoking area;

f. Keep the site free of litter and garbage;

g. Observe all health-related requirements made by the Public Health Department of Seattle & King County; and

h. Post and distribute to encampment residents, copies of health or safety information provided by the City of Seattle, King County or any other public agency.

i. Prohibit any open flames except an outdoor heat source approved by the Fire Department.
3. Provide toilets, running water, and garbage collection according to the following standards:

   a. Provide and maintain chemical toilets as recommended by the portable toilet service provider or provide access to toilets in an indoor location;

   b. Provide running water in an indoor location or alternatively, continuously maintain outdoor running water and discharge the water to a location approved by the City; and

   c. Remove garbage frequently enough to prevent overflow.

4. Cooking facilities, if they are provided, may be located in either an indoor location or outdoors according to the following standards:

   a. Provide a sink with running water in an indoor location or alternatively, continuously maintain outdoor running water and discharge the water to a location approved by the City;

   b. Provide a nonabsorbent and easily-cleanable food preparation counter;
c. Provide a means to keep perishable food cold;

and

d. Provide all products necessary to maintain the cooking facilities in a clean condition.

5. Allow officials of the Public Health Department of Seattle & King County, the Seattle Fire Department, and Seattle Department of Planning and Development to inspect areas of the encampment that are located outdoors and plainly visible without prior notice to determine compliance with these standards.

C. A site inspection of the encampment by a Department inspector is required prior to commencing encampment operations.

D. Parking is not required for a transitional encampment allowed under this Section 23.42.054.

Section 2. Section 23.43.040 of the Seattle Municipal Code, which section was last amended by Ordinance 123378, is amended as follows:

Deleted: 23.43.040 Accessory uses and structures exceptions to development standards for solar collectors and
F. Transitional encampments accessory use.

Transitional encampments accessory to religious facilities or to principal uses located on property owned or controlled by a religious organization are regulated by Section 23.42.054.

Section 3. A new Section 23.44.053 of the Seattle Municipal Code is adopted to read as follows:

23.44.053 Transitional encampments accessory use

Transitional encampments accessory to religious facilities or to principal uses located on property owned or controlled by a religious organization are regulated by Section 23.42.054, Transitional Encampments Accessory to Religious Facilities.

Section 4. A new Section 23.45.595 of the Seattle Municipal Code is adopted to read as follows:

23.45.595 Transitional encampments accessory use

Transitional encampments accessory to religious
facilities or to principal uses located on property owned or controlled by a religious organization are regulated by Section 23.42.054, Transitional Encampments Accessory to Religious Facilities.

Section 5. A new Section 23.47A.036 of the Seattle Municipal Code is adopted to read as follows:

23.47A.036 Transitional encampments accessory use

Transitional encampments accessory to religious facilities or to principal uses located on property owned or controlled by a religious organization are regulated by Section 23.42.054, Transitional Encampments Accessory to Religious Facilities.

Section 6. Section 23.50.012 of the Seattle Municipal Code, which section was last amended by Ordinance 123378, is amended as follows:

23.50.012 Permitted and Prohibited Uses

* * *

Table A for 23.50.012
Uses in Industrial Zones

<table>
<thead>
<tr>
<th>USES</th>
<th>IB</th>
<th>IC</th>
<th>IG1 and IG2 (general)</th>
<th>IG1 in the Duwamish M/I Center</th>
<th>IG2 in the Duwamish M/I Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>* * *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. INSTITUTIONS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E.1. Adult care centers</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>E.2. Child care centers</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>E.3. Colleges</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>X(6)</td>
<td>X(6)</td>
</tr>
<tr>
<td>E.4. Community centers and Family support centers</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>E.5. Community clubs</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>E.6. Hospitals</td>
<td>EB</td>
<td>EB</td>
<td>CU(7)</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>E.7. Institutes for advanced study</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>E.8. Libraries</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>E.9. Major institutions subject to the provisions of Chapter 23.69</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
</tr>
<tr>
<td>E.10. Museums</td>
<td>EB</td>
<td>EB(9)</td>
<td>EB</td>
<td>X(8)</td>
<td>X(8)</td>
</tr>
<tr>
<td>E.11. Private clubs</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>E.13. Schools, elementary or secondary</td>
<td>EB</td>
<td>EB</td>
<td>EB</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>E.14. Vocational or fine arts schools</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>

* * *

(15) Transitional encampments accessory to religious facilities or to principal uses located on property owned or controlled by a religious organization are regulated by Section 23.42.054.

Section 7. Section 23.84A.038 of the Seattle Municipal Code, which section was last amended by Ordinance 123495, is amended as follows:
23.84A.038 "T"

* * *

"Transitional Encampment" means a use having tents or a similar shelter that provides temporary quarters for sleeping and shelter. The use may have common food preparation, shower, or other commonly-used facilities that are separate from the sleeping shelters.

* * *

Section 8. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 9. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ___ day of ________________________, 2011, and signed by me in open session in authentication of its passage this ___ day of ______________________, 2011.

_________________________________
President __________ of the City Council

Approved by me this ___ day of ________________________, 2011.

_________________________________
Michael McGinn, Mayor

Filed by me this ___ day of ________________________, 2011.

_________________________________
Monica Martinez Simmons, City Clerk

(Seal)

Bill Mills DPD Transitional Encampment ORD October 3, 2011 Version #12

1 Form Last Revised: May 2, 2011
Supreme Court of the State of Washington

Opinion Information Sheet

Docket Number: 80588-1
Title of Case: City of Woodinville v. Northshore United Church of Christ
File Date: 07/16/2009
Oral Argument Date: 05/20/2008

SOURCE OF APPEAL

Appeal from King County Superior Court
06-2-16416-4
Honorable Charles W Mertel

JUSTICES

Gerry L. Alexander Signed Majority
Charles W. Johnson Signed Majority
Barbara A. Madsen Signed Majority
Richard B. Sanders Concurrence Author
Tom Chambers Signed Concurrence
Susan Owens Signed Majority
Mary E. Fairhurst Signed Majority
James M. Johnson Majority Author
Debra L. Stephens Signed Majority

COUNSEL OF RECORD

Counsel for Petitioner(s)
Anthony L. Rafel
Rafel Law Group PLLC
999 3rd Ave Ste 1600
Seattle, WA, 98104-4030

Robert Aloysiuis Hyde
Rafel Law Group PLLC
999 3rd Ave Ste 1600
Seattle, WA, 98104-4030

Sean Adam Russel
Ahlers & Cressman PLLC

999 3rd Ave Ste 3100
Seattle, WA, 98104-4049

Counsel for Respondent(s)
Greg Alan Rubstello
Attorney at Law
2100 Westlake Ctr Twr
1601 5th Ave
Seattle, WA, 98101-3621

Joseph Zachary Lell
Ogden Murphy Wallace PLLC
1601 5th Ave Ste 2100
Seattle, WA, 98101-1686

Michael Paul Scruggs
Scruggs Law Offices
7900 Se 28th St Ste 320
Mercer Island, WA, 98040-2970

Amicus Curiae on behalf of Church Council of Greater Seattle
Howard Mark Goodfriend
Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of Temple Beth Am
Howard Mark Goodfriend
Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of Northwest Washington Synod of the Evangelical Lutheran Church
Howard Mark Goodfriend
Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of Evergreen Council of American Baptist Church
Howard Mark Goodfriend
Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of Catholic Archdiocese of Seattle
Howard Mark Goodfriend

Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of Pacific Northwest Conference of the United Church of Christ
Howard Mark Goodfriend
Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of Washington Association of Churches
Howard Mark Goodfriend
Edwards Sieh Smith & Goodfriend PS
1109 1st Ave Ste 500
Seattle, WA, 98101-2988

Amicus Curiae on behalf of ACLU
Sarah A Dunne
ACLU
705 2nd Ave Ste 300
Seattle, WA, 98104-1723

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF WOODINVILLE, a Washington municipal corporation,

Respondent,

v.

NORTHSORE UNITED CHURCH OF CHRIST, AND SEATTLE HOUSING AND RESOURCE EFFORT/WOMEN'S HOUSING EQUALITY AND ENHANCEMENT PROJECT,

Petitioners.

No. 80588-1
En Banc

Filed July 16, 2009

J.M. JOHNSON, Tent City 4 is a movable encampment of homeless people in the Puget Sound area sponsored by nonprofit Seattle Housing and Resource Effort/Women's Housing Equality and Enhancement Project (Share/Wheel). The encampment houses approximately 60-100 people and moves from place to place every 90 days. It relies on property

owners to volunteer sites and in 2006 asked Northshore United Church of
Christ (the Church) to host. The Church agreed to allow use of its property in
the R-1 residential area around the church buildings in the city of Woodinville
(City) and applied for a temporary use permit from the City. Several months
before the application, the City had passed a six-month moratorium on all
land use permit applications in the R-1 zone, pending completion of a study
on sustainable development.1 Relying on the moratorium, the City declined to
process the Church's permit application.

The Church argues the City's (in)action conflicts with our cases
considering article I, section 11 of Washington's constitution. That provision
guarantees, ?[a]bsolute freedom of conscience in all matters of religious
sentiment, belief and worship, . . .? but also provides the provision, ?shall not
be so construed as to . . . justify practices inconsistent with the peace and
safety of the state.? Id.

Concerned that the encampment would go forward, the City sought,
1 The moratorium was later extended for an additional six months.

No. 80588-1
and the trial court entered, an injunction against the Church and Share/Wheel,
prohibiting Tent City 4 from proceeding without the necessary permits. The
Court of Appeals upheld the City's denial of the permit based on the
moratorium. City of Woodinville v. Northshore United Church of Christ,
139 Wn. App. 639, 162 P.3d 427 (2007). Based on our precedent construing
article I, section 11 of the Washington Constitution, we hold that the City
cannot apply a moratorium to refuse to consider a permit request from the
Church and therefore reverse.

Facts and Procedural History

The main facts underlying this case occurred in 2006, but several
important events occurred two years earlier. In 2004, Share/Wheel and Tent
City, working with the Church, also sought a location in the City as a
temporary home. The City offered to allow Tent City free use of a site on
city property intended for a public park. The City, Share/Wheel, and the
Church executed a contract spelling out conditions for the temporary use and
the parties' rights and duties. In a relevant provision, the 2004 contract provides for Share/Wheel and the Church to submit an application to locate a future Tent City at some other church-owned location, but . . . must agree on these changes.

No. 80588-1

not to establish . . . any homeless encampment within the City of Woodinville without a valid temporary use permit . . . .? Clerk's Papers (CP) at 160. In 2004, Tent City spent three months on the city property pursuant to this contract and then moved on to other areas of King County.

Two years later, with the Church again as host, Tent City 4 sought to move back to the city. In the meantime, the City had adopted a moratorium on all temporary use permits in the R-1 residential zone where the Church is located. The moratorium lasted six months, and its purpose was to allow city planners to study environmental effects of new development. The City subsequently renewed the moratorium for another six months.

The Church planned to host Tent City 4 beginning in August 2006, but because Tent City 4's summer site host withdrew, the Church sought to accelerate its hosting to the months of May through July. Scrambling in late April, the Church applied for a temporary use permit to begin in May. The City refused to process the application, citing the moratorium on all permits in the R-1 zone. The Church alternatively asked the city council to let Tent City 4 move to the same parklands location where it had stayed in 2004 (which was outside the R-1 zone of the moratorium). After a public hearing and

No. 80588-1

input from the community, the city council rejected the proposal.

When the Church moved forward to host Tent City 4 on its property, notwithstanding the failure to get permits, the City brought an action in King County Superior Court for a temporary restraining order. The City also requested a permanent injunction blocking the Church and Share/Wheel from hosting Tent City 4 without obtaining the necessary permits.

Originally, the trial court denied the City's motion for a temporary
restraining order and instead, sua sponte, entered an order allowing Tent City 4 to set up its encampment at the Church immediately. Tent City 4 moved onto church property. The City moved to dissolve the court's temporary order and to consolidate that hearing with a trial on the merits of the case. The case proceeded to a consolidated hearing on the merits.

A different judge was assigned to the case, and the trial court heard evidence over the next week and a half, after which it entered a final order. That order consolidated the motion for a temporary injunction with the motion for permanent relief. The court then ordered Tent City 4 to leave the city and enjoined the Church from hosting Tent City in the future without a permit. It held that the Church had breached the 2004 contract and that Tent City 4 was

creating a public nuisance under the City's zoning laws by operating without a permit. The court held that Washington's constitution and the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-2000cc-5, both required the city zoning restrictions to be narrowly tailored to achieve a compelling government purpose but that the City had met the standard. Attorney fees were denied, and the only issue the order failed to address was the amount of damages the Church owed the City for violating the 2004 contract.

The Church appealed. Northshore United Church, 139 Wn. App. 639. Division One of the Court of Appeals held that the trial court was correct that the Church had violated the 2004 contract. Even though the trial court had applied the wrong constitutional standard by applying strict scrutiny, the permanent injunction was upheld by the Court of Appeals, as was denial of attorney fees. The Church once again appealed.2 This court granted review.

City of Woodinville v. Northshore United Church of Christ, 162 Wn.2d 1019, 178 P.3d 1033 (2008). We hold the refusal to process the permit application was violative of rights under article I, section 11, and reverse.

Issues

2 The City cross-appealed only the denial of attorney fees.
No. 80588-1

1. Whether the City's refusal to process the Church's requested permit based on an area-wide moratorium violated article I, section 11 of the Washington Constitution.

2. Whether the Church breached its 2004 contract with the City and, if so, whether this breach was justified by the City's refusal to process a permit.

Standard of Review

The parties dispute the appropriate standard of review. The Church requests de novo review on all issues while the City asks us to review the trial court's factual findings only for clear error. The unique posture of the case warrants brief explanation. The trial court consolidated the motion for a temporary injunction with a trial on the merits and heard testimony on every issue. We have no cases deciding the proper standard of review for such a situation, but there is persuasive guidance from federal courts (which have comparable court rules). As stated in one of those federal cases, where the trial court combined the hearing on the injunction with a trial on the merits, we review the district court's findings of fact for clear error . . . and its conclusions of law de novo. Pinette v. Capitol Square Review & Advisory Bd., 30 F.3d 675, 677 (6th Cir. 1994) (citations omitted).

No. 80588-1

Analysis

A. The City's Application of a Moratorium To Deny the Permit Application Violated the Church's Exercise of Religion

Washington's constitution guarantees, ?[a]bsolute freedom of conscience in all matters of religious sentiment, belief and worship? and also provides that this ?shall not be so construed as to . . . justify practices inconsistent with the peace and safety of the state.? Wash. Const. art. I, § 11.

The Court of Appeals did not decide whether this guaranty of our constitution is broader than the federal constitutional protection for religious freedom because the Church did not offer a complete analysis of the difference between the state and federal constitutions. Northshore United

Church, 139 Wn. App. at 654.

State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986) articulates standards to determine when and how Washington's constitution provides different protection of rights than the United States Constitution. Id. at 58. Litigants brief the differences when we are faced with deciding whether a parallel constitutional provision affords differing protections. State v. Reichenbach, 153 Wn.2d 126, 131 n.1, 101 P.3d 80 (2004). But where we have already determined in a particular context the appropriate state constitutional analysis under a provision of the Washington State Constitution, it is unnecessary to provide a threshold Gunwall analysis. Id.

A strict rule that courts will not consider state constitutional claims without a complete Gunwall analysis could return briefing into an antiquated writ system where parties may lose their constitutional rights by failing to incant correctly. Gunwall is better understood to prescribe appropriate arguments: if the parties provide argument on state constitutional provisions and citation, a court may consider the issue. This is especially true where, as in many areas, the special protections of our state constitution have been previously recognized by this court. Listing the Gunwall factors is a helpful approach when arguing how Washington's constitution provides greater rights than its federal counterpart. But failing to subhead a brief with each factor does not foreclose constitutional argument.

Here, numerous cases in this court have already decided that the article I, section 11 freedom of religious sentiment, belief and worship absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution . . . .? First Covenant Church v. City of Seattle, 120 Wn.2d 203, 229-30, 840 P.2d 174 (1992). The Church

No. 80588-1

has more protection under Washington's constitution.

Proceeding under article I, section 11, a party challenging government
action must show two things: that the belief is sincere and that the government action burdens the exercise of religion. Open Door Baptist Church v. Clark County, 140 Wn.2d 143, 152, 995 P.2d 33 (2000). The government must then show it has a narrow means for achieving a compelling goal.3 Id.

There is no issue raised here of whether hosting Tent City is important or central to the Church’s exercise (though the Church has never before engaged in such practice around or in its church). The City conceded in its briefing in this case the Church’s sincerity of belief. The City has also not argued in its briefing that the moratorium fulfills a compelling goal and only offered argument that the moratorium did not substantially burden the Church’s free exercise of religion. Thus, the only issue presented is whether the City’s actions substantially burden the free exercise of the Church’s religious sentiment, belief [or] worship.?

Government burdens religious exercise ?[i]f the ?coercive effect of [an]

3 Of course, the government may require compliance with reasonable police power regulation. See Wash. Const. art. I, § 11 (the right to religious belief and worship does not excuse practices inconsistent with peace and safety).

No. 80588-1

enactment? operates against a party ?in the practice of his religion . . . .?? First Covenant, 120 Wn.2d at 226 (alteration in original). This does not mean any slight burden is invalid, however.4 If the constitution forbade all government actions that worked some burden by minimally affecting sentiment, belief [or] worship,? then any church actions argued to be part of religious exercise would be totally free from government regulation. Our constitution expressly provides to the contrary. The argued burden on religious exercise must be more, it must be substantial. Here, the total refusal to process a permit application is such a burden.

Unconstitutional burdens through government regulation were found in the two decisions of this court: Munns v. Martin, 131 Wn.2d 192, 930 P.2d 318 (1997) and Open Door. In Munns, St. Patrick’s School was a state historic site and the Bishop of Spokane intended to change the church building use to a pastoral center. Id. at 195. Petitioner sought to enforce an

ordinance to delay permitting for up to 14 months. This court held the

4 When deciding if a government regulation is a substantial burden, courts should look at any alternatives the regulation leaves open. For example, at oral argument, the Church conceded it would be possible to house Tent City inside the Church. Worship traditionally takes place inside a church and this alternative would obviate many of neighbor/city legitimate concerns. We make no decision on such a regulation because the City did not allow such alternative.

No. 80588-1

potential burden of delay created an unconstitutional burden. Id. at 207. In Open Door, a church bought a building intending to renew its use as a place of worship, and the county ordered the church to apply for a conditional use permit. Open Door, 140 Wn.2d at 145-46. Clark County allowed the church to continue operating pending decision on an application, but the church brought suit rather than go through the process. We held the burden of properly applying for a permit was not an excessive burden on religion expressly noting, . . . we are not confronted in the case with the denial of a conditional use permit application . . . . Id. at 149. If any government burden, such as applying for permits, were unconstitutional, we would have decided Open Door differently.

These cases conclude that a burden can be a slight inconvenience without violating article I, section 11, but the State cannot impose substantial burden on exercise of religion. See also First United Methodist Church v. Hearing Examiner, 129 Wn.2d 238, 249, 916 P.2d 374 (1996) (landmark designation reducing value of a church by half is an excessive burden).

Any state burden must be evaluated in the context in which it arises.
The City properly did not dispute in court the sincerity of the beliefs nor their

No. 80588-1

importance to believers. Housing the homeless may be a part of religious belief or practice, but it is different from prayer or services, for example, which are at the core of protected worship. The Church has never before hosted the homeless on or in its property but has long continued to worship in a manner preferred by its congregation.

The context for the constitutional evaluation of any burden necessarily

http://www.mrsc.org/mc/courts/supreme/Slip%20Opinions/805881MAJ.htm

2/12/2010
encompasses impact on others in the city. Housing the homeless affects those outside the church in a way that private prayer or religious services inside the church buildings do not. Indeed, a homeless encampment likely affects the neighbors who live nearby far more than it impacts most parishioners who spend only hours in church weekly while neighbors must live continuously with the encampment. Cities may mediate these externalities reflecting concerns for safety, noise, and crime but may not outright deny consideration of permitting. By way of analogy, while healing the sick is similarly connected to worship, a church must still comply with reasonable permitting processes if it wants to operate a hospital or clinic. This notion is expressly reflected in article I, section 11 providing, "the liberty of conscience hereby secured shall not be so construed as to . . . justify practices inconsistent with

No. 80588-1

the peace and safety of the state."

Applying these principles, the City's total moratorium placed a substantial burden on the Church. It prevented the Church from even applying for a permit. It gave the Church no alternatives. The moratorium lasted a full year, nearly equaling the 14 month moratorium we held improper in Munns, 131 Wn.2d at 195, 207. The City failed to show that the moratorium was a narrow means for achieving a compelling goal. Therefore, the City's action constituted a violation of article I, section 11 of our constitution.

Since we hold for the Church on state constitutional grounds, we need not, and therefore do not, decide whether there is violation of RLUIPA. Our decision rests solely on our state constitution. See First Covenant Church, 120 Wn.2d at 228.

B. The Church's Breach of the Property Use Agreement and the City's Duty to Process Permit Application

The Church signed a contract with the City in 2004 promising to obtain a valid permit before hosting Tent City at the Church in the future. The Church argues that the contract was only valid for 2004, and even if it
breached, it was justified by the City’s breach. The relevant contract

No. 80588-1
language, found at section 2.B. in the contract, reads:

[Tent City] and one or more Woodinville-based church
sponsor(s) may jointly submit an application to locate a future
Tent City at some other church-owned location, but

(1) must allow sufficient time in the application process
for public notice, public comment and due process of the permit
application; and

(2) must agree not to establish, sponsor or support any
homeless encampment within the City of Woodinville without a
valid temporary use permit issued by the city.

CP at 160. The Church did not obtain a valid permit before hosting Tent City
4. Under the contract’s clear language, the Church breached this contract.

The Church argues to limit the contract effect to 2004. It points to
section 3 of the contract, which reads, [Tent City] shall promptly vacate the
Property no later than 40 days after August 14, 2004? and which allows the
Church to ?submit an application to maintain Tent City 4 at the Property for
an additional 60 days, provided that a valid city permit is issued . . . .? Id. It
also cites the first sentence of the contract: ?THIS AGREEMENT FOR
TEMPORARY USE OF CITY PROPERTY (?the Agreement?) is hereby
executed . . . .? Id. at 159. It also argues that section 2 is time-limited
because it begins with: [Tent City’s] use of the Property pursuant to this

No. 80588-1
Agreement is expressly subject to the following conditions . . . .? Id. at 160
(emphasis added). [The Property?] means the park, id. at 159, so section 2
must apply only to the park.

These arguments fail because they require the court to entirely
disregard section 2 of the contract and courts avoid such rewriting of
contracts. Colo. Structures, Inc. v. Ins. Co. of the W., 161 Wn.2d 577, 588,

The Church also argues we find the contract ambiguous and construe
the contract against the City, as drafter. However, the contract expressly
provides otherwise: ?No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language.? CP at 167. The contract is not ambiguous and the promise at issue is section 2: ?church sponsor(s) may jointly submit an application to locate a future Tent City at some other church-owned location, but . . . must agree not to establish, sponsor or support any homeless encampment within the City of Woodinville without a valid temporary use permit issued by the city.? CP at 160. This is simple and clear; it is not ambiguous. The parties obviously considered a future Tent City stay, and the Church breached by not obtaining ?a valid

No. 80588-1
temporary use permit.?

Though the Church breached, it alternatively argues that such breach was justified. On this theory, the City had a duty to accept and process the Church?s permit application. When the City refused the permit application, citing the moratorium, the City breached that duty.

If a party materially breaches a contract, the other party may treat the breach as a condition excusing further performance. Colo. Structures, 161 Wn.2d at 588. Under the agreement, the Church had the duty to apply for a permit and the City had a corresponding duty to accept and process. All parties to a contract have duties of good faith and fair dealing. Metro. Park Dist. v. Griffith, 106 Wn.2d 425, 437, 723 P.2d 1093 (1986). When the City rejected the Church?s application without even considering it, the Church was excused from full compliance. Though the Church did not provide sufficient processing time, as also required by the 2004 contract, this does not excuse the City?s refusal to process the permit application, especially since the City actually had time to hold a public hearing.

Under the contract?s clear terms, the Church promised not to host Tent City 4 until it obtained a permit, a promise it broke. Since the City would not

No. 80588-1
process the Church?s permit application, the Church was excused from its
performance under these unique circumstances.

Conclusion

The City violated the Church's constitutional rights under article I, section 11 when it refused to process the Church's permit application based on a total moratorium on temporary use permits in the area. Rather than seeking to impose reasonable conditions on the Church's project to protect the safety and peace of the neighborhood, the City categorically prevented the Church from exercising what the City concedes is religious practice. We therefore reverse the Court of Appeals.

AUTHOR:
Justice James M. Johnson

WE CONCUR:
Chief Justice Gerry L. Alexander
Justice Charles W. Johnson
Justice Barbara A. Madsen
Justice Susan Owens
Justice Mary E. Fairhurst
Justice Debra L. Stephens

No. 80588-1