FOR IMMEDIATE RELEASE
September 18, 2018

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What: UC Berkeley Report Release
Where: Pioneer Courthouse Square, 701 SW 6th Ave. Portland, OR
When: September 18, 2018 at 4pm

THE POLICY ADVOCACY CLINIC AT UC BERKELEY SCHOOL OF LAW RELEASES CALIFORNIA BUSINESS IMPROVEMENT DISTRICTS REPORT..HOMELESS EXCLUSION DISTRICTS

The Policy Advocacy Clinic at UC Berkeley School of Law conducted a study for the Western Regional Advocacy Project (WRAP) to understand the effects Business Improvement Districts (BIDs) have on houseless communities in California.

Patrolling and controlling our public spaces, sidewalks, streets, and parks, Business Improvement Districts (BIDs) are privatizing our downtowns and main thoroughfares. Our public spaces are becoming corridors and shopping centers that are welcoming consumers with open arms and excluding everyone else. Most particularly impacted by this emerging trend are the houseless communities that see areas to rest and sleep, free from harassment and criminalization, shrinking.

A BID is a special, legal subdivision of the city, with the legal authority to create their own districts, effectively claiming ownership over neighborhoods. The city collects assessments (taxes) from property owners, including city property and public spaces within the district, and then distributes that money to the BID. The BIDs can use those funds however they see fit to serve businesses within the district with little to no public oversight.

This study "Homeless Exclusion Districts: How California Business Improvement Districts Use Policy Advocacy and Policing Practices to Exclude Homeless People from Public Space," is the first of its kind and contains groundbreaking research on how BIDs impacts our local communities and reflect the impacts of BIDs across the country. The report analyses the several ways in which current BID policy and policing practices violate California law and infringe on the legal rights of homeless people. The UC BerkeleyLaw Policy Advocacy Clinic surveyed approximately 189 BIDS in 69 of California's largest cities to study the relationship between BIDs and houseless people. Clinic student Shelby Nacino states "Our research shows that BIDs have been successful in pressing state and local lawmakers to criminalize

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homelessness.The growing number of BIDs since the legislature gave them greater authority and autonomy in 1994 correlates strongly with a striking increase in anti-homeless laws."

The study found that "BIDs violate California law when they spend property assessment revenue on policy advocacy… BIDs may violate additional state laws when they spend assessment revenue collected from public properties within their districts on policy advocacy…. BIDs and their agents may violate state, federal, and international law through their policing practices, including the infringing on the legal rights of homeless people."

BIDs have been at the forefront of the criminalization of homelessness, gentrification, and displacement of poor people across the country. In the Bay Area, we see and experience the backlash of BIDs' influence on public policy, privatization of public spaces and policing every day. Unfortunately, the repercussions of BIDs are visible not just in the Bay Area. Benjamin Dunning from Denver Homeless Out Loud stated that business districts in Denver started to take sections of sidewalk away. "This was public space, and they were offering it up to private business... The business improvement district made environmental changes to make it more difficult for homeless people to exist in that area." BIDs are privatizing public space across the country and with privatization comes policing, criminalization and displacement of the houseless, buskers, street vendors and the local poor.

"BIDs will go Block by Block to ensure that every sidewalk, street, and park serve to benefit the businesses that are in the district. Public Space has become nothing more than the hallways of a shopping mall and if you are in that hallways you better be there to shop, or someone might chase you out." says Paul Boden of WRAP.

With the release of this study "Homeless Exclusion Districts: How California Business Improvement Districts Use Policy Advocacy and Policing Practices to Exclude Homeless People from Public Space," we hope to bring greater awareness to how our shiny new shopping spaces are created, and what goes into their creation--mainly our tax dollars and our freedom.

EXECUTIVE SUMMARY

BUSINESS IMPROVEMENT DISTRICTS ("BIDs") are private entities funded by local property assessments that play an increasingly large role in managing public space in California cities. First authorized by state law in the 1960s to help revitalize struggling urban areas, BIDs have grown considerably in number and influence, especially since 1994 when the State Legislature reduced public oversight of BIDs and expanded their assessment and spending authority. Today, approximately 200 California BIDs collect hundreds of millions of dollars annually in compulsory property assessment revenue, which they spend on a wide range of activities.

Researchers and policymakers have paid little attention to the rise of BIDs and their growing influence on municipal and state affairs. BIDs typically are located in downtown areas where businesses are concentrated. These same areas, especially in California, often have a high concentration of homeless people, including many people who are unsheltered. The interests and activities of BIDs and homeless people intersect and conflict in several important ways, including in the areas of public policy, policing practices, and social services.

In this report, we share research findings about the relationship between California BIDs and homelessness. We conducted a literature review, studied municipal laws that target or disproportionately impact homeless people, researched the legal framework authorizing BIDs, and surveyed BIDs in California's 69 largest cities. To help interpret the data from these sources, we conducted in-depth case studies of eleven BIDs in the cities of Berkeley (2), Chico, Los Angeles, Oakland (2), Sacramento (2), San Diego, and San Francisco (2), including analysis of public records, interviews with BID officials, and surveys and interviews of homeless people.

Our key findings are that BIDs exclude homeless people from public spaces in their districts through policy advocacy and policing practices. BID involvement in social services is experienced by homeless people as an additional form of policing, surveillance, and harassment.

POLICY ADVOCACY: BIDs use property assessment revenue, including from public properties, to advocate for the enactment, preservation, and strengthening of local and state laws that punish people experiencing homelessness for engaging in life-sustaining activities that they have no choice but to undertake in public, such as sitting, resting, sleeping, and food sharing ("anti-homeless laws"). The proliferation of anti-homeless laws correlates strongly with the increase in the number and authority of BIDs since 1994.

POLICING PRACTICES: BIDs coordinate closely with local police departments—and sometimes use their own private security—to enforce anti-homeless laws and otherwise exclude or remove homeless people from their districts. In prior research, we found that such enforcement in California is growing and is increasingly based on homeless people's status rather than their behavior. The rising enforcement of anti-homeless laws also correlates with the growing number of BIDs statewide.

SOCIAL SERVICES: While advocating for anti-homeless policies and enforcing anti-homeless laws, some BIDs work with homeless service providers and refer homeless people to services. Homeless people often experience such "help" as another form of policing, surveillance, and harassment. Considered in the context of their anti-homeless policy advocacy and policing practices, BID involvement in social services contributes to the exclusion of homeless people from business districts.

Our findings raise several legal concerns. When BIDs spend property assessment revenue on local and statewide policy advocacy, they may violate California law. BID spending on policy advocacy with revenue from assessments of publicly owned properties raises special statutory and constitutional concerns. Further, BID policing practices may violate the legal rights of people experiencing homelessness and expose BIDs to criminal liability.

Homelessness has reached crisis proportions in many California cities, and decades of government divestment from affordable housing and other public services is a leading cause. Like state and local lawmakers, business owners have a legitimate interest in helping to address the crisis. But our findings suggest that BID policy advocacy and policing practices to date have exacerbated the problem by excluding homeless people from public places without addressing the causes and conditions of homelessness. Several recommendations flow from our findings and legal concerns:

First, **THE STATE LEGISLATURE** should amend state laws that grant BIDs broad authority to collect and spend property assessment revenue and to operate largely independent of government oversight. Lawmakers should:

(1) prohibit BIDs from spending property assessment revenue on policy advocacy and policing,

(2) repeal BID authority to spend property assessment revenue on security (and thereby policing), and

(3) restrict BID authority to assess revenue from publicly owned properties.

Second, **CITY GOVERNMENTS** should provide more careful scrutiny and regulation of BID activities within their jurisdictions. Existing state laws could be strengthened, but cities can act immediately to:

(1) reject BIDs that propose to engage in policy advocacy or policing practices,

(2) refuse to collaborate with BIDs that violate the rights of homeless people, and

(3) disestablish BIDs that spend assessment revenue on policy advocacy and policing.

Third, **BIDs** should have greater accountability to all district residents and visitors. The state and cities should act to curb BID activities that harm homeless people, but BIDs should:

(1) stop engaging in anti-homeless policy advocacy,

(2) end policing practices that target or disproportionately impact homeless people, and

(3) collaborate with homeless people, advocates, and service providers.

IT TAKES A VILLAGE

Practical Guidance for Authorized Homeless Encampments

SEATTLE U
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HOMELESS RIGHTS
ADVOCACY PROJECT

It Takes a Village

Practical Guidance for Authorized Homeless Encampments

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EXECUTIVE SUMMARY

In countless cities across the United States, emergency shelters and transitional housing have been inadequate to meet the needs of a growing number of people experiencing homelessness.[1] Existing shelters and transitional housing often lack space to accommodate the sheer number of people needing shelter, resulting in overcrowding inside and thousands of people left to seek other options outside. Many people are excluded from shelters based on gender identity, family makeup, criminal histories, or a lack of documented identification. Still others avoid shelters based on past experiences of harassment, requirements to participate in religious activities, or unsanitary conditions. As a result, shelters are often functionally inaccessible to vast numbers of people experiencing homelessness. Because encampments can pose many of these same barriers, they must do more than replicate the flaws of other shelter systems if encampments are to be a meaningful alternative.

Several cities have implemented authorized encampments[2] as interim shelter options for people experiencing homelessness. An authorized encampment is a community of unhoused people lawfully living outdoors on property owned by a city, university, church, or other entity, and operated by a body with oversight capabilities and access to human service providers. Each element can vary by encampment model—for example, some encampments begin as unauthorized sites and later achieve permitted status by city ordinance. In those instances, communities develop prior to the encampment becoming sanctioned by the city, as opposed to communities created by application or by compulsory relocation. While the specifics differ, each case study discussed herein shares four common features of authorized encampments: (1) a community of unhoused people, (2) present by permission of the landowner or local ordinance, (3) on land owned by someone else, (4) with formal operating and governance structures aimed at maintaining the encampment and rehousing the residents.

Encampments demonstrate several benefits for people experiencing homelessness:

- **Safety and Security.** People living outdoors alone, in pairs, or in unauthorized encampments are often subjected to "sweeps": government action enforcing laws that prohibit public camping. During sweeps, homeless people are forced to clear out of the area and whatever belongings they cannot carry are often seized or

[1] This brief will primarily refer to people experiencing homelessness using person-first language to emphasize that homelessness is temporary experience, not an identity or status more significant than personhood. Common terminology like "the homeless" and even "homeless people" can be dehumanizing, emphasizing one's current living arrangements as a person's sole identity. With that concern in mind, this brief will refer to "people experiencing homelessness," "unhoused people," and occasionally "homeless people" interchangeably when necessary for sentence flow and clarity, with the intention that readers will understand that homelessness is an experience shared by encampment residents, but it is not their sole identity.

[2] Cities vary in terminology employed to describe authorized homeless encampments. This brief will at times refer to "authorized," "permitted" and "sanctioned," and "tent cities" and "encampments" interchangeably, as consistent with the terminology used in a given case study.

destroyed. Besides disrupting the already chaotic life of an unhoused person, sweeps can violate constitutional guarantees against unreasonable seizures, punishment based on status, and due process. Beyond sweeps, people living on the streets face harassment and even violence by police and passersby, creating a pervasive and persistent sense of extreme uncertainty. Encampments can offer some degree of safety and security for residents by virtue of enclosed spaces patrolled by resident security teams, assurance that their belongings can remain in a specific place all day, and certainty regarding where to sleep the next night.

- **Community.** Homelessness can be an extremely isolating experience, and chronically homeless people sometimes describe the experience as living on the outskirts of society. Living in a community of people with shared experiences can help to erode that stigma over time and create space for supportive relationship-building.
- **Autonomy.** As opposed to shelter environments with strict directives about when to come and go and how to behave while inside, many encampments are governed by group living agreements developed by residents themselves, allowing some degree of self-determination for people to develop the rules by which they live. The simple fact of having a private space (even if only a tent) to oneself and the freedom to come and go as one chooses can have a dignity-restoring effect for people who have experienced the dehumanizing conditions of shelters and living on the street.
- **Stability.** Many housing-first models have demonstrated that providing safe, consistent shelter can be a positive step for people dealing with chemical dependency, mental illness, poor physical health, and other factors that contribute to homelessness. Stable living arrangements can eliminate (or at least reduce) some of the stress of being unhoused, allowing people to focus on rehabilitation.
- **Health.** Sanctioned encampments offer additional benefits like efficient service delivery to a centralized group of people. This centralization allows housing navigators and other caseworkers to do their jobs more effectively than when meeting with clients sporadically. Permitted encampments can also lessen health care burdens when homeless people can live in sanitary conditions and see medical professionals regularly, treating chronic illnesses and preventing the spread of communicable diseases.

While many cities have explored authorized encampments as interim solutions to homelessness, implementation has been haphazard because of the dearth of practical guidance. Though each city surely must tailor its approach to the unique local needs, this brief synthesizes some key issues that any city should consider prior to implementing a permitted encampment:

- **Operations.** Encampment governance can be managed by residents, outside specialists, or some combination of the two groups. The governance structure should be clear to all parties and reflect the values and objectives of the particular encampment. Each party involved in operating the encampment—residents,

operating partners, the landowner, and secondary partners like utility providers and social service agencies—should be very clear about their respective duties in relation to one another to minimize uncertainty and conflict. Further, the intended duration for individual residents and for the location of the site will determine many operational features (permanence of structures, necessity of internet and other utilities, governance structure) and should therefore be identified at the outset.

- **Legal.** Given that cities often authorize transitional encampments by ordinance, legal considerations are crucial. For example, officials should carefully consider zoning laws to allow for an appropriate number of encampments throughout the municipality. Contracts between the landowner and encampment operator should contemplate liability and indemnification. Finally, encampment rules and regulations should be drafted and promulgated to ensure residents' rights are understood and respected.
- **Messaging.** Any proposed authorized encampment will garner questions and concerns from the public, and cities should be prepared to answer each inquiry with candor. Public relations efforts should underscore benefits to public health and public safety and dispel misconceptions about potential hazards associated with encampments. Cities should also emphasize the potential for effective service delivery via encampments, given that existing alternatives have not rehoused many people in the community. And all messaging should clearly acknowledge that authorized encampments are not themselves a solution to homelessness, cannot be used to justify complacency or increased criminalization of homelessness, and must be paired with continuing efforts towards permanent solutions.

This brief examines several case studies demonstrating common challenges and opportunities posed by different encampment models: encampments hosted by universities, operated by third-parties, self-governed, and compelling participation. Next, this brief synthesizes the most important considerations any city should examine when developing a plan for an authorized encampment. Finally, this brief concludes with overall recommendations about how to effectively implement a permitted encampment to maximize the utility of this interim approach to solving homelessness.

Key Recommendations

1. **Research how similar communities have enacted authorized encampments.** Many communities are opening sanctioned encampments through a variety of approaches. Municipalities should work together and share insights so that a new city considering creating an authorized encampment can benefit from prior experience .

2. **Identify clear and specific goals.** Is the goal of the encampment to respond to a specific health crisis? To create an intentional community? To create additional capacity for emergency shelters? What subgroup of unhoused people is the target population? The purpose of the encampment must be specific because it will not only inform how to approach operations, legal obligations, and messaging, but also how to measure success. Incorporate the fundamental goals of the encampment into evaluations of its effectiveness.

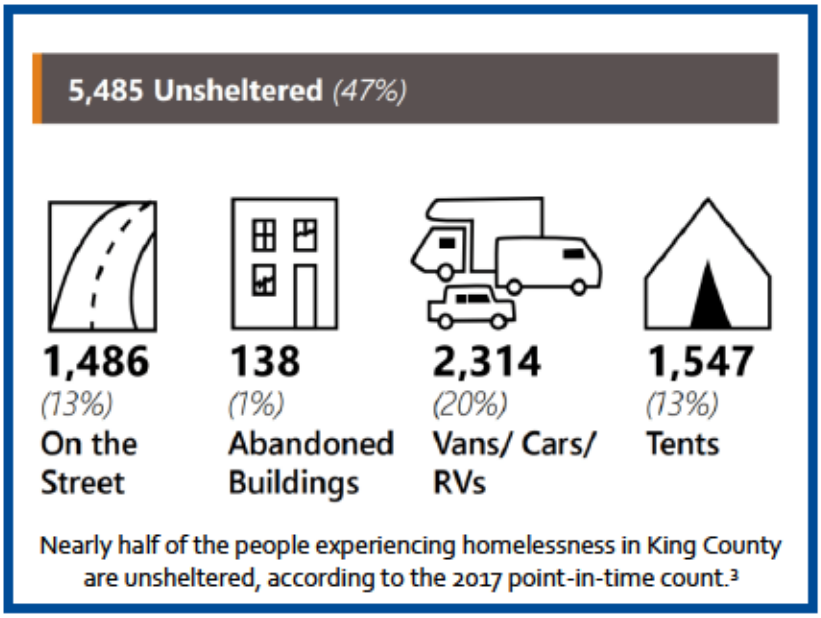
3. **Approach those goals realistically and acknowledge their shortcomings.** Rehousing people experiencing homelessness takes time, and cities should take care not to set unattainable benchmarks. Cities should also resist overselling the merits of sanctioned encampments because they can functionally exclude people in many of the ways shelters do. Cities should not punish individuals for whom authorized encampments are not a viable option.

4. **Set clear expectations and follow through consistently.** Operations will run more smoothly when all parties understand their own responsibilities. Clear standards and procedures can also minimize conflict within the encampment as well as between it and the surrounding community.

5. **Genuinely commit to whatever community structure has been selected.** The dynamics and priorities of the encampment may change over time, as may community support for the endeavor. Any alterations to rules or performance measures should be in service to the encampment's underlying mission.

INTRODUCTION

In recent years, communities across the country have experienced drastic increases in the number of people experiencing homelessness, and existing low-income housing and shelter facilities have been inadequate to meet the needs of the growing population.[3] For example, in King County, Washington, the most recent point-in-time count showed nearly twelve thousand people experiencing homelessness in January 2017.[4] Nearly half of the people counted were left unsheltered, once all the beds were full in existing emergency shelters.[5] Of the 5,485 unsheltered people in that county, most were staying in vehicles, on the street, or in tents.[6] In addition to the lack of space available in emergency shelters and transitional housing programs, these options are often functionally inaccessible for many people experiencing homelessness.[7] As a result, many unhoused people have begun living in



Nearly half of the people experiencing homelessness in King County are unsheltered, according to the 2017 point-in-time count.[3]

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[3] *See, e.g.*, All Home, Count Us In: Seattle/King County Point-In-Time Count of Persons Experiencing Homelessness 8 (2017) http://allhomekc.org/wp-content/uploads/2016/11/2017-King-PIT-Count-Comprehensive-Report-FINAL-DRAFT-5.31.17.pdf [hereinafter, Count Us In] (illustrating that of the nearly twelve thousand people experiencing homelessness in King county, 5,485 were left unsheltered, according to that county's most recent point-in-time count). *See also*, National Law Center on Homelessness and Poverty, Homelessness in America: Overview of Data and Causes (2015), https://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet (presenting data demonstrating significant increases in homelessness since the 2008 economic recession).

[4] All Home, Homelessness in King County, (Jan. 27, 2017) http://allhomekc.org/wp-content/uploads/2017/05/2017-Count-Us-In-Infographic.pdf. It should be noted that point-in-time counts assuredly underestimate the actual number of unhoused people because such data is difficult to collect. *See* Sara Rankin, *The Influence of Exile*, 76 Md. L. Rev. 4, 44 n. 227 (2016); Paul Boden, *Homeless Head Counts Help No One*, SF Gate (Feb. 5, 2013), http://www.sfgate.com/opinion/openforum/article/Homeless-head-counts-helpno-one-4254191.php ("At best, this method is an elementary and ineffective way to determine how many people exist without housing.").

[5] Count Us In, *supra* note 3.

[6] *Id.*

[7] For example, shelter rules requiring identification, excluding people with criminal records, or dividing families based on gender can have the effect of excluding people from the outset. Others avoid shelters because of unsafe or unsanitary conditions, or policies that discriminate against gay, lesbian, and trans individuals. For more information on barriers to accessing shelters, see Suzanne Skinner, Seattle University Homeless Rights Advocacy Project, Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter (Sara Rankin, ed., 2016).

outdoor communities, or homeless encampments, for safety in numbers and other group support mechanisms.[8]

An authorized encampment is a community of unhoused people lawfully living outdoors on property owned by a city, church, or university, often operated by some combination of camp residents and partner organizations with human services expertise.[9] Cities, churches, and other entities have explored authorized encampments as interim solutions to homelessness for at least the past ten years but have often done so haphazardly because guidance on how best to pursue them is wanting.

> In communities that lack sufficient shelter, authorized encampments can offer safer, more stable temporary living arrangements than other alternatives.[11]

Authorized encampments are not themselves permanent solutions to homelessness.[10] But, in communities that lack sufficient shelter and affordable housing, authorized encampments can offer safer, more stable temporary living environments than other alternatives such as living alone or in pairs in other public spaces.[11]

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[8] *See* Samir Junejo, Seattle University Homeless Rights Advocacy Project, No Rest for the Weary: Why Cities Should Embrace Homeless Encampments (Sara Rankin & Susanne Skinner eds., 2016).

[9] City of Seattle, *City-Sanctioned Encampments*, Homelessness Response, https://www.seattle.gov/homelessness/sanctioned-encampments [hereinafter *Seattle City-Sanctioned Encampments*]; Zachary Clark, *How Pacific Northwest Cities Have Made Space for Homeless Encampments*, San Francisco Public Press (Mar. 3, 2017), http://sfpublicpress.org/news/2017-03/how-northwest-cities-have-made-space-for-homeless-encampments.

[10] Nor do homeless rights advocates uniformly embrace homeless encampments as a means to address homelessness. For example, consultant Barbara Poppe, who was hired to develop Seattle's plan to address homelessness in 2016, described encampments as "a real distraction from investing in solutions." Daniel Beekman, *Stop Opening Tent Cities, Homelessness Expert Tells Seattle Leaders*, The Seattle Times (Feb. 26, 2016), https://www.seattletimes.com/seattle-news/politics/stop-opening-tent-cities-homelessness-expert-tells-seattle-leaders/. *See also* United States Interagency Council on Homelessness, Ending Homelessness for People in Encampments: Advancing the Dialogue 2 (2015) (expressing concern that costly homeless encampment operations can prevent funding from going directly to permanent housing and "distract communities from focusing on" permanent solutions); J. D. Morris, *Sonoma County to Shut Down Roseland Homeless Encampments, Connect Residents with Services*, The Press Democrat (Feb. 25, 2018) ("Activists are trying to secure another Santa Rosa location for an authorized encampment, but the idea faces resistance from city policymakers who view it as out of step with their focus on getting homeless people into shelter or long-term housing."), http://www.pressdemocrat.com/news/8020042-181/sonoma-county-to-shut-down; *but see generally* Junejo, *supra* note 8. Other homeless rights advocates have cautioned overselling authorized encampments as solutions to homelessness, criticizing "reclassif[ication] of those living in sanctioned encampments as residing in emergency shelter" for the purposes of a point-in-time count as "useless legerdemain . . . trickery, cunning, artifice, deceit and deception . . . rebrand itself, calculated to reassure us of progress while the homeless crisis steadily deepens and more people die year after year." Tim Harris, *Director's Corner: "Without Shelter, People Die" Isn't Just a Hyperbolic Slogan*, Real Change News (Aug. 2, 2017).

[11] Telephone Interview with Paul Boden, Executive and Organizing Director, Western Regional Advocacy Project (October 31, 2017). Because "theft, sweeps, and loss of property are a part of life for homeless folks," it is a vast improvement for an authorized encampment resident to be able to leave for the day, certain that his belongings will still be there when he returns. Hanna Brooks Olson, *Access Denied: What Happens When Barriers are Lifted*,

Unfortunately, traditional shelter and transitional housing services in many cities cannot meet the needs of their local homeless population due to insufficient funding, barriers to entry, inadequate protections or services, or some combination of the above.[12] And, in the absence of long-term solutions to homelessness and the affordable housing crisis, "homeless people need a place to sleep, shelter themselves, and store belongings."[13] Authorized encampments provide an alternative temporary living environment with some safety and security[14] and a sense of community[15] and, potentially, efficient access to supportive services to help residents transition into permanent housing.[16] Centralizing a group of unhoused people together also allows for more efficient service delivery for basic needs like food, running water, and restrooms. Although homeless encampments are not a new invention,[17] *sanctioned* encampments are a relatively recent trend,[18] representing many cities' legitimization of this interim option for people experiencing homelessness, making it easier for people living in these environments to re-establish a sense of self-determination and stability crucial to becoming rehoused.

Real Change News (June 28, 2017), http://realchangenews.org/2017/06/28/access-denied-what-happens-when-barriers-are-lifted [hereinafter Olson, *Access Denied*].

[12] Julie Hunter, Paul Linden-Retek, Sirine Shebaya, and Samuel Halpert, National Law Center on Homelessness and Poverty, Welcome Home: The Rise of Tent Cities in the United States 10 (Hope Metcalf, Eric Tars, Heather Maria Johnson eds., 2014); Junejo, *supra* note 8 at 3; Skinner, *supra* note 7.

[13] National Law Center on Homelessness and Poverty, Homelessness, Tent City USA 12 (2017), https://www.nlchp.org/Tent_City_USA_2017 [hereinafter Tent City USA].

[14] Unhoused people are often subjected to laws that prohibit public camping and criminalize engaging in basic life-sustaining activities like sitting, standing, sleeping, urination, and defection in public places. *See* Justin Olson & Scott MacDonald, Seattle University Homeless Rights Advocacy Project, Washington's War on the Visibly Poor: A Survey of Criminalizing Ordinances and Their Enforcement (Sara Rankin, ed., 2015). Cities often "sweep" unauthorized encampments instead of or in addition to citing people for public camping, forcing people to move, and often seizing and destroying whatever belongings the individuals are unable to carry with them. *See* Junejo, *supra* note 8 at 15–21. One of the major benefits authorized encampments can offer is the guarantee that one can return to the same place to sleep night after night and that one's belongings can remain secure there.

[15] Gretchen Schultz, *Vendor Profile: Dennis*, Real Change (Mar. 7, 2018), http://www.realchangenews.org/2018/03/07/vendor-profile-dennis. ("'Anybody could become homeless. But they shouldn't stay there. I just hate to see the people laying and sleeping on the sidewalk. The tent city was a big step up from that itself, just being an organized group. And that must be because I like being around other people . . . It'd be nice if Seattle sanctioned more urban encampments like that.'")

[16] Olson, *Access Denied*, *supra* note 11.

[17] *See* Tent City USA, *supra* note 13 at 7 (noting a 1,342% increase in "unique homeless encampments reported in the media" from 2007 to 2016).

[18] Only 4% of encampments are legal. *Id.*

Operational structures for encampments can vary. Some permitted encampments have evolved from unauthorized communities that form group living agreements while unsanctioned (herein called "organically-seeded encampments"); these communities often have the desire and capacity to self-manage many of their operations once they achieve permitted status.[19] Operating partners for such encampments might be less involved in the day-to-day operations or decision-making, but could facilitate secondary partnerships with utilities, waste management, housing navigators, or other service providers.

This brief compares a variety of encampment models:

- Encampments hosted by universities;
- Encampments operated by third-party entities;
- Self-governed encampments; and
- Compulsory encampments.

Other permitted encampments have been formed after a city has designated an authorized encampment site, and thus require a partner organization to actually operate the site, managing logistics as well as enforcing rules and regulations (herein called "officially-seeded encampments").[20] Officially-seeded encampments have been criticized by advocates concerned about cities authorizing encampments as repositories for people getting swept from their unauthorized camping sites, forcing relocation rather than allowing people to live in encampments by choice; this approach defeats the purpose of preserving autonomy in authorized encampments.[21] However, organically-seeded encampments may be especially vulnerable to problems with oversight or inadequate supportive services.[22] Any encampment engaging residents in its governance or management faces a difficult tension: it must retain strong, experienced leaders within the community, but its ultimate goal is to move those individuals into permanent housing, thereby removing the strongest candidates from self-governance roles.[23]

This brief centralizes best practices developed by some host sites, operating partners, encampment leadership, and governmental actors on the West Coast, given the alarming increase in homelessness in this part of the country since 2015.[24] Part I examines several case studies selected for variety and comparison of different encampment models: encampments

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[19] *See, i.e.*, Dignity Village and Camp Second Chance, *infra* Part I(C).
[20] *See, i.e.*, San Diego, Cal. and Tacoma, Wash., *infra* Part I(D).
[21] Interview with Paul Boden, *supra* note 11; Telephone Interview with David Baum, Community Advocate (October 24, 2017).
[22] Telephone Interview with Polly Trout, Executive Director, Patacara Community Services (October 12, 2017); Telephone Interview with Krystal Koop, Community Advocate (November 2, 2017).
[23] Interview with Polly Trout, *supra* note 22.
[24] Christopher Weber and Geoff Mulvihill, *America's Homeless Population Rises for First Time in Years*, ASSOCIATED PRESS (Dec. 7, 2017), https://www.apnews.com/47662ad74baf4bb09f40619e4fd25a94. While the national homeless population increased by about 1 percent since 2016—the first increase since 2010—increases have been generally much higher in West Coast cities like Seattle and Los Angeles. Notably, the number of unsheltered people has risen disproportionately faster than compared to the number of people experiencing homelessness overall. *Id.*

hosted by universities, encampments operated by third-party entities, self-governed encampments, and compulsory encampments. The selected case studies are by no means exhaustive but represent a range of operational approaches that demonstrate some of the most significant hurdles and advantages of encampments.

Based on insights gleaned from the case studies, Parts II-IV discuss significant opportunities and challenges that should be considered by any city or entity planning to implement an authorized encampment. Part II details operational issues like duration and delegating duties. Part III discusses legal issues including liability and residents' rights. Part IV outlines the major points for messaging or public relations efforts, like the benefits of public health and safety, efficiency, and community enrichment. The brief concludes with general observations and critical recommendations for advocates of permitted encampments.

I. Case Studies

The following case studies demonstrate a variety of operational, legal, and social challenges and opportunities evident in authorized encampments in Seattle, Washington; Tacoma, Washington; Portland, Oregon; and San Diego, California. Although each encampment is unique, the selected sites can be broadly categorized based on their most significant distinguishing features. First, encampments *hosted by universities* pose unique opportunities for community engagement—both with pedagogical opportunities and with additional stakeholders to address in any messaging efforts. Second, encampments *operated by a third-party entity* (other than the landowner or encampment residents themselves) enjoy valuable expertise and oversight, but at the cost of removing some degree of autonomy from the encampment residents. Third, *self-governed* encampments emphasize dignity and self-determination by vesting decision-making power in the encampment residents, but they are vulnerable to unethical leadership and uncertain processes. Finally, encampments *compelling participation in response to public health emergencies* represent a locality's recognition of the health risks associated with homelessness, but can force people experiencing homelessness into compulsory participation without meaningful alternatives.

A. University Hosts

Tent City 3 (TC3) has operated in different locations as a "democratically self-governed encampment offering tent shelter and community solidarity" since 2000.[25] TC3 operates under the umbrella organization Seattle Housing and Resource Effort (SHARE), a grassroots coalition of homeless and formerly homeless individuals working together to "eradicate homelessness, educate the community, and empower homeless people."[26] Each of the major four-year universities in Seattle has hosted TC3 at least once: Seattle University in February 2005; Seattle Pacific University in winter 2012–2013, 2015–2016, and 2017–2018; and University of

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[25] Jessica Bielenberg, et al., University of Washington School of Public Health, TC3@UW: EVALUATION REPORT WINTER 2017 3 (Mar. 9, 2017) [hereinafter TC3@UW] (on file with author).

[26] *About Us*, SEATTLE HOUSING AND RESOURCE EFFORT/WOMEN'S HOUSING EQUALITY AND ENHANCEMENT LEAGUE, http://www.sharewheel.org/aboutus. SHARE's objectives include increasing visibility of homeless people in order to educate the community about the realities of homelessness. To that end, the organization devised a system of rotating tent city locations every 90 days to bring awareness to various neighborhoods around Seattle. *Id.*

Washington in winter 2016–2017. Churches typically host TC3 for ninety-day periods when the encampment is not located at a university.[27] Students were the primary force pushing for each university to host TC3.[28]

In each instance that TC3 and universities agreed to partner together, the entities detailed their respective responsibilities in a memorandum of understanding (MOU). Critical provisions included dates of operation, respective obligations for each entity, joint commitments, early termination rights, denying access to campus for TC3 participants or SHARE/WHEEL representatives who do not comply with the agreement, and survival of obligations.[29] Obligations of the host university included permitting use of facilities and utilities (space, water, fencing, electricity, garbage and recycling services), specific vehicle access points, and indemnification from third party suits for injury or damage caused by negligence of SPU representatives.[30] SHARE/WHEEL's obligations included ensuring secure checkpoints staffed by TC3 residents, construction and maintenance, enforcing the TC3 Code of Conduct, responsibility for damages, insurance coverage, and indemnification from third party suits for injury, damage, or loss caused by TC3 and SHARE/WHEEL representatives.[31]

Besides the challenges and benefits associated with operating an authorized encampment on city land, university hosts must consider other obstacles and opportunities inherent to the institutions. For example, universities face additional constituent groups for public relations beyond the neighborhood residents and nearby businesses. Students, parents, alumni, faculty, and staff all have an interest in a university's decision to host a homeless encampment; taxpayers also constitute stakeholders in a public university. Universities' pedagogical roles also present opportunities and potential pitfalls. Students can gain practical experience in the fields of medicine, law, and sociology by working directly with encampment residents. However, universities should scrutinize whether they are

Photo credit: Seattle Pacific University.[28]

[27] For scoping purposes, this brief does not address considerations unique to encampments hosted by faith-based entities. For information on religious land use and homeless services, see Kate Means, Seattle University Homeless Rights Advocacy Project, FAITH IS THE FIRST STEP: FAITH-BASED SOLUTIONS TO HOMELESSNESS (Sara Rankin ed., 2018).

[28] Telephone Interview with Joe Orlando, Director of the Center for Jesuit Education, Seattle University (September 28, 2017); Ana Marie Cauce, *UW to Host Tent City 3 for 90 Days in Winter 2017*, UNIVERSITY OF WASHINGTON OFFICE OF THE PRESIDENT (June 8, 2016), http://www.washington.edu/president/2016/06/08/uw-to-host-tent-city-3-for-90-days-in-winter-2017/; *About SPU's Homeless Initiative*, ENGAGING HOMELESSNESS, http://spu.edu/engaging-homelessness/about.

[29] Tent City 3 Contract with SPU for 2014–2015 [Appendix].

[30] *Id.*

[31] *Id.*

asking too much of encampment residents by putting them in the role of teachers. Likewise, residents of the encampments should carefully consider how this educational experience could be structured to be beneficial to the encampment residents themselves.[32]

The university-hosted case studies that follow demonstrate several benefits and obstacles associated with situating authorized encampments in a collegiate environment. While each university took different approaches to bringing TC3 to its campus, all shared common considerations: persuading their constituencies to allow the partnership, deciding on location and duration of the stay, determining legal obligations and operational duties, and designing educational opportunities. Overall, the universities and encampment residents found that the partnerships had humanizing and community-building effects.

1. *Seattle University*

Dates of Operation	**February 2005 (one month)**
Capacity	**60–80 people**
Location	**Tennis courts, southeast corner of campus**

Seattle University (SU) was the first university in the country to host a tent encampment when it invited TC3 to campus in February 2005.[33] Students in the university's graduate program in Educational Leadership studied tent cities and saw an opportunity for the school's educational programming to intersect with its Jesuit mission by hosting a tent city on campus.[34] Over several months, the university and the leadership of TC3 planned and negotiated location, duration, and the utilities and services the school would provide.[35]

As the university-encampment partnership was such a new innovation, the parties agreed to a stay lasting one month. A court order allowed private entities to host homeless encampments for a maximum of 90 days, and the TC3 leadership felt that moving was such a considerable undertaking, it would only be worthwhile if they could stay for at least a month in the new location.[36] TC3 was set up on the school's tennis courts because encampment leadership had emphasized the importance of hard surfaces (less mud during Seattle's rainy winter months) and fencing (for the residents' safety).[37] The tennis courts also had the advantage of lighting—the school kept the lights on later than they would for the courts'

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[32] *See* TC3@UW, *infra* note 107 (recommending designing classes specifically for the benefit of encampment residents, like resume writing or job interviewing, during TC3's next stay at University of Washington).
[33] Interview with Joe Orlando, *supra* note 28. *See also* Tan Vinh, *Homeless Set Up Camp Near Seattle University Campus*, Seattle Times (Jan. 30, 2005, updated Jan. 29, 2005), https://www.seattletimes.com/seattle-news/homeless-set-up-camp-near-seattle-university-campus/.
[34] Interview with Joe Orlando, *supra* note 28. In fact, religious organizations have a long history of providing services for homeless people, including hosting encampments. *See* Means, *supra* note 27.
[35] Interview with Joe Orlando, *supra* note 28.
[36] *Id.* As university hosting was experimental, SU was careful not to "bite off more than it could chew," and agreed to host for one month. *Id.*
[37] *Id.*

regular athletic use, and the residents appreciated the visibility.[38] Ultimately, "the residents [of TC3] just wanted *space*. Everything else [the university provided] was gravy: electricity, water, meals."[39] The university considered offering other amenities—like showers, library access, even classes for residents—but eventually decided against these extras, careful not to overextend themselves.[40]

> "The residents were often in the role of educators. Students came to see people as people."[43]

TC3 and University leadership structured an integrated relationship for students and residents. Seattle University arranged for three categories of connections between TC3 residents and the university community: educational, community-building, and service.[41] Educational connections included class tours of the camp (within hours and numbers set by camp residents) and panels of speakers discussing their experiences with homelessness.[42] Community-building activities like game nights and a Super Bowl viewing party had a humanizing effect and allowed students and residents to build authentic relationships.[43] The hosting relationship also included a service component: nursing and legal clinics with graduate students in those programs, meals provided by the university's dining services, and fundraising from the local community to cover moving costs like trucks and portable toilets.[44] The university's facilities department even hired a few TC3 residents for temporary jobs, putting a little money in the residents' pockets and providing an employer reference for the future.[45]

The effort was preceded by public relations efforts and messaging to the university's constituents. Prior to hosting, Seattle University sent letters out to parents, students, and alumni, explaining the plan to host and outlining accountability structures to quell concerns.[46] The overwhelming response was positive—people felt it was a good thing for the university to host a homeless encampment and they were glad to hear it was happening.[47] Negative responses were few, but vehement.[48] Negative reactions ranged from alumni pledging never to donate another dollar to the university, parents threatening to "sue if their daughter got raped by a resident," and students complaining of being deprived of a tennis court paid for by their tuition.[49] The university realized that people did not respond well to efforts trying to convince them they were wrong or their concerns were misguided. Rather, detractors were

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[38] The sun sets between 5 and 6 p.m. in Seattle in February. SEATTLE, WASHINGTON, USA—SUNRISE, SUNSET, AND DAYLENGTH, FEBRUARY 2005, https://www.timeanddate.com/sun/usa/seattle?month=2&year=2005.
[39] Interview with Joe Orlando, *supra* note 28 (emphasis by speaker).
[40] *Id.*
[41] *Id.* ("The residents were often in the role of educators. Students came to see people as people.").
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*

more satisfied when SU simply provided them with the public safety plan and a description of how the university planned to address concerns.[50]

> Seattle studies suggest there is no significant increase in crime associated with authorized encampments.[56]

Similarly, the university notified residents of the neighborhood surrounding the university of the plan to host.[51] The nearby Baptist Church on Cherry Street had hosted homeless encampments, so many neighbors were already somewhat familiar with the concept.[52] Their responses were mostly genuine inquiries about implementation, including duration, who was in charge of security, and what would happen if there was trouble.[53] Some members of the business community were not happy about the university's choice and felt that the school was "bringing an unruly element to the neighborhood unnecessarily."[54] But these concerns proved to be unfounded. No significant "unruly" incidents were associated with the encampment's presence at the university.[55] This outcome is apparently not unique: the most recent evaluation of permanent encampments in Seattle notes that the Seattle Police Department collected data on crime levels around permitted encampments that show these encampments are not associated with any significant increase in crime.[56]

2. Seattle Pacific University

Dates of Operation	**January–March 2012** **December 2014–March 2015** **November 2017–February 2018**
Capacity	**60–80 people**
Location	**Soccer field, northeast edge of campus** **Grassy area in the middle of the central vehicle entrance to campus** **Parking lot, north campus**

Seattle Pacific University (SPU) has hosted TC3 several times, allowing university and camp coordinators to develop curriculum, streamline operations, and build lasting

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[50] *Id.*
[51] *Id.*
[52] Interview with Joe Orlando, *supra* note 28; *see* Means, *supra* note 27.
[53] Interview with Joe Orlando, *supra* note 28.
[54] *Id.*
[55] *Id.*
[56] CITY OF SEATTLE, *Permitted Encampment Evaluation* 10 (June 28, 2017), http://www.seattle.gov/Documents/Departments/HumanServices/AboutUs/Final%202017%20Permitted%20Encampment%20Evaluation.pdf [hereinafter *Permitted Encampment Evaluation*].

relationships.[57] SPU hosted for the first time in winter of 2012, again in 2015 and for the third time in winter 2017–2018.[58]

Over time, SPU learned how the location of the encampment relative to the rest of campus affected the relationships between students and encampment residents. The first time the university hosted the encampment, it was located on a soccer field near the edge of campus.[59] Though many students engaged with encampment residents, interaction was selective and the location at the edge of campus made it easy for many students to completely avoid TC3.[60] The second time SPU hosted, it located the encampment in the university's Tiffany Loop, near the student union and several academic buildings. This more central location allowed students to engage with the encampment more frequently.[61] The third time SPU hosted TC3, it was situated on a central visitor parking lot, surrounded by the university bookstore, academic buildings, university mailing and copying services, and the Center for Applied Learning connected to the School of Business, Government, and Economics.[62]

Map: Seattle Pacific University[59]

Each time SPU has hosted, it has done so for three months, as per SHARE/WHEEL's operational model.[63] Although a Seattle city ordinance now allows authorized encampments to stay at a permitted location for a year or more,[64] TC3 continues to adhere to its older ninety-day rule. This timeframe may have made more sense back in 2012 when the objective was to

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[57] Telephone Interview with Niki Amarantides, Director of the Center for Learning, Seattle Pacific University (October 6, 2017); Jennifer McKinney & Karen Snedker, *From Charity to Change*, 15 CONTEXTS 2 at 80, 81 (2016) [hereinafter *From Charity to Change*]. SPU has also developed general guidance for hosting an authorized encampment. *Hosting a Tent Encampment*, SEATTLE PACIFIC UNIVERSITY, http://spu.edu/engaging-homelessness/hosting-a-tent-encampment.

[58] Interview with Niki Amarantides, *supra* note 57; Mike Wold, *SPU Students Earn an A From Tent City Residents*, REAL CHANGE NEWS (Mar. 14, 2012), http://realchangenews.org/2012/03/14/spu-students-earn-tent-city-residents.

[59] *Campus Map*, SEATTLE PACIFIC UNIVERSITY, http://spu.edu/info/maps/index.asp.

[60] Interview with Niki Amarantides, *supra* note 57.

[61] *Id.*

[62] *Id.*

[63] *Frequently Asked Questions*, SEATTLE HOUSING AND RESOURCE EFFORT/WOMEN'S HOUSING EQUALITY AND ENHANCEMENT LEAGUE, http://www.sharewheel.org/tent-city-f-a-q-s.

[64] SEATTLE, WASH., LAND USE CODE § 23.42.056(E) (2015).

make tent cities more visible with exposure to as many neighborhoods as possible.[65] Since homelessness has come to the forefront of public attention in Seattle, some advocates have questioned whether frequent tent city moves create more benefits or burdens.[66] The shorter duration suits the university's interest because it allows for the pedagogical and philosophical benefits of hosting while limiting the university's expenses.[67] The university host model also alleviates some of the burden of the frequent moves, as SPU garnered significant support from student and community volunteers to assist with load-in and load-out days.[68]

Photo: Seattle Pacific University[68]

As an operating partner, SHARE/WHEEL provided a meal calendar,[69] brought in a free dental service van, and oversaw inspections with the fire and health department.[70] TC3 residents who had engineering and layout skills worked with SPU facilities to map out waste water, power, and Wi-Fi.[71]

Timing was one of the most crucial considerations for SPU's hosting of TC3.[72] Like the other universities, each time SPU hosted, it did so during winter months, when the encampment residents most needed a stable place to stay.[73] As a large institution, the university absorbed the burden of bringing people inside a university building during extreme winter temperatures, wind, and rain.[74] The university also needed sufficient time to plan and inform their neighbors of the intended land use change, obtain necessary permits, develop a memorandum of understanding, and publicize the plans to students and

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[65] Interview with Niki Amarantides, *supra* note 57.
[66] *Id.*
[67] *Id.* Of course, there are costs associated with brief hosting periods as well; for example, moving costs like trucks, tools, and meals for volunteers can add up with frequent moves. *Id.*
[68] Mike Wold, *SPU students Earn an A From Tent City 3 Residents*, Real Change News (Mar. 14, 2012), http://realchangenews.org/2012/03/14/spu-students-earn-tent-city-residents; Julia Siemens, *City Without Walls: Students and Tent City Residents Share Campus Life*, Seattle Pacific University Response, http://spu.edu/depts/uc/response/new/2012-spring/the-city/city-without-walls.asp.
[69] Community groups can view the public calendar to see which meals have already been accounted for, then contact SHARE/WHEEL to sign up to provide a meal on a particular day: *Tent City 3*, Seattle Housing and Resource Effort/Women's Housing Equality and Enhancement League, http://www.sharewheel.org/tent-city-3. SPU could view the calendar and provide the remaining meals. Interview with Niki Amarantides, *supra* note 57.
[70] Interview with Niki Amarantides, *supra* note 57. *Tent City 3*, Seattle Pacific University, http://spu.edu/engaging-homelessness/tent-city-3.
[71] Interview with Niki Amarantides, *supra* note 57. Residents use Wi-Fi to search for work and housing. *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*

parents.[75] Winter was the best option for both the university and for TC3 because it allowed time for planning and outreach while maximizing the benefit for the residents.

Persuading constituents to support the partnership became easier after the first time SPU successfully hosted TC3. By the time SPU was considering hosting TC3 for a second time in 2012, a new President had joined the university and embraced the notion of hosting an encampment as "part of the SPU brand," even including hosting homeless encampments as part of its "core theme" of Christian identity and purpose in the university's strategic plan.[76] The university President's enthusiasm for hosting meant funding and support for a standing Committee on Homelessness to plan for each instance of hosting.[77] This effort framed the act of hosting as more than charity, instead grounding it in the university's theological heritage.[78]

Prior to the arrival of TC3 on campus, SPU sent out informational emails to students and parents anticipating the most pressing questions:

> Encampments can be "a remarkable living classroom."[76]

- Where the encampment would be located;
- How long the encampment would stay;
- How hosting the encampment posed opportunities for deeper engagement with the university's pedagogical and Christian values;
- TC3's self-governance policies and how it, SHARE/WHEEL, and the university planned to address safety issues.[79]

SPU also offered several opportunities for students, parents, faculty, and the public to join the conversation and learn more about TC3 and homelessness, such as breakout sessions and film events as part of its Annual Day of Common Learning.[80]

Although the SPU administration was skeptical about hosting the encampment the first time, a group of persistent students urged the school to consider it seriously.[81] At the request of these students, SPU agreed to host. Dr. Snedker offered its first sociology seminar on homelessness in 2011 in anticipation of hosting the encampment, and now offers courses on issues around homelessness every year.[82] In hosting years, Dr. Snedker also offered an advance seminar course, approaching homelessness from a service-learning perspective and incorporating research methodology skills and genuine relationship building.[83] SPU also found

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[75] *Id.*

[76] *Id.*; Email from Dan Martin, President, Seattle Pacific University available at http://mailchi.mp/spu.edu/tent-city-3-returns-to-campus?e=7a1ac2e94e.

[77] Interview with Niki Amarantides, *supra* note 57.

[78] *Id.*; *About SPU's Homeless Initiative*, ENGAGING HOMELESSNESS, http://spu.edu/engaging-homelessness/about.

[79] SPU letters to Students and Parents [Appendix].

[80] Jennifer Wilson, *Day of Common Learning*, SPU CENTER FOR SCHOLARSHIP AND FACULTY DEVELOPMENT (AUG. 3, 2016), https://digitalobby.spu.edu/csfd/annual-events/.

[81] *Id.*; Telephone Interview with Karen Snedker, Associate Professor of Sociology, Seattle Pacific University (October 6, 2017).

[82] Interview with Karen Snedker, *supra* note 81; *see, e.g.*, *Visual Communication Student Projects on Homelessness*, Seattle Pacific University, http://spu.edu/about-spu/news/homelessness (art course on Informational Design).

[83] Jennifer McKinney & Karen Snedker, *Hosting a Tent City: Student Engagement and Homelessness*, 45 TEACHING SOCIOLOGY 252, 253 (2017).

that besides the academic skills students developed by participating in the course, many experienced their own "personal transformations" because of their engagement with the residents of TC3.[84]

3. University of Washington

Dates of Operation	December 2016–March 2017
Capacity	60–80 people
Location	Parking lot, southwest edge of campus

Several groups of professors and students unsuccessfully petitioned UW administration to host a tent city in 2006 and again in 2009.[85] Eventually, a group called "Tent City Collective" (The Collective)—comprised of students, alumni, and TC3 residents—registered as a student organization, gathered community support, and developed a proposal for hosting, which the university finally accepted.[86] Even then, it took several years of planning and community outreach before the university was ready to host TC3 for the 2017 winter quarter.[87] Given university populations, this timeframe meant that many of the student leaders who had initiated The Collective had graduated by the time their goal came to fruition.[88] The older students recruited underclassmen to take responsibility for The Collective's efforts to keep the group's momentum going.[89]

While at UW, TC3 was located on parking lot W35, situated near the southwest corner of campus.[90] It was adjacent to the university's School of Aquatic and Fishery Sciences, School of Marine and Environmental Affairs, and Joint Institute for the Study of the Atmosphere and Ocean.[91] While some students and TC3 residents felt that the location was too remote for

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[84] *From Charity to Change*, *supra* note 57, at 81. For example, students reported changes in their "everyday conversations with friends, family members, and coworkers" as the students began to share their new understandings about poverty and homelessness with others in their lives. *Id.* at 82.

[85] Interview with Sally Clark, Director of the Office of Regional and Community Relations, University of Washington (October 12, 2017); TC3@UW, *supra* note 25 at 3.

[86] Interview with Sally Clark, *supra* note 85; TC3@UW *supra* note 25, at 3.

[87] Interview with Sally Clark, *supra* note 85; TC3@UW *supra* note 25, at 3. By this time, University of Washington was the only major university in Seattle that had not yet hosted a homeless encampment and it was able to rely heavily on the lessons learned and policies developed by the other institutions. Interview with Sally Clark, *supra* note 85.

[88] Interview with Sally Clark, *supra* note 85.

[89] *Id.*

[90] Parking Lot (W35), University of Washington, http://www.washington.edu/maps/print/?parking=347.

[91] *Learning From and With Our Neighbors*, Addressing Homelessness, University of Washington, http://www.washington.edu/community/homelessness/; The Collective initially proposed 6 potential locations that met TC3's requirements of at least 10,000 ft² relatively flat hardscape. Interview with Sally Clark, *supra* note 85; Ashley Archibald, *UW eyes two properties for Tent City 3 site*, Real Change News (June 7, 2016), http://realchangenews.org/2016/06/07/uw-eyes-two-properties-tent-city-3-site.

Map: University of Washington[90]

much community interaction, other students and residents felt that the location was actually too highly trafficked by students.[92]

Other than the land, the university's most vital contributions were water and electricity.[93] Though the university offered other services like Wi-Fi, showers, and class audits, these resources were generally underutilized because access was "inconvenient and unclear" and somewhat out of line with the priorities of the encampment residents.[94] For example, the university made the Waterfront Activity Center available to TC3 residents, but only about a third of residents utilized that space, even when extreme winter weather made outdoor conditions even more dangerous than typical.[95] Instead, many residents chose more private arrangements: some went to emergency shelters, a few received emergency motel vouchers, and others found places to "couch surf" until the storm passed.[96]

UW and The Collective made significant efforts to engage students with TC3 residents and issues surrounding homelessness during TC3's stay at the university. The school offered eight academic courses related to homelessness during the quarter it hosted, ranging from a "Health and Homelessness" course in the School of Dentistry to a "Housing and Social Policy" course in the School of Public Policy and a "Social Issues Composition" course in the English Department.[97] The university also hosted non-academic community-building events like game nights and potlucks.[98] Yet, many TC3 residents reported that they felt "the stigma of being homeless . . . followed them wherever they [went]," including the UW campus.[99] This feeling was likely due, at least in part, to the size of the student body and the reality that some students were not well-informed about or even aware of the policies behind TC3's presence at UW.[100]

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[92] TC3@UW, *supra* note 25, at 14.

[93] University of Washington/Tent City 3 Contract [Appendix]

[94] TC3@UW, *supra* note 25, at 16 ("Overall, there was a disconnect between services/resources provided at UW and what residents said they needed.").

[95] The Waterfront Activity Center was located about half a mile away, with a fireplace, kitchen, hot showers, and television. TC3@UW, *supra* note 25, at 16; Interview with Sally Clark, *supra* note 85. Nick Allard, *Snow Storm Leaves Icy Roads, Thousands Without Power*, KIRO 7 (Feb. 7, 2017), http://www.kiro7.com/news/local/lowland-snow-threat-to-return-late-sunday-and-monday/490758240.TC3@UW, *supra* note 25, at 16.

[96] Interview with Sally Clark, *supra* note 85.

[97] *Learning From and With Our Neighbors*, *supra* note 91.

[98] Interview with Sally Clark, *supra* note 85.

[99] TC3@UW, *supra*, note 25 at 17.

[100] Interview with Sally Clark, *supra* note 85; TC3@UW, *supra*, note 25 at 17. There were over 40,000 students enrolled at the Seattle campus for fall of 2016. *Fast Facts 2017*, UNIVERSITY OF WASHINGTON OFFICE OF PLANNING & BUDGETING 1, http://opb.washington.edu/sites/default/files/opb/Data/2017_Fast_Facts.pdf.

As a public institution of higher learning, UW felt an intense duty to remain transparent and open to community feedback throughout the planning process and during its time as host of TC3.[101] This effort included building a robust page on the university website, inviting feedback via email and at town-hall meetings, and publishing the encampment safety regulations and Memorandum of Understanding online.[102]

> As a public institution, UW's expenditures were a matter of taxpayer concern: "There were a lot of people who believe they know how public resources should be used."[101]

Besides fostering robust learning opportunities and deepening community engagement, UW felt that hosting the encampment was a positive move for its reputation.[103] It was the first public university in the country to host a homeless encampment, which garnered a great deal of media attention.[104] As the university is often seen as a behemoth, this attention helped to cast light on UW's role as a good neighbor doing its part to support unhoused people in Seattle.[105]

Importantly, one of the academic courses connected to the encampment was a program evaluation course in the university's public health graduate program. The course surveyed and interviewed UW community members (students, faculty, staff, and administration), TC3 residents, and local businesses and organizations.[106] The evaluation found that the community would support another opportunity to host TC3 and made several recommendations to improve the experience of all parties, largely focusing on centralizing the needs and desires of TC3 residents and investing in and acknowledging the efforts made by residents, students, and other

> "Students remained engaged and have done tremendous work, in addition to their class loads, in order to make the stay a success."[105]

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[101] Interview with Sally Clark, *supra* note 85.
[102] *Learning From and With Our Neighbors*, *supra* note 91; Interview with Sally Clark, *supra* note 85; Ana Mari Cauce, *Seeking Your Feedback on Hosting Tent City 3*, University of Washington Office of the President (Mar. 31, 2016), http://www.washington.edu/president/2016/03/31/seeking-your-feedback-on-hosting-tent-city-3/.
[103] Interview with Sally Clark, *supra* note 85.
[104] *Id.*; Ashley Archibald, *UW Eyes Two Properties for Tent City 3 Site*, Real Change News (June 7, 2016), http://realchangenews.org/2016/06/07/uw-eyes-two-properties-tent-city-3-site; Ted Land, *Homeless Campers Move to UW Campus*, King5 (Dec. 16, 2016), http://www.king5.com/news/local/homeless/homeless-campers-move-to-uw-campus-1/371123249; Jessica Lee, *UW is Making Plans to Host Homeless Encampment in 2017*, The Seattle Times (Jun. 9, 2016, updated Oct. 8, 2017), https://www.seattletimes.com/seattle-news/education/uw-president-campus-to-host-homeless-encampment/; Katherine Long, *UW Students Get a Lesson in Homelessness with Tent City 3*, The Seattle Times (Jan. 14, 2017, updated Oct. 9, 2017), https://www.seattletimes.com/seattle-news/education/uw-students-get-a-lesson-in-homelessness-with-tent-city-3/; Chetanya Robinson, *At UW, Students Get Lessons on Homelessness*, Crosscut (Jan. 17, 2017), http://crosscut.com/2017/01/homeless-students-meet-on-home-turfs/.
[105] Interview with Sally Clark, *supra* note 85.
[106] "TC3@UW, *supra*, note 25.

volunteers.[107] Given the results of the evaluation, the university may consider hosting an encampment again in future, "contingent on having the same level of student engagement."[108]

4. Summary of Challenges & Opportunities

Universities present several unique environmental attributes relevant to hosting an encampment. First, universities provide an additional layer of constituency for public relations. All permitted encampments should conduct outreach to neighbors and nearby businesses to explain how the encampment will be operated, what purposes it will serve, and how its leadership intends to respond to concerns raised by the outside community. However, universities answer to additional stakeholders: students, parents, alumni, faculty, and staff—all of whom have an interest in how the institution is operated, how its funds are spent, and who is permitted on campus.[109]

Second, a university's educational purpose can be integrated into the effort to host the encampment. Each university in Seattle that hosted TC3 developed curriculum around the encampment, creating practical service-learning opportunities for students in sociology, nursing, and legal programs. These courses allow students to learn from real patients and clients and to see the results of their efforts in person. Perhaps more important, students that directly engaged with encampment residents reported transformational experiences: face-to-face interactions with encampment residents created opportunities for those students to challenge their own preconceptions about homelessness, and many students shared their new understandings with other people in their lives.[110]

> "[W]e witnessed students so impacted by the experience that everyday conversations with their friends, family members, and coworkers changed."[110]

In the university context, the opportunities and challenges relating to hosting a permitted encampment look like counterweights. The additional layer of constituents presents

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[107] TC3@UW, *supra*, note 25 at 22. The report made the following key recommendations: "(1) Commit to hosting a tent city again/Institutionalize the option for UW to host tent city again via university policy. (2) Continue and expand courses seeking to address causes of homelessness. (3) Identify additional strategies for UW to strengthen its response to the Seattle homelessness emergency. (4) Identify a variety of ways to acknowledge student, resident, and volunteer contributions (scholarships, credits, internships/practicums). (5) Establish clear expectations and communication about resources available to residents. (6) Ensure any engagement is driven by resident needs or requests via consistent communication amongst established point people at the camp. (7) Be mindful of the pressures on TC3 created by the high stakes associated with a stay at a high-profile university. (8) Consider offering classes specifically for TC3 residents, such as skills classes on resume writing and job interviewing. (9) Seek financial resources through fundraising or grants prior to a tent city moving in. Investigate issues related to fundraising problems through USEED. (10) Raise funds to pay a staff member to assist with coordinating a tent city stay to limit the burden put on TCC students. (11) Revisit the RFP review process to vet classroom activities associated with TC3 to center the voice of residents." *Id.*

[108] Ana Marie Cauce, *Tent City 3 Concluding Successful Stay at the UW*, University of Washington Office of the President (Mar. 15, 2017), http://www.washington.edu/president/2017/03/15/tent-city-3-concluding-successful-stay-at-the-uw/.

[109] Public institutions of higher education also answer to taxpayers.

[110] *See From Charity to Change*, *supra* note 57.

opportunities to connect with the local community (and beyond), but also means that the university must be prepared to answer those constituent concerns. And while the pedagogical opportunities can be both practical and transformational, they also risk appropriating the experiences of encampment residents. Universities must be careful about putting encampment residents in the position of teachers and respect the wishes of the campers. Likewise, encampments and universities considering partnership should work together to develop curriculum not only enlightening to the students, but also beneficial to the encampment residents themselves.

Opportunities	Challenges
• The additional layer of constituents in the university context presents numerous opportunities to **connect with the local community**. • Hosting an encampment poses practical and transformational **pedagogical** opportunities.	• The university must also be prepared to answer those **constituent concerns** because stakeholders like students, parents, alumni, faculty, and staff have significant interests in how the institution is operated and who is allowed on campus. • When universities put residents in the position of teachers—or worse, subjects to be studied—they risk **appropriating** the experiences of encampment residents.

B. Third-Party Operators

Authorized encampments in Seattle are typically operated by a third-party entity, which provides social services and supervises the daily operations of the encampment. The third-party operator also acts as liaison to the City: it applies for the initial land-use permit, negotiates contracts with the City and other partners like utility providers, and receives reimbursements from the City for some expenses of operating the encampment.[111] In Seattle, permitted encampments generally evolved from unauthorized encampment communities that receive permission to relocate to city-owned land for a one-year period when the City approves a new transitional encampment site. Such communities often have existing group living agreements, or codes of conduct, which serve as the basis for the operational plans once the encampment becomes authorized by the city. The established leadership within those communities retain autonomy to varying degrees once the encampment agrees to partner with an operator. While third-party operators can offer valuable expertise and oversight, critics are concerned this arrangement diminishes the residents' feeling of self-determination, undercutting one of the essential benefits of living in an encampment.

[111] SEATTLE, WASH., LAND USE CODE § 23.42.056 (2015).

1. Nickelsville, SHARE/WHEEL, & LIHI

Homeless encampments have existed in Seattle for decades,[112] but not until November 2015 did Seattle Mayor Ed Murray and King County Executive Dow Constantine declare states of emergency around homelessness, requesting emergency funding and establishing administrative authority to create immediate responses to the crisis that had been brewing for years.[113] The action authorized the city's first permitted homeless encampments with a land use code permitting transitional encampments as interim use for certain types of city-owned land.[114] Besides outlining zoning requirements for land put to such use, the code requires community outreach, operations standards, and a community advisory committee (CAC).[115]

The Seattle code also authorizes an operator role for an organization to serve as liaison between the City and the encampment to manage daily operations and contracts with secondary providers like waste management, volunteers donating meals, and case managers.[116] Seattle requires that role to be filled by a qualified encampment operator (such as Nickelsville, SHARE/WHEEL, or LIHI) vetted by the Human Services Department.[117] The Seattle encampments are operated through partnerships between these organizations.[118] Though the terminology is not entirely consistent across the board, LIHI essentially functions as a sponsor—responsible for "case management, site development, tiny house construction coordination, [and] volunteer management"—while Nickelsville and SHARE/WHEEL are responsible for daily management including "enforcing the code of conduct, intake procedures, and village oversight" in their respective encampments.[119]

Perhaps the most famous organically-seeded encampment in Seattle, Nickelsville was established as organized encampment in 2008, when homeless advocates set up an unauthorized camp on city-owned land in a highly visible critique of then-Mayor Greg Nickels'

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[112] For example, Nickelsville, discussed in greater detail *infra* Part I(B), was "erected to call attention to Mayor Greg Nickels' policy of clearing homeless camps and belongings from public property" in 2008. Cydney Gillis, *Nickelsville Pitched on Southwest Seattle Vacant Lot*, REAL CHANGE NEWS (Mar. 9, 2009), http://realchangenews.org/2009/03/09/nickelsville-pitched-southwest-seattle-vacant-lot ("'There are going to be a couple of hundred people here within a couple of days,'" said Anitra Freeman, SHARE activist who also helped set up Tent City 2 in 1998. "'At that point, it's going to be obvious that there are more people needing shelter than the mayor has shelter for.'").

[113] Daniel Beekman & Jack Broom, *Mayor, County Exec. Declare 'State of Emergency' Over Homelessness*, THE SEATTLE TIMES (Nov. 2, 2015), https://www.seattletimes.com/seattle-news/politics/mayor-county-exec-declare-state-of-emergency-over-homelessness/; *Seattle City-Sanctioned Encampments*, *supra* note 9.

[114] SEATTLE, WASH., LAND USE CODE § 23.42.056 (2015).

[115] SEATTLE, WASH., LAND USE CODE §§ 23.42.056(A), (B) (2015).

[116] SEATTLE, WASH., LAND USE CODE § 23.42.056(C) (2015).

[117] *Id.*; CITY OF SEATTLE HUMAN SERVICES DEPARTMENT, *2015 Authorized Encampment Operators Request for Qualifications*, 2–3, http://www.seattle.gov/Documents/Departments/HumanServices/Funding/AEO-RFQ-2015.pdf (detailing eligibility and program requirements for organizations interested in acting as encampment operators).

[118] Email from Bradford Gerber, Tiny House and Volunteer Programs Coordinator, Low Income Housing Institute to Evanie Parr, Seattle University School of Law (Apr. 4, 2018) (on file with author).

[119] SEATTLE, WASH., LAND USE CODE § 23.42.056(C) (2015); *Id.*

Photo: Real Change News[120]

treatment of homeless people in Seattle.[120] Over the next several years, Nickelsville encampments frequently shifted locations in response to "sweeps"[121] by city officials, but the organization was eventually approved to operate permitted encampments following City Council's approval of the authorized encampment ordinance in March 2015.[122] Today, Nickelsville operates three authorized encampments: Ballard Nickelsville, Georgetown Village, and Othello Village.[123]

SHARE/WHEEL fills a similar managerial role for two of the other sanctioned encampments: Interbay Tent City 5 and Licton Springs Village.[124] Seattle Housing and Resource Effort (SHARE) and the Women's Housing Equality Enhancement League (WHEEL), collectively SHARE/WHEEL, are partner organizations of current and formerly homeless men and women, operating shelters and tent cities in King County, Washington.[125]

The Low-Income Housing Institute (LIHI) is a Seattle-based organization that provides permanent, supportive, and transitional housing services.[126] Besides operating several of the

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[120] Dr. Wes Browning, Opinion, *Dr. Wes: Nickelsville is the Mayor's Fault*, Real Change News (Sept. 17, 2008), http://realchangenews.org/2008/09/17/dr-wes-nickelsville-mayor-s-fault; Gillis, *supra* note 112; John Iwasaki, *Homeless Start Settling in Fuchsia 'Nickelsville'*, Seattle PI (Sept. 22, 2008), http://www.seattlepi.com/local/article/Homeless-start-settling-in-fuchsia-Nickelsville-1285979.php; Erik Lacitis, *150 Tents for Homeless Spring Up on Industrial Land Owned by Seattle*, The Seattle Times (Sept. 23, 2008, updated Sept. 25, 2008), https://www.seattletimes.com/seattle-news/150-tents-for-homeless-spring-up-on-industrial-land-owned-by-seattle.

[121] "Sweep" refers to the common government practice of removing tents and other belongings from an encampment and forcing residents to leave the site. *See* Junejo, *supra* note 8 at 15–20 (discussing how sweeps significantly disrupt residents' lives, fail to effectively relocate residents to shelters, and raise potential claims for constitutional violations).

[122] Seattle, Wash., Land Use Code § 23.42.056 (2015); Daniel Beekman, *Seattle City Council Clears Way for 3 New Homeless Camps*, The Seattle Times (Mar. 30, 2015, updated July 29, 2015), https://www.seattletimes.com/seattle-news/politics/seattle-city-council-clears-way-for-3-new-homeless-camps/; Daniel Beekman, *Only 2 Groups Get OK to Operate New, City-Regulated Tent Cities*, The Seattle Times (Jun. 19, 2015, updated July 29, 2015), https://www.seattletimes.com/seattle-news/politics/only-2-groups-get-ok-to-operate-new-city-regulated-tent-cities/.

[123] *Seattle City-Sanctioned Encampments*, *supra* note 9.

[124] *Id.*

[125] *About Us*, Seattle Housing and Resource Effort/Women's Housing Equality and Enhancement League, http://www.sharewheel.org/aboutus.

[126] *About*, Low Income Housing Institute, https://lihi.org/about/; Telephone Interview with Bradford Gerber, Tiny House and Volunteer Programs Coordinator, Low Income Housing Institute (October 12, 2017).

permitted sites, LIHI acts as fiscal sponsor for the encampments operated by SHARE and Nickelsville.[127] The City of Seattle funds operational costs like supplies, portable toilets, and supportive services staffing, and LIHI has the accounting capabilities to track finances.[128] Community donors fund meals and tiny houses for LIHI's sites.[129] As a fiscal partner, LIHI plays a supportive role to the day-to-day operators. LIHI acts as a property manager: it coordinates supplies and manages volunteers who build tiny homes and platforms for tents.[130]

LIHI also provides case management services for the encampments it operates.[131] Given LIHI's role as a housing service provider, its staff was experienced in interacting with the population of individuals living in homeless encampments and in understanding their service needs.[132] As of this writing, LIHI operates seven sites, including some authorized encampments with few structures, some "tiny home villages,"[133] and some hybrids of the two.[134] Like most shelter programs, LIHI's program success is evaluated by the number of people moved into permanent housing.[135]

Each of the Seattle encampment operators share oversight with community advisory committees (CACs), as required by the city ordinance authorizing encampments.[136] The CACs for consist of representatives of various stakeholder groups, including camp leadership, operator staff, representatives from the city, neighbors, and people who oppose homeless encampments. The CACs meet regularly to keep all parties appraised of the recent events at the encampment and to hear and respond to concerns from the surrounding community.

2. Summary of Challenges & Opportunities

The primary benefits of third-party operators are oversight and expertise. Running an authorized encampment is no simple task, and the experience of an operating organization can be invaluable. Third-party operators can fill gaps in capacity that encampment residents often lack—because they do not know the technical requirements of the secondary providers (such as vehicle access points for waste management), do not have the skillset for bookkeeping, or do not have the time to oversee the camp because they work. In contrast to resident operators, third-party operators can develop expertise and provide impartial

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[127] *Seattle City-Sanctioned Encampments*, *supra* note 9; LIHI publishes instructions for building tiny houses as well as explanations on required permitting, and recruits volunteers to supplement its staff's efforts. *Tiny Houses*, Low Income Housing Institute, https://lihi.org/tiny-houses/.

[128] Interview with Bradford Gerber, *supra* note 126.

[129] Email from Bradford Gerber, Tiny House and Volunteer Programs Coordinator, Low Income Housing Institute to Evanie Parr, Seattle University School of Law (Apr. 2, 2018) (on file with author).

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Tiny Houses*, *supra* note 127. For information on tiny homes and other accessory dwelling units on private land, see Tran Dinh, Seattle University Homeless Rights Advocacy Project & David A. Brewster, Anna C. Fullerton, Gregory D. Huckaby, Mamie L. Parks, University of Denver Sturm College of Law Homeless Advocacy Policy Project, Yes, In My Backyard: Building ADUs to Address Homelessness (Sara Rankin, Nantiya Ruan, Elie Zweibel eds., 2018).

[134] *Tiny Houses*, *supra* note 127.

[135] Email from Bradford Gerber, *supra* note 129.

[136] Interview with Bradford Gerber, *supra* note 126; Seattle, Wash., Code § 23.42.056(A)(1)(b) (2015).

oversight, important qualities for cities concerned about financial transparency and measuring success.

On the other hand, placing authority in the hands of third party can feel paternalistic for encampment residents. Just as nonprofit organizations can cultivate expertise from operating multiple encampments, individuals who reside in those encampments can develop unique perspectives about what encampments need to be successful. Third-party operators risk losing sight of the resident experience in favor of their own judgment. Further, the disconnect between decision-makers and the people who must live by those decisions can undermine some values of encampment living, like dignity and autonomy.

Opportunities	Challenges
• Third-party operators provide valuable **oversight**, particularly when they can provide checks and balances for encampment operations and resolve conflicts impartially. • These organizations can also offer **expertise** in areas of management that a layperson wouldn't necessarily know, like bookkeeping or waste management.	• Placing authority in the hands of a third party can feel **paternalistic** to encampment residents who understand what an encampment needs to be successful from their on-the-ground experience. • The disconnect between decision-makers and residents can undermine benefits to encampment living like dignity and autonomy.

C. Self-Governance

Other encampments have rejected the third-party operator model as paternalistic and undermining of the self-determination value of a permitted encampment. Instead, these encampments govern themselves, valuing democracy above the benefits of third-party operating partners. However, self-governed encampments are not immune to the challenges that plague other new democracies: few written rules leading to inconsistent application, leadership elected based on influence rather than competence, and more. But residents in self-governed encampments have ownership over the rules they live by, and potentially get more out of the community and self-determination aspects of encampment living compared to encampments operated by an outside entity. Yet, self-governed encampments struggle to balance these benefits with ethical leadership and capable oversight.

1. Camp Second Chance

Dates of Operation	April 2016–present (sanctioned February 2017)
Capacity	40–50 people
Location	Meyers Way, in south Seattle

Camp Second Chance is an organically-seeded encampment established by former Tent City 3 residents who had split with TC3 over disagreements regarding sobriety requirements and what self-governance ought to look like in a homeless encampment.[137] Camp Second Chance famously found its home by cutting the lock fencing in a city-owned lot near Myers Way so the encampment could move in.[138] Initially unauthorized to camp there, Camp Second Chance aimed to win over its neighbors' hearts and support by being friendly, well-managed, and exceptionally clean and orderly.[139] Camp Second Chance voted for Patacara to serve as its fiscal sponsor, leaving self-governance to its residents, and Patacara eventually received a contract with the City of Seattle to operate Camp Second Chance as a permitted encampment, based on the perseverance of the encampment and acceptance from the neighborhood.[140]

From its inception, Camp Second Chance envisioned democratic self-governance that vested authority to make and enforce policies in the camp residents themselves, rather than in an external body like an operating partner.[141] Camp Second Chance residents were concerned that the encampments authorized by the city of Seattle were more "self-managed," than "self-governed," meaning that campers had significant responsibilities but little power.[142] When Patacara received its contract with the City of Seattle for Camp Second Chance to become a permitted encampment, funding meant that Patacara could hire a site manager.[143] This shift in

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[137] Ashley Archibald, *A New Kind of Camp*, Real Change News (Feb. 22, 2017) http://realchangenews.org/2017/02/22/new-kind-camp; Interview with Polly Trout, *supra* note 22.
[138] Reed Ingalls, *Breaking Chains and Building Bridges: Patacara Wins Contract for Homeless Camp*, 30 Northwest Dharma News 1, https://northwestdharma.org/2017/03/breaking-chains-and-building-bridges-patacara-wins-contract-for-homeless-camp/. "Patacara Community Services is a faith-based nonprofit offering compassionate and respectful care to those who are suffering." Patacara Community Services, http://patacara.org/.
[139] Daniel Beekman, *Proposal Asks Seattle City Council to OK New Limits on Homeless Sweeps on Public Land*, The Seattle Times (Aug. 24, 2016, updated Oct. 9, 2017), https://www.seattletimes.com/seattle-news/politics/proposal-to-seattle-city-council-seeks-to-further-limit-homeless-sweeps-on-public-land/; Interview with Polly Trout, *supra* note 22.
[140] Dyer Oxley, *Seattle's Camp Second Chance Gets a Second Chance*, My Northwest (Feb. 9, 2017), http://mynorthwest.com/539598/camp-second-chance-city-contract/; Interview with Polly Trout, *supra* note 22.
[141] Interview with Polly Trout, *supra* note 22.
[142] *Id.* According to some advocates, Camp Second Chance was established precisely because of the distinction between self-governance and self-management. Some people who had been part of TC3 (managed by SHARE) were unhappy with that camp's management structure and split off to form Camp Second Chance as a more independent, democratic encampment. Ashley Archibald, *Camp Second Chance Splits with Supporting Nonprofit*, Real Change News (Sept. 6, 2017), http://www.realchangenews.org/2017/09/06/camp-second-chance-splits-supporting-nonprofit.
[143] Interview with Polly Trout, *supra* note 22.

power and influx of resources led to problems when most of the original residents moved on into housing, and many of those who remained were resistant to sharing leadership in a robust democracy.[144] The idealistic model of self-governance was also vulnerable to abuse due to the transient nature of the population of encampment residents.[145] As some residents moved on to other housing arrangements—taking their institutional knowledge with them—it became challenging to maintain ethical leadership long-term.[146]

Notably, Camp Second Chance itself has not been party to any contract with Patacara or with the city, since the encampment is not itself an official entity with legal rights. Rather, Patacara contracted with the city directly, and Patacara and Camp Second Chance never executed a written agreement specifying the terms of fiscal sponsorship or how power and responsibility would be shared.[147] Some advocates believe the funding from the City arguably "upped the odds" of this dynamic, creating more incentives to "play dirty."[148] Disputes over power dynamics, unilateral decision-making, unfair enforcement of camp policies, and a general lack of transparency raged, and eventually the camp leadership and its operating partner agreed to part ways.[149] Ultimately, uncertainty about how the partner organization should check decisions made by the encampment residents—or whether the partner organization even ought to—became an existential crisis for Camp Second Chance.[150]

Camp Second Chance remained at its original location but needed a new organizational partner to serve as its fiscal sponsor to retain its permitted status with the City of Seattle. As a result, LIHI took over the contract to operate Camp Second Chance. While the new contract resolved some of the immediate problems facing Camp Second Chance, like clarifying certain roles and policies, it also presented new challenges. Most important, the change in the operating partner raised significant disputes over the proper degree of self-governance.[151] As of this writing, leaders within Camp Second Chance, LIHI staff, and committed allies continue to negotiate a balance of authority, oversight, and cooperation.[152]

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[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] Email from David Baum, Community Advocate, to Evanie Parr, Seattle University School of Law (Apr. 6, 2018) (on file with author).
[148] *Id.*
[149] Ashley Archibald, *Camp Second Chance Splits with Supporting Nonprofit*, Real Change News (Sept. 6, 2017), http://www.realchangenews.org/2017/09/06/camp-second-chance-splits-supporting-nonprofit.
[150] Interview with Polly Trout, *supra* note 22. According to news reports, parties involved in the split interpreted events quiet differently. For example, the camp manager expressed concern that public funds were missing or had been misused, and believed he was fired in retaliation for raising these allegations. On the other hand, the operating partner believed the camp manager had committed sexual harassment and she expelled him for violating the camp's code of conduct. The operating partner was also concerned that longtime campers (including the camp manager) were "consolidating power and preventing the camp from operating as a true democracy." Ashley Archibald, *Camp Second Chance Splits with Supporting Nonprofit*, Real Change News (Sept. 6, 2017), http://www.realchangenews.org/2017/09/06/camp-second-chance-splits-supporting-nonprofit.
[151] Tracy Record, *Camp Second Chance: Transition to New Operator 'Not Very Smooth Sailing,' Advisory Committee Told*, West Seattle Blog (Oct. 3, 2017), http://westseattleblog.com/2017/10/camp-second-chance-transition-to-new-operator-not-very-smooth-sailing-advisory-committee-told/.
[152] Interview with David Baum, *supra* note 21.

2. Dignity Village

Dates of Operation	December 2001–present (sanctioned in 2004)
Capacity	60 people
Location	Sunderland Yard, in north Portland

Dignity Village was established as an organically-seeded unauthorized encampment in 2001 in Portland, Oregon, in response to sweeps of smaller encampments.[153] Within a year, Dignity Village registered as a 501(c)(3) nonprofit organization, whose mission was to "improve the lives of the poor in Portland by operating a "community-based living facility" for people unable to find other shelter.[154] While the initial encampment changed locations in response to frequent sweeps, residents eventually settled in an industrial area in southeast Portland called Sunderland Yard, which would become the village's permanent home.[155] In 2004, Dignity Village became sanctioned under the state of Oregon's "transitional housing accommodations" statute authorizing municipalities to designate a campground within the urban area as an authorized encampment. [156]

Dignity Village operates as a membership-based nonprofit; residents in "good standing" comprise the membership of the nonprofit and enjoy voting privileges regarding the community policies and decisions at monthly meetings.[157] Members in good standing are residents who contribute at least ten hours per week of "sweat equity" work in contribution to Village operations and maintenance and pay a monthly insurance fee of $35.00.[158] Members elect a councilors who serve one-year terms, including a Chairperson, Vice-Chairperson, Secretary, and Treasurer.[159] The council meets weekly to report out on recent developments and resolve conflicts within the Village.[160] While the contract with the City includes a fulltime Program Support Specialist staff position, that individual does not have decision-making power over Village business; rather, the Specialist provides operational support and acts as liaison with service providers.[161]

During the most recent significant contract renegotiation in 2012, the City of Portland expressed concern about individuals staying at the Village indefinitely, as a sign that the

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[153] *Origins*, DIGNITY VILLAGE, https://dignityvillage.org/history/origins/; Telephone Interview with Katie Mays, Program Support Specialist, Dignity Village (November 7, 2017).
[154] *Mission & Values*, DIGNITY VILLAGE, https://dignityvillage.org/about-2/mission-values/.
[155] *Origins*, *supra* note 153.
[156] Regulations and Limitations on Transitional Housing Accommodations, OR. REV. STAT. ANN. § 446.265 (2015).
[157] Interview with Katie Mays, *supra* note 153; *Articles of Incorporation*, DIGNITY VILLAGE, https://dignityvillage.org/governance/bylaws/.
[158] Interview with Katie Mays, *supra* note 153; *Entrance Agreement*, DIGNITY VILLAGE, https://dignityvillage.org/services/entrance-agreement/ [Appendix].
[159] *Articles of Incorporation*, *supra* note 157.
[160] Interview with Katie Mays, *supra* note 153.
[161] *Id.*

Village was not fulfilling its purpose as a transitional living space.[162] As a result, the Village agreed to reactivate a dormant policy limiting individual stays to two years.[163] However, extensions are available for people on subsidized housing wait lists, or awaiting decisions from the Social Security Administration, as long as they actively comply with the respective process.[164] And, to preserve institutional knowledge, villagers serving in leadership positions can receive extensions to complete their terms.[165] However, the Village has no term limits for their leadership positions, so villagers can (and sometimes do) stay for several years.[166]

Photo: Dignity Village[154]

Dignity Village has been described as "volatile, precarious, and incredibly resilient" due to its self-governance structure.[167] For example, the Village has struggled to find member-residents with the skills to fill certain roles required by its nonprofit status.[168] While some residents developed ownership over their duties, this process can result in a lack of delegation.[169] Further, since some residents have lived in the Village for eight or even ten years, certain perspectives and sources of power became entrenched, so innovative ideas are often shut down quickly.[170]

3. Summary of Challenges & Opportunities

Both self-governed encampments struggle to strike the optimal balance between their values of dignity and autonomy with the necessity for oversight and checks and balances. One common incident is illustrative of this dilemma:[171]

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[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] This incident is entirely hypothetical, but it represents the kinds of issues that can come up in any encampment and how the self-governance structure can complicate their resolution.

Residents Anna, Bob, and Catherine live in a self-governed encampment. The rules of the encampment are enforced by an elected council, and both Anna and Catherine are councilmembers. Among other provisions, the encampment's code of conduct includes:

1. A zero-tolerance policy for consuming alcohol on-site;
2. A general procedure for one resident to accuse another of violating one of the camp policies by presenting evidence at a regular council meeting, open to all residents of the encampment; and
3. A right to appeal decisions made by the camp council.

> One resident can serve as witness, prosecutor, judge, and jury.

Resident Anna conflicts with Bob over a personal matter, and Anna uses the camp's zero-tolerance alcohol policy to oust Bob from the encampment. Anna plants an empty liquor bottle in Bob's tent while Bob is eating dinner. Then, Anna finds Catherine, who is serving on security duty. Anna tells Catherine she has seen Bob acting intoxicated. Catherine decides that Anna's description is sufficient cause to enter Bob's tent, where Catherine finds the empty liquor bottle. At the next council meeting, Anna and Catherine present evidence against Bob, and Anna uses her position of authority to persuade the other councilmembers to vote to evict Bob based on his violation of a non-negotiable rule.

In this not uncommon scenario,[172] one resident can serve as witness, prosecutor, judge, and jury, wielding enormous power over the fate of another person. Bob might have a nominal right to appeal the decision, but the result is unlikely to change, particularly if Anna is one of the people charged with reviewing Bob's case. While this arrangement may seem manifestly unjust for a person in Bob's position, it technically comports with the rules and governance structure agreed to by all residents of the encampment. And if the encampment has deliberately chosen to operate without the oversight of an independent body, it can be very difficult to check unethical behavior.

Although the self-governance model reflects encampment values of autonomy and dignity by vesting the power to determine rules in the residents who must live by them, the actual effect can be to diminish the rights of individual residents. A self-governed encampment is especially vulnerable to problems like unethical leadership and uncertain processes when it lacks an effective mechanism for checks and balances or oversight. [173] This problem is further complicated by issues of institutional knowledge: as residents who understand the rules and know who might take advantage move on to more stable housing, encampments lose valuable perspective that could otherwise protect against unethical leadership. Further, since

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[172] Interview with Polly Trout, *supra* note 22; Interview with David Baum, *supra* note 21.

[173] As in any democratic community, maintaining principled leadership can be extremely challenging when ethics are governed by norms rather than rules, and enforcement depends on the commitment of the community to speak out.

homelessness can be an extremely traumatizing experience, self-governance poses the danger of further distressing residents when leaders lack training in trauma-informed care.[174]

Opportunities	Challenges
• Vesting rule-making power in encampment residents promotes **autonomy** and **dignity**.	• The transitional nature of encampments makes it difficult to **retain ethical leadership** over time. • **Enforcing due process** is difficult in the absence of impartial oversight.

D. Compulsory Encampments

Some cities authorized encampments in response to public health emergencies, building new encampment sites and requiring people experiencing homelessness to relocate to the newly permitted encampments for their own safety. While these encampments may represent cities' recognition of the detrimental health effects of living outdoors, their compulsory participation has raised serious concerns about the manner of implementation.

1. San Diego, California

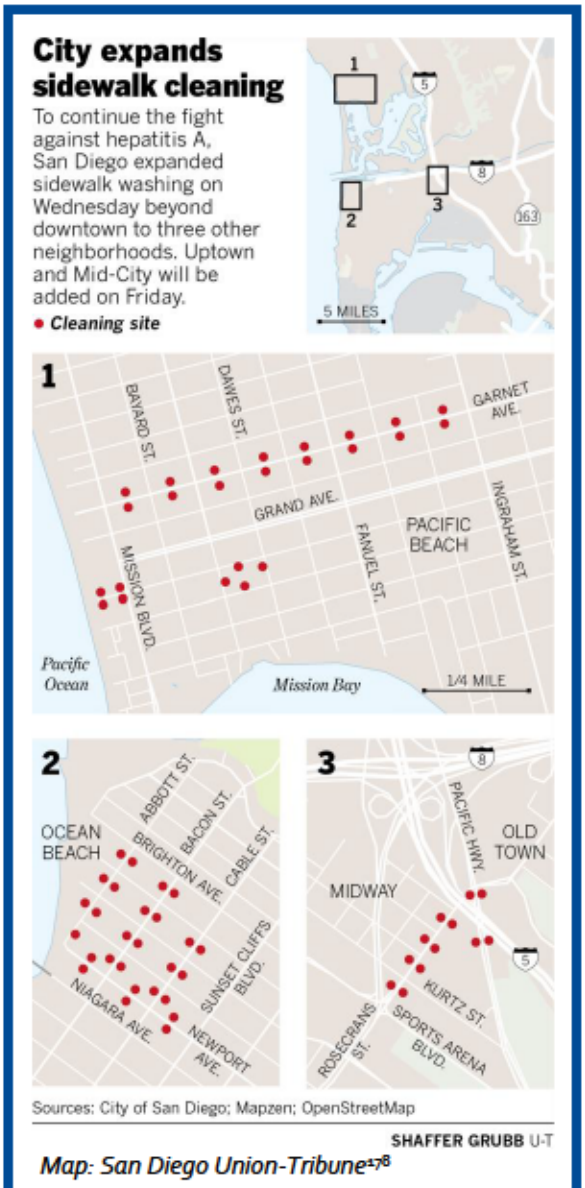
Dates of Operation	October 2017—present
Capacity	136 people
Location	Golden Hill, East San Diego

San Diego, California authorized its first homeless encampment in October 2017 in response to the city's recent Hepatitis A outbreak.[175] Unhoused people lacked basic sanitation and hygiene facilities that would otherwise prevent contamination, and the disease spread with devastating efficiency among people experiencing homelessness in downtown San Diego.[176] "Hepatitis A is spread through unsanitary conditions, and the outbreak has

[174] Interview with Tsukina Blessing, Community Advocate (Nov. 28, 2017).

[175] Mike McPhate, *California Today: Homeless Camps, With Official Blessing*, THE NEW YORK TIMES (Oct. 9, 2017), https://www.nytimes.com/2017/10/09/us/california-today-homeless-camps-with-official-blessing.html?emc=edit_tnt_20171010&nlid=68062483&tntemailo=yl; *City Approves Update to Emergency Shelter Declaration*, SAN DIEGO MAYOR KEVIN. L. FAULCONER, https://www.sandiego.gov/mayor/news/releases/city-approves-update-emergency-shelter-declaration.

[176] Lauren Schroeder, *How San Diego's Hepatitis A Outbreak Became the Worst the U.S. has Seen in Decades*, LOS ANGELES TIMES (Oct. 8, 2017), http://www.latimes.com/local/lanow/la-me-san-diego-hepatitis-20171008-story.html. Some advocates have indicated that the City of San Diego's actions in closing its public restrooms in conjunction with increased enforcement of its "encroachment" ordinance actually led to the Hepatitis A outbreak. *See* Tent City USA, *supra* note 13 at 38; SAN DIEGO MUN. CODE § 54.0110.



Map: San Diego Union-Tribune[178]

disproportionately affected the homeless population. More than 370 people have been hospitalized and of the 20 people who have died, 11 were homeless."[177]

In an initial response to the outbreak, the City brought in crews to power-wash sidewalks with bleach in downtown neighborhoods frequently populated by homeless people.[178] Unhoused people camping in downtown areas of San Diego had to remove all of their belongings for the cleaning, but when they returned later, they were met by police who told them "the area had to be cleared to break the cycle that has caused the hepatitis a virus to spread."[179] Though most people cooperated, some were arrested, and no one was provided prior notice of this police action.[180]

To keep homeless people away from the downtown areas most plagued by the sanitation issue, San Diego opened a sanctioned alternative camping site on city-owned land. On a city maintenance yard, the site provides space for 136 individuals, bathrooms, storage, and 24-hour security.[181] The Alpha Project, a local nonprofit that provides transitional housing, emergency service, and other outreach and case management services, operates the "transitional campsite" and provides transportation in and out of the camp for residents with medical appointments or other business in the downtown area.[182] However, residents of the encampment

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[177] Gary Warth, *More Homeless Arrested Following Hepatitis A Outbreak*, THE SAN DIEGO UNION-TRIBUNE (Nov. 13, 2017), http://www.sandiegouniontribune.com/news/homelessness/sd-me-homeless-arrest-20171109-story.html [hereinafter Warth, *More Homeless Arrested*].

[178] Gary Warth, *Homeless Cleared Out, City Expands Sidewalk Washing*, THE SAN DIEGO UNION-TRIBUNE (Sept. 27, 2017), http://www.sandiegouniontribune.com/news/hepatitis-crisis/sd-me-homeless-eviction-20170927-story.html [hereinafter Warth, *Homeless Cleared Out*].

[179] *Id.*; Associated Press, *San Diego Increases Homeless Citations in Hepatitis Outbreak*, KPBS (Sept. 28, 2017), http://www.kpbs.org/news/2017/sep/28/san-diego-increases-homeless-citations-hepatitis-o/.

[180] Warth, *Homeless Cleared Out*, *supra* note 178.

[181] Susan Murphy, *San Diego Launches Campground for the Homeless*, KPBS (Oct. 9, 2917), http://www.kpbs.org/news/2017/oct/09/san-diego-launches-homeless-campground/.

[182] Gary Warth, *City-Sanctioned Homeless Camp to Open Monday*, THE SAN DIEGO UNION-TRIBUNE (Oct. 4, 2017), http://www.sandiegouniontribune.com/news/hepatitis-crisis/sd-me-homeless-camp-20171002-story.html.

have little say in how the encampment is operated.[183] Since the Alpha Project is experienced in operating transitional housing, it determines the rules by which residents of the encampment live.[184]

> "Hepatitis A is spread through unsanitary conditions, and the outbreak has disproportionately affected the homeless population. More than 370 people have been hospitalized and of the 20 people who have died, 11 were homeless."[186]

The encampment may address the immediate health crisis by providing a more sanitary living environment and offering medical care to people already affected by the virus. However, the City paired the opening of the sanctioned encampment with increased policing in the downtown areas most affected by the viral outbreak.[185] Citing the need to "keep[] public areas clean and prevent[] the unsanitary conditions that helped fuel the outbreak from returning," the City prohibited any further camping in downtown San Diego, effectively compelling unhoused people to move to the new permitted encampment.[186] Advocates are concerned this policy reflects a mere desire to "round up" people experiencing homelessness, rather than to establish an intentional community for people to transition into permanent housing.[187] The San Diego encampment has even been compared to an internment camp, based on the tactics of requiring a certain class of people to relocate to a site controlled by someone else.[188] Further, early reporting suggests that very few individuals have exited in the encampment into permanent housing.[189]

2. Tacoma, Washington

	Mitigation Site	**Stabilization Site**
Dates of Operation	**May–June 2017**	**June 2017–present**
Capacity	**30–80 people**	**80 people**
Location	**East 18th and Portland Avenue, Port of Tacoma**	**Portland Avenue East and Puyallup Avenue, Port of Tacoma**

[183] Telephone Interview with Michael McConnell, Community Advocate (November 7, 2017).
[184] *Id.*
[185] Joshua Emerson Smith, *After Crackdown on Tent City, Homeless Recount Hepatitis Horror Stories*, THE SAN DIEGO UNION-TRIBUNE (Sept. 30, 2017), http://www.sandiegouniontribune.com/news/hepatitis-crisis/sd-me-hepatitis-homeless-20170929-story.html (noting that arrests for "encroachment" or "illegal lodging" tripled in September 2017, as compared to the same month in 2016).
[186] Warth, *More Homeless Arrested*, *supra* note 177 (quoting an email from San Diego Mayor Kevin Faulconer's Press Secretary Greg Block).
[187] Interview with Michael McConnell, *supra* note 184.
[188] *Id.*
[189] Andrew Bowen, *Data From San Diego's Homeless "Bridge Shelters" Show Bumpy Start*, KPBS (Mar. 9, 2018), http://www.kpbs.org/news/2018/mar/09/data-san-diego-homeless-bridge-shelters-tents/.

Tacoma, Washington authorized its first homeless encampment in May 2017, under the City Council's declaration of a state of public health emergency recognizing how homelessness impairs people's physical, mental, and behavioral health.[190] Tacoma declared the state of emergency after a spike in complaints from business owners concerned about the impact of existing unauthorized homeless encampments on their businesses, dating to January 2017.[191] In the spring of 2017, one prominent business voiced louder and stronger concerns about a nearby unauthorized homeless encampment that had recently grown to over 100 individual residents, a very large encampment for a city of Tacoma's size.[192] When Tacoma responded by clearing out that encampment, it forced those people into other areas of town, growing some of the other encampments from around a dozen residents to thirty or forty.[193] Businesses and neighborhood entities near the smaller encampments then complained about the influx of people.[194]

The City planned to address the public health crisis in a three-phase Emergency Temporary Aid and Sheltering Plan.[195] The first phase involved bringing social services and basic necessities to an existing encampment to address immediate needs for six weeks.[196] Tacoma is currently in its second phase, which consists of an enclosed,

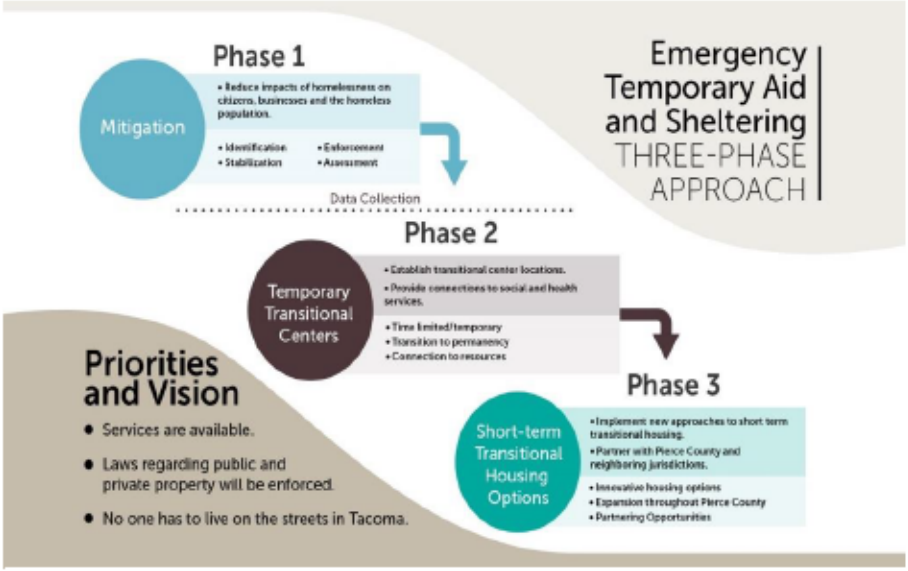

Image: City of Tacoma[192]

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[190] TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.63(B)(4) (2017); *Emergency Temporary Aid and Shelter Plan*, CITY OF TACOMA, WASHINGTON, https://www.cityoftacoma.org/government/city_departments/neighborhood_and_community_services/human_services_division/homelessness_services/emergency_temporary_aid_and_shelter_plan [hereinafter *Emergency Temporary Aid and Shelter Plan*]; Jenna Hanchard, *Tacoma Begins Moving Homeless to Temporary Emergency Shelter*, KING5 (June 26, 2017), http://www.king5.com/news/local/tacoma/tacoma-begins-moving-homeless-to-temporary-emergency-shelter/452301858; Julia-Grace Sanders, *Tacoma's Doing Something Different on Homelessness*, CROSSCUT (June 7, 2017), http://crosscut.com/2017/06/tacoma-goes-its-own-way-on-homeless-emergency/.

[191] Telephone Interview with James Pogue, Director of Homeless Outreach, Comprehensive Life Services (November 9, 2017).

[192] *Id.*; Tacoma's population is approximately 208,100. *About*, CITY OF TACOMA, WASHINGTON, FIRE DEPARTMENT, https://www.cityoftacoma.org/government/city_departments/fire/About.

[193] Interview with James Pogue, *supra* note 191; *Homeless Eviction From "the Jungle" Encampment*, THE NEWS TRIBUNE (Dec. 13, 2017), http://www.thenewstribune.com/news/local/article189667569.html.

[194] *Id.*

[195] *Emergency Temporary Aid and Shelter Plan*, *supra* note 190.

[196] Interview with James Pogue, *supra* note 191.

temperature-controlled tent with stricter rules and screening processes in addition to services.[197] The third phase will focus on creating new short-term transitional housing.[198]

Phase One paired Tacoma's first temporary authorized encampment with increased law enforcement regarding public camping, car camping, and drug and sex trafficking. The City Council passed an emergency zoning and land use ordinance to allow the city to site temporary emergency shelters and named one of the larger existing unauthorized encampment sites as its first "Mitigation Site."[199] The city contracted with local service providers Comprehensive Life Resources and the Tacoma Rescue Mission to manage the site and coordinate service delivery.[200]

The Mitigation Site, otherwise known by locals as "the compound," consisted of around thirty residents, many who had lived there for a year or more.[201] When the City declared that site its first permitted encampment, it required people living in other unauthorized sites to relocate to the compound, resulting in the population literally doubling overnight.[202] The influx of unfamiliar people disrupted the individuals already living as a community at the compound, including some who had been there for over a year.[203] The long-term residents felt uncomfortable with so many strangers around, and the newcomers' experiences were chaotic.[204]

Photo: The News Tribune[193]

Establishing the Mitigation Site brought social service providers and basic amenities to the compound. Prior to the city contract, the community had group living agreements, which prohibited theft and nonresident guests. When the compound was named the Mitigation Site, these agreements were formalized and the residents created leadership roles and weekly community meetings.[205] A network of local organizations set up a robust

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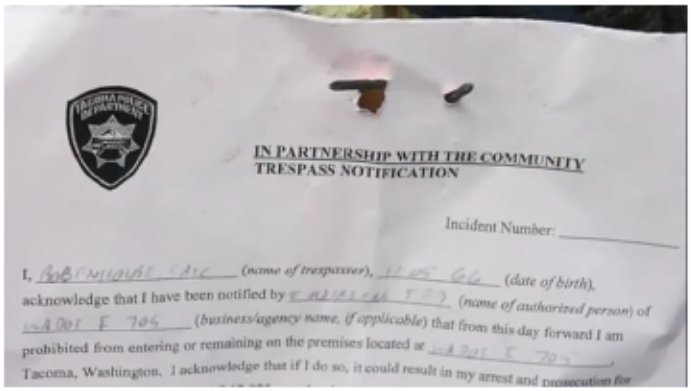
[197] Hanchard, *supra* note 190; Interview with James Pogue, *supra* note 191.
[198] *Emergency Temporary Aid and Shelter Plan*, *supra* note 190.
[199] TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.63(B)(4) (2017); Interview with James Pogue, *supra* note 191.
[200] *Id.* Aside from its role in Tacoma's Emergency Temporary Aid and Sheltering Plan, Comprehensive Life Services operates other homelessness services like mental health outreach to people experiencing homelessness in Tacoma and business outreach in response to complaints. *Id.*
[201] *Id.* The City selected this location based on the number of current occupants, proximity to other encampments, and its poor health and safety conditions. *June 6, 2017 Study Session Temporary Emergency Aid and Sheltering Presentation*, CITY OF TACOMA, Washington 9, http://cms.cityoftacoma.org/NCS/HSD/HomelessnessServices/StudySessionPresentation-EmergencyAidandSheltering-June6-2017.pdf [hereinafter *June 6, 2017 Study Session*].
[202] Interview with James Pogue, *supra* note 191.
[203] *Id.*
[204] *Id.*
[205] *Id.*

schedule of services,[206] including needle exchanges, healthcare, housing navigators, transportation to appointments, food, mental health counseling, and drug treatment.[207] These service providers also set up a massive email listserv of over 70 providers, and key participants still meet weekly to keep each other updated on activities at the Mitigation Site (and later, the Stability Site) and solve problems together.[208] Amenities included drinking water, handwashing stations, portable toilets, and waste disposal.[209]

Because business owners were concerned about drug and sex trafficking attendant to the unauthorized encampments, the first phase of the City's plan included increased law enforcement efforts.[210] However, no police were stationed at the Mitigation Site.[211] The site was staffed by a security agency 24/7, but its job was to protect the City's assets, not to arrest residents.[212] While some residents were glad police were not monitoring their activity at the encampment, others would have preferred more police protection.[213]


IN PARTNERSHIP WITH THE COMMUNITY
TRESPASS NOTIFICATION

Incident Number: _____

I, _____ (name of trespasser), _____ (date of birth), acknowledge that I have been notified by _____ (name of authorized person) of _____ (business/agency name, if applicable) that from this day forward I am prohibited from entering or remaining on the premises located at _____, Tacoma, Washington. I acknowledge that if I do so, it could result in my arrest and prosecution for

Photo: The News Tribune[193]

Phase One was short term, lasting only for six weeks while the Stability Site for phase two was built. Residents at the Mitigation Site were told that the encampment would be shut down at the end of June 2017, and anyone living there would be offered a spot at the new encampment site.[214] Nearly all of the Mitigation Site residents moved to the Stability Site when the time came, though some could not stay because they did not meet the criteria for entry; others left later to live in environments with more individual freedom.[215]

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[206] Tacoma called this service delivery model "Rapid Resource Pop-Up," emphasizing the temporary nature of the encampment and services. *Glossary of Terms*, TACOMA EMERGENCY TEMPORARY AID AND SHELTER PLAN, http://cms.cityoftacoma.org/NCS/HSD/Homelessnessservices/GlossaryofTerms-EmergencyAidandShelterPlan.pdf.

[207] Interview with James Pogue, *supra* note 191; *June 6, 2017 Study Session*, *supra* note 201, at 10.

[208] Interview with James Pogue, *supra* note 191.

[209] *Id.*; *June 6, 2017 Study Session*, *supra* note 201, at 10.

[210] Interview with James Pogue, *supra* note 191; *see also June 6, 2017 Study Session*, *supra* note 201, at 11.

[211] Interview with James Pogue, *supra* note 191.

[212] *Id.* When planning the Mitigation Site, Tacoma officials consulted with Seattle, San Diego, Portland, and Denver on key operational considerations for authorized encampments. Representatives from Seattle reported some issues with predatory behavior in encampments, such as individuals staking out bathrooms and demanding payment for other residents to use them. Tacoma's Mitigation Site security monitored the equipment to prevent this kind of behavior. *Id.*

[213] *Id.*

[214] *Id.*

[215] *Id.*

In Phase Two, residents live under a large tent with running water and space for up to eighty-five people.[216] A shelter provider operates the encampment, known as the Stability Site, and has made a significant effort to run the encampment with input from the residents.[217] However, keeping residents engaged in leadership has been a challenge, likely due to a combination of feelings of trauma and stress with a lack of ownership in the endeavor. Tacoma has had difficulty moving people into housing from the outset. Due to the scarcity of permanent supportive housing facilities in Pierce County, very few people find placements.[218] Many potential residents are excluded from the Mitigation site, because admission to one of the limited available spaces is based on vulnerability.[219]

Photo: Citylab[216]

Tacoma City Council is now considering several amendments to the ordinance permitting encampments as temporary shelters. Amendments include increasing the number of sanctioned encampments allowed in the city from two to six, with no more than two in any one police sector.[220] The amended regulations would also "allow for a variety of sheltering models," including indoor shelters and vehicle residency, and would allow temporary shelters to stay in the same location for up to a year.[221] Providers are interested in implementing

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[216] Heather Hansman, *Running Water Can Ease the Effects of Homelessness*, CITYLAB (Dec. 14, 2017), https://www.citylab.com/amp/article/547505/.

[217] Telephone Interview with Joshua Waguespack, Director of Operations for Homeless Adult Services, Catholic Community Services of Western Washington (Nov. 16, 2017).

[218] Candice Rudd, *Tacoma Could Spend $7 Million on Homelessness Next Year, Balancing Shelter with Enforcement*, THE NEWS TRIBUNE (Oct. 6, 2017, updated Oct. 8, 2017), http://www.thenewstribune.com/news/local/article177554166.html ("Of the roughly 140 people who have been served at the stability site since it opened in June, nine people have transitioned into housing.").

[219] Interview with James Pogue, *supra* note 191.

[220] TACOMA PLANNING COMMISSION, PROJECT: "PROPOSED TEMPORARY SHELTERS PERMANENT REGULATIONS," STAFF ANALYSIS REPORT (2018), http://cms.cityoftacoma.org/Planning/Planning%20Commission/PC%20Agendas%202018/Agenda%20Packet%20(2-7-18).pdf [hereinafter TACOMA PLANNING COMMISSION, STAFF ANALYSIS REPORT]. The Planning Commission recommended defining the number of shelters across the city in terms of police sectors in part due to the community policing effort around homelessness in Tacoma, deploying mental health professionals and social workers in a multidisciplinary approach to community policing. Telephone interview with Lauren Flemister, Senior Planner, City of Tacoma (Apr. 4, 2018). Moreover, the police sectors cross neighborhood boundaries and blend more and less affluent communities so that the burden of hosting an encampment is not relegated to a particular area of the city. *Id.*

[221] TACOMA PLANNING COMMISSION, STAFF ANALYSIS REPORT, *supra* note 220; Interview with Lauren Flemister, *supra* note 220.

additional sanctioned encampments in Tacoma, but felt this longer duration was necessary to justify the investment of time and effort of setting up temporary emergency shelter.[222]

Photo: The News Tribune[225]

Perhaps most egregiously, the city followed the opening of the encampment with even harsher treatment of homeless people who are not residents of the permitted encampment: banning public camping.[223] The new ordinance makes "unlawful camping" on public property a misdemeanor punishable by imprisonment for up to 90 days, a fine up to $1,000, or both.[224] The camping ban and increased policing policies were enacted "to appease some Tacomans who complain about negative impacts that can accompany homelessness,"[225] despite warnings that such a ban was likely to make the problem of homelessness worse and could unconstitutionally criminalize homelessness in violation of the Eighth Amendment.[226] And, since the Stability Site and other shelters are often full, the remaining homeless population has few options for places to sleep and camp and avoid citation.[227]

3. Summary of Challenges & Opportunities

The compulsory participation model reflects a city's recognition of a very serious and urgent problem: homelessness is very dangerous to one's health. However, this approach becomes problematic when it means offering unsheltered people the choice between going to the new permitted encampment or getting cited or arrested, when paired with increased enforcement of laws that criminalize homelessness. This compelled participation suggests that cities using compulsory models probably want to solve the immediate health crisis, but they also want to control people. Critics of compulsory encampments have compared them to internment camps: rounding up a particular class of people, informing them they must relocate for their own

> Cities using emergency response models probably do want to solve the immediate health crisis, but they also want to control people.

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[222] Interview with Lauren Flemister, *supra* note 220.

[223] TACOMA, WASH., PUBLIC SAFETY CODE § 8.12.180 (2017) ("unlawful camping"); Matt Driscoll, *Tacoma's Ban on Public Camping Might be Illegal and Do More Harm than Good*, THE NEWS TRIBUNE (July 22, 2017, updated July 20, 2017), http://www.thenewstribune.com/news/local/news-columns-blogs/matt-driscoll/article163000128.html.

[224] TACOMA, WASH., PUBLIC SAFETY CODE § 8.12.180(B), (D) (2017).

[225] Candice Rudd, *Tacoma Could Spend $7 Million on Homelessness Next Year, Balancing Shelter with Enforcement*, THE NEWS TRIBUNE (Oct. 6, 2017, updated Oct. 8, 2017).

[226] Matt Driscoll, *Tacoma's Ban on Public Camping Might be Illegal and Do More Harm Than Good*, THE NEWS TRIBUNE (July 22, 2017, updated July 30, 2017), http://www.thenewstribune.com/news/local/news-columns-blogs/matt-driscoll/article163000128.html (citing NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* (2016), https://www.nlchp.org/documents/Housing-Not-Handcuffs).

[227] Candice Rudd, *Amid Increased Enforcement of Homeless Issues, a Camp Pops Up in the Middle of the Hilltop*, THE NEWS TRIBUNE (Feb. 28, 2018, updated March 1, 2018), http://www.thenewstribune.com/news/local/article202769044.html.

good or for the public good, and then requiring them to live by rules over which they have no ownership. It's challenging to implement an encampment project swiftly without sliding into these pitfalls that undermine the value of permitted encampments.

Opportunities	Challenges
• Compulsory encampments often reflect a genuine **recognition of the urgent homelessness crisis** and the serious health problems associated with living outdoors.	• Compulsory encampments are often paired with increased policing, **criminalizing** the daily lives of people for whom the sanctioned encampments are not a viable option. • Compulsory encampments reflect a desire to **control** people and deprive residents of autonomy.

II. Operational Issues

Operational structures can and should vary, depending on goals and values of a particular encampment and on the social, political, and physical environment of the local area. Each encampment will want to set up services for basic necessities like food, water, bathroom facilities, and waste disposal. Some encampments may wish to arrange for electricity and internet and may build semi-permanent structures like tiny houses as opposed to tents. All encampments will also contract with social service providers that might include housing navigators, mental health counselors, medical professionals, and vocational skills trainers. This Part examines several operational factors affecting the remaining secondary operational decisions: duration, delegation of duties, and governance and enforcement.

A. Duration

Duration may be limited by city rules or negotiated by parties to address concerns such as availability of space and increasing stability for encampment residents.[228] For example, encampments authorized by the City of Seattle can remain at their permitted locations for one year, with an option to renew for a second year.[229] Past encampments were permitted for shorter periods: Seattle University hosted TC3 for just one month in 2005, and SHARE has typically operated its encampments for 90 days.[230] Some residents, hosts, and service

[228] Telephone Interview with Patrick Downs, Assistant City Attorney, City of Seattle (September 29, 2017).
[229] SEATTLE, WASH., LAND USE CODE § 23.42.056(E) (2015).
[230] *Permitted Encampment Evaluation*, *supra* note 56, at 3. SHARE continues to operate several encampments separate from those authorized by the City of Seattle; these encampments are typically hosted by churches in King County and continue to rotate locations every 90 days. *Frequently Asked Questions*, SEATTLE HOUSING AND RESOURCE EFFORT/WOMEN'S HOUSING EQUALITY AND ENHANCEMENT LEAGUE, http://www.sharewheel.org/tent-city-f-a-q-s. TC3 is among this category of encampments: not permitted by the City of Seattle but hosted by churches and universities for roughly three months at a time. For more information on church-hosted homeless encampments and shelters, see Means, *supra* note 27.

providers felt that 90 days was too disruptive, so encampments on City of Seattle land are now authorized for a one-year period with an option to renew for a second year based on "successful operation."[231] Success is measured by performance commitments contained in the contract between the City and the operator, such as target numbers for meeting emergency and immediate shelter needs and individuals entering transitional and permanent housing.[232]

In contrast, Tacoma, Washington allows temporary shelters to remain at a location for up to 185 days (roughly six months) with the possibility of a "one-time extension of up to 40 days, or longer in the case of inclement weather."[233] Tacoma further limits temporary shelters from returning to the same site only after six months have lapsed since the end of the previous temporary shelter.[234]

Given the significant benefits associated with stability and the burdens on the parties (both during the stay and associated with each move), groups planning for authorized encampments should thoughtfully consider a host term that strikes the right balance between costs and benefits.

> Partners must share a specific objective for the authorized encampment. Is it an on-going intentional community?
>
> Or a stop-gap measure for people transitioning into permanent housing?

In the university-host context, a short-term stay (such as 90 days) can coincide well with the academic calendar and appease public concerns about the institutions staying focused on their academic purposes.[235] However, as the university hosting relationship flourishes with deep community engagement and mutual learning opportunities between the camp residents and university community, university hosts may require more lead time to prepare for even a short-term hosting period. The planning period for the university requires all the same operational, legal, and social preparation as encampments on religious or city land, but with the additional tasks of cultivating institutional buy-in and developing curriculum. Each of the Seattle-based university hosts clarified that they could not undertake hosting an encampment without persistent students prepared to take on a lot of legwork and institutional leadership amenable to the idea. At the University of Washington, for example, this process took several years, meaning that many students involved in the initial effort had graduated by the time their vision came to fruition; the student organization had to continue to recruit underclassmen to take up the work, knowing that even they may not see the encampment at their school before they graduate.

Perhaps the most important consideration in operating an authorized encampment is how the parties envision a mutual end goal of the project. Parties involved in authorized encampments share the ultimate goal of ending homelessness, but they may hold different

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[231] *Permitted Encampment Evaluation*, *supra* note 56, at 3.
[232] *Id.* at 7.
[233] TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.635(4) (2018).
[234] *Id.*
[235] TC3@UW, *supra* note 25, at 3.

visions of the role of encampments as a means to that end.[236] Partners implementing authorized encampments should also share a specific objective—either to operate the encampment as an on-going alternative to less-safe outdoor living arrangements or as a stop-gap measure for people to move into other forms of transitional or permanent housing.[237]

Those two approaches involve different logistical and social implications that should be carefully planned ahead of time. For example, a long-term encampment might need more substantial dwellings like tiny houses (as opposed to tents on pallets) and more sophisticated or permanent arrangements for running water and waste management than an environment intended for shorter-term residence.[238] On the other hand, an encampment modeled as a transitional step might do with less permanent dwellings but would require a greater investment in service delivery, like a higher ratio of case workers to work to get residents into housing.[239]

B. Delegation of Duties

Contracts between the landowner (city or university, for purposes of this brief) and the operating partner (for example, Nickelsville, SHARE, or Patacara in the Seattle case studies; Alpha Project in San Diego) typically address location and service term, payment, delegation of duties relating to hygiene and safety, indemnification, and expectations around communication. In Seattle, the obligations of the encampment operator also include developing a governance structure

> to create a shared power and decision making structure where residents participate in the adoption and enforcement of policy, assist with security and property maintenance . . . and share experience and expertise with their peers. These experiences are intended to promote balanced and shared power, and skill development in conflict resolution, communication and leadership.[240]

However, it is unclear how effectively the encampment operators achieve this commendable objective. Because the Seattle encampments are managed by organizations with long histories of homeless advocacy, the historical governance structures of SHARE/WHEEL and Nickelsville have been applied to that city's authorized encampments, regardless of how well they reflect the power dynamic desired by the encampment residents.[241]

Notably, neither the residents of the encampment nor its governing board are parties to this agreement between the operating partner and the landowner. However, each encampment is governed by a code of conduct and grievance procedures, incorporated into

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[236] Telephone Interview with Tim Harris, Founding Director, Real Change Homeless Empowerment Project (Oct. 26, 2017).
[237] Interview with Krystal Koop, *supra* note 22.
[238] *Id.*
[239] *Id.*
[240] CITY OF SEATTLE DEPARTMENT OF CONSTRUCTION & INSPECTIONS DIRECTOR'S RULE 9-2016, HUMAN SERVICES DEPARTMENT DIRECTOR'S RULE 2-2016 (2016), http://www.seattle.gov/dpd/codes/dr/DR2016-9docx.pdf.
[241] Email from David Baum, Community Advocate, to Evanie Parr, Seattle University School of Law (Mar. 13, 2018) (on file with author).

the landowner/operator contract by reference.[242] For a well-operated encampment, this tiered relationship has many benefits. It allows an organization with infrastructure to work with the landowner to work out insurance and financial agreements, while leaving the policy decisions about camp governance to the residents who develop the code of conduct. Ideally, the organization in the middle understands and can navigate between the needs of the parties on either end to work out other important operational concerns like safety policies, meals, and service delivery.

However, such a role is difficult to fill. By its role in the middle, the operating partner can be simultaneously pulled in one direction by the encampment residents (who want stability and autonomy so they can focus on rehabilitation) and another by local governments (who want to get people into housing, but feel pressure to meet deadlines and milestones that may not be entirely realistic).The operator must be prepared to take on significant risks associated with running an encampment: indemnifying the landowner against any claims arising from conduct of residents, staff, or volunteers, and taking the brunt of public opinion.[243] Successful partnerships cannot be done effectively without trusting relationships between all parties.[244]

C. Governance & Enforcement

It is well understood that autonomy is one of the primary benefits of encampment living as opposed to homeless shelters; however, autonomy shifts once an encampment agrees to comply with an operator and landowner's needs in exchange for its permitted status. The question becomes to what extent camp residents will sacrifice some autonomy and to what extent the landowner can be flexible with its requirements. Perhaps most important, this bargain is governed by existing power structures, meaning that encampments face automatic disadvantages like the risk of sweeps if they remain unauthorized.

The encampment must retain some sense of self-ownership, if for no other reason than the fact that operating partners lack the capacity to do so. While the scope of camp authority can vary, the two basic models can generally be described as "self-governance" and "self-management."[245] Self-governance would involve democratic representation from within the encampment community and buy-in from neighbors and other stakeholders, but ultimately leave policy decisions to the encampment residents themselves. In contrast, self-management would shift some of that authority to the operator (and arguably to the city as well) but leave implementation to the residents on the ground.

> "Often, 'self-managed' is a euphemism for understaffed."[245]

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[242] Incorporation by reference refers to the drafting practice of referring to an external document so as to include its contents in the terms of the agreement without actually copying it into the contract itself.
[243] Tim Harris, Editorial, *Like it or Not, Seattle Needs SHARE and Nickelsville*, Real Change News (Feb. 17, 2016), http://realchangenews.org/2016/02/17/it-or-not-seattle-needs-share-and-nickelsville.
[244] Interview with Tim Harris, *supra* note 236.
[245] Interview with Krystal Koop, *supra* note 22.

Both models pose challenges. A self-governance structure is vulnerable to the dangers of entrenched power, corruption, and incompetence present in any true democracy.[246] Self-management can lack sufficient resources and oversight to work effectively.

> Plan a governance structure that reflects the purpose of the encampment.

Another concern with either model of governance is retaining competent, ethical leadership representative of a population that is by definition transitory. The question of leadership within homeless encampments is truly a double-edged sword: many residents who hold institutional knowledge about how to run the encampment eventually become housed. Permanent housing is the goal of authorized encampments as interim solutions to homelessness and the goal of virtually all unhoused people. But once an individual gets into housing, they are no longer residents of the encampment with the requisite personal stake in operating the camp that defines self-management or self-governance; nor do they necessarily possess the time or interest to continue in a leadership role in the camp. This outcome is obviously a boon for the individual, but it inevitably means a loss of experienced leadership for the camp and can lead to accountability problems among long-term residents.

How can advocates reconcile the need for long-term memory and leadership experience, the benefits of autonomy, and the end goal of getting people *out* of homelessness? Some experts have posited that we still have not answered the question of how to create stable, ethical leadership over time, but have suggested mechanisms that might support this objective.[247]

For example, former residents who get into housing "shouldn't have to martyr themselves" by staying behind to self-govern from within the encampments.[248] Rather, governing boards could include current and former residents (who have moved into housing) who receive compensation for their service.[249] These roles could carry meaningful job titles like "program coordinator" or "program coordination intern" and include professional development and training in self-governance, which could translate to future jobs.[250]

Encampments should plan a governance structure that reflects the purpose of the encampment. Whether the objective of the encampment is to build an intentional community or to respond to an immediate health crisis will inform how much say the residents should have, who enforces the rules, and what procedures are necessary to resolve conflicts.

III. Legal Issues

Cities often authorize transitional encampments by ordinance, and any encampment inevitably involves relationships and agreements between several entities. Therefore, careful

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[246] Interview with Polly Trout, *supra* note 22 ("Often, 'self-managed' is a euphemism for understaffed.").
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] *Id.*

legal drafting is critical to every aspect of authorized encampments. Land use ordinances and contracts between the primary parties should anticipate limitations and risks posed by encampments and should formulate zoning laws and contracts that sufficiently address these issues. Further, encampment rules and regulations should be vetted to adequately protect the rights of residents, particularly in settings where individual discretion could skew administration. The specific legal issues any potential encampment may confront are fact- and jurisdiction-specific; however, this section surveys a few common legal considerations.

A. Zoning & Land Use

When a city authorizes homeless encampments on public land, it has the authority to determine the parameters of an appropriate location. Considerations might include proximity to public transportation,[251] the nature of the area's current or nearby uses,[252] vehicle accessibility for waste disposal and other service providers, the existence or readiness for plumbing, and the quality of the surface of the land. A municipality should carefully consider the breadth of sizing options and understand how many viable locations would fit the parameters.[253] A city with a very large homeless population, for example, should consider the sizing options so that more than one location could satisfy the standards.[254]

Cities may also write operational parameters into the codified permitting requirements. For example, the Tacoma Municipal Code authorizes the Director of Planning and Development Services to issue permits for temporary homeless shelters "only upon demonstration that all public health and safety considerations have been adequately addressed" and to revoke permits "if the City determines the site is unfit for human habitation based on sanitary conditions or health related concerns."[255] The same Chapter requires portable water, toilets, handwashing stations, waste disposal, and minimum spacing requirements per resident to prevent overcrowding.[256]

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[251] For example, the Land Use Ordinance for Tacoma, Washington requires that "the temporary shelter must be located within one-half mile of a bus route that is in service seven days per week." TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.635(14) (2018).) (2018). Seattle similarly requires transitional encampments to be located within half a mile of a transit stop, but does not specify how frequently the stop must be in service. SEATTLE, WASH., CODE § 23.42.056(B)(5).

[252] For example, the Land Use Ordinance for Seattle, Washington requires transitional encampments to be located on property that is zoned industrial, downtown, commercial, or "within a Major Institution Overlay district." SEATTLE, WASH., CODE § 23.42.056(B)(1). A major institution is one that provides medical or educational services to the community, meets certain minimum size parameters, and "by nature of its function and size, dominates and has the potential to change the character of the surrounding area and/or create significant impacts on the area." SEATTLE, WASH., CODE § 23.84A.025.

[253] Interview with Patrick Downs, *supra* note 228. *See, e.g.* SEATTLE, WASH., CODE § 23.42.056(B)(6) (requiring 5,000 square feet of land and a minimum of 100 square feet per occupant); TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.635(4)(c) (2018) (requiring a minimum of 7,500 square feet for a shelter serving up to 50 people).

[254] Interview with Patrick Downs, *supra* note 228.

[255] TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.635(4)(b)(1) (2018).

[256] TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.635(15) (2018).

B. Liability

Liability and insurance coverage may be addressed in the city ordinances authorizing encampments and in contracts between landowners and operating organizations.[257] It is unsurprising that contracts between landowners and operating organizations include additional insurance and indemnification clauses. What might be surprising, however, is how rarely these clauses are invoked. For example, when a camp-associated dumpster failed to lock in place and accidentally rolled into a government vehicle parked near the TC3 encampment at University of Washington, no one bothered to file an insurance claim; SHARE simply cut a check to cover the costs to repair the dent directly.[258] These provisions likely anticipate more serious incidents, like violent or negligent conduct by residents or operators that cause significant harm to people or property within the encampment or the surrounding community. This concern may be grounded in some of the common misconceptions about the behavior of homeless people, though research shows these worries are largely misguided.[259]

C. Residents' Rights: Due Process & Contractual Obligations

Relevant to the earlier discussion of degrees of autonomy and self-governance is the question of encampment residents' legal rights. Given that residents are not typically party to the contracts between landowners and operators, do residents have any claims to enforce those contracts?[260] This question has not yet been tested, perhaps because encampment residents are more concerned with their rights relating to camp codes of conduct and removal procedures. For example, many codes of conduct specify qualifications for entry and prohibited conduct within the encampment, and require signed agreement as a condition to become a resident.[261] Virtually all encampment codes of conduct contain provisions regarding conduct that can cause a resident to be temporarily or permanently "barred" from the encampment, such as violent or threatening behavior toward another resident or violation of prohibitions on alcohol or drugs.[262] These rules are often among encampments' zero-tolerance policies, so the stakes are high when an individual resident is accused of violating one, and any such allegations should not be taken lightly.

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[257] TACOMA, WASH., LAND USE REGULATORY CODE § 13.06.365(4)(b)(2)(f) (2018) (requiring the sponsoring organization to commit in the permit application "to maintain liability insurance in types and amounts sufficient to cover the liability exposures inherent in the permitted activity during the existence of any sponsored temporary shelter).

[258] Interview with Sally Clark, *supra* note 85.

[259] *Seattle City-Sanctioned Encampments*, *supra* note 9 at 1; Junejo, *supra* note 8 at 7–11.

[260] When Patacara assumed the role of operator for Camp Second Chance, those parties never executed a written agreement, which meant that the relationship was particularly dependent on trust between the individual actors. *Id.*

[261] *See, e.g.*, City of Seattle, *Camp Second Chance Code of Conduct*, https://www.seattle.gov/Documents/Departments/Homelessness/CAC/C2C-CoC.pdf; City of Seattle, *SHARE/WHEEL Low-Barrier Village Code of Conduct*, https://www.seattle.gov/Documents/Departments/Homelessness/CAC/Licton-CoC.pdf.

[262] *Id.*

But do these codes of conduct provide sufficient due process to individuals who might challenge their evictions based on alleged violations? For instance, in self-governed encampments, the same individual may serve in the roles of witness, prosecutor, and judge in an instance of alleged rule-breaking. If the encampment rules do not provide for some recusal for conflicts of interest, the accused individual is not guaranteed that his or her fate will be determined by an impartial decision-maker. And if the procedure for bringing and deciding a rule violation charge is not sufficiently documented, there may be little guarantee of a consistent or fair process.

> Do codes of conduct provide sufficient due process for residents accused of violating encampment rules?

Further, some legal experts have suggested that codes of conduct that do not specify the process or grounds for appeal may unconstitutionally leave residents without due process and subject to arbitrary and unfair evictions.[263] Considering the utter dearth of rights for individuals in homeless shelters, it is not entirely surprising that encampment codes of conduct do not contain many meaningful legal protections for residents. [264] But given the unique dynamic of authorized encampments run by self-organized individuals, this gap could be an opportunity for advocates in the homeless community to push for some major developments in legal rights for homeless people.

Codes of conduct could create binding legal rights and obligations and should be drafted carefully to establish clear expectations. While most codes of conduct nominally provide for rights to appeal, few adequately describe the process to appeal decisions for individuals accused of violating the agreement.[265] Unclear or inconsistent appeals processes could raise significant due process issues, a complex topic not yet tested in a court of law. Similarly, "insurance payments"[266] or monthly dues[267] could constitute consideration, making contracts that require them enforceable in a court of law. Neither has this issue been tested in court yet, but it could create another avenue to ensure stronger rights for encampment residents.

Because encampments themselves are not typically considered legally cognizable entities, encampment operators should be conscious of how they respect the rights of individual residents. People experiencing homelessness have the same rights as housed people but are not always treated as such. Encampment operators should make rules and procedures clear and accessible to residents to ensure that everyone's rights are equally protected.

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[263] City and State anti-discrimination laws would also apply to encampments and could be avenues for relief for individuals challenging camp evictions related to protected statuses like mental illness. Email from Tristia Bauman, National Law Center on Homelessness and Poverty, to Sara Rankin, Director, Seattle University Homeless Rights Advocacy Project (Oct. 24, 2017) (on file with author).

[264] *Id.*

[265] *See* Codes of Conduct, *supra* note 261

[266] *See supra* Part I § C(1).

[267] *See supra* Part I § C(2).

IV. Messaging & Social Issues

Any city planning to open an authorized encampment should be prepared to answer many questions and concerns posed by the public and other stakeholders. City ordinances can even require operating partners to set up community outreach efforts and mechanisms for public input throughout operating the encampment.[268] Cities should anticipate the most common concerns and be prepared to dispel misconceptions and to emphasize the benefits of permitted encampments. Sometimes, it may be more effective to provide information about how a city or host intends to respond to specific concerns should they come to fruition, rather than to persuade every dissenter of an encampment's merits.

> Anticipate the most common concerns, be prepared to dispel misconceptions, and emphasize the benefits of permitted encampments.

Most importantly, cities implementing authorized encampments must acknowledge what the encampment can and cannot do with candor. Most—if not all—authorized encampments replicate at least some of the barriers to existing shelters by virtue of limited space and rules in place to protect the residents and the surrounding community. This reality means that sanctioning encampments may respond to part of the problem with emergency shelters (not enough beds for the number of people experiencing homelessness), but they do little to address other functional barriers to shelter, let alone the underlying causes of homelessness. Cities should be forthright in their communications about the sanctioned encampment and careful not to overstate its role as an interim solution to homelessness. Sanctioned encampments are a "critical interim measure" to ensure that unhoused people have " a safe and stable place to live," but they should not be the solution to a larger housing crisis, nor should their existence be used "to enable complacency or increased criminalization of houseless folks who do not or cannot access a sanctioned encampment."[269]

A. Public Health & Public Safety

First, uninformed housed people worry about the public health and safety risks posed by homeless encampments. However, encampments have been shown not to create health and safety problems, even partially resolving those issues sometimes.[270] Yet, many people mistakenly associate people experiencing homelessness with crime and disease, and any hosting entity should be prepared to head off those concerns.

For example, one night, while Seattle University was hosting Tent City 3, there was an altercation between some unhoused people on the far side of campus.[271] The fight took place

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[268] *See, e.g.*, SEATTLE, WASH., CODE § 23.42.056(A) (2015) (requiring at least one community meeting prior to implementation and a "Community Advisory Committee" to meet regularly to answer questions and report on ongoing encampment operations).

[269] Email from Breanne Schuster, Staff Attorney, American Civil Liberties Union of Washington, to Evanie Parr, Seattle University School of Law (Apr. 25, 2018) (on file with author).

[270] *See supra* at Part I § (D)(1).

[271] Interview with Joe Orlando, *supra* note 28.

around three in the morning, and the police were called because of a knife injury.[272] The individuals involved had no relationship to TC3, but were homeless.[273] News coverage of the fight the next day mentioned that SU was hosting a homeless encampment, as though that information was relevant because of the unhoused status of the individuals and the proximity to university property (though located centrally in a major urban area).[274] Representatives from SU spent the day calling news stations, asking them to stop bringing up the encampment in the coverage of the fight because one actually had nothing to do with the other, but mentioning the encampment in the same news segment suggested a connection.[275]

One of the notable restrictions on encampment residency is a zero-tolerance policy for individuals with histories as sex offenders. Many authorized encampments ask whether individuals are on sex offender registries as part of their screening questions and do not allow anyone who says 'yes' to join the encampment. Similarly, authorized encampments also include sobriety policies, prohibiting any use of drugs or alcohol on site, and making violation an eviction-worthy event. These restrictions can assuage some of the public health and safety concerns expressed by housed neighbors, especially in the university context. Yet, it is also worth noting this exclusionary policy means that people who face some of the most significant barriers to housing (including emergency shelters and other transitional housing spaces) are also excluded from the authorized encampment environment.[276]

Finally, the Seattle Police Department collected data about the frequency of crimes committed in the areas around authorized encampments in that city, which shows "no significant increase in crime" because of the encampment.[277] The City of Seattle even suggested that the increased traffic of unhoused people in a neighborhood hosting an encampment may be the source of negative perceptions but noted that further study is necessary to understand the impact of increased foot traffic.[278]

> There has been "no significant increase in crime" because of authorized encampments.[277]

B. Stability & Efficiency

Cities should also emphasize the potential for effective service delivery via encampments, given that existing alternatives have been insufficient to rehouse many people in the community. Caring for people experiencing homelessness is costly—from shelter operations to sweeps[279] and unpaid medical bills. Authorized encampments pose opportunities

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[272] *Id.*
[273] *Id.*
[274] *Id.*
[275] *Id.*
[276] *See* Skinner, *supra* note 7 at 19–25 (explaining the Housing First model in contrast to the widespread practice of sobriety requirements for shelters, keeping unhoused people with substance abuse problems on the street, alienated from treatment).
[277] *Seattle City-Sanctioned Encampments*, *supra* note 9 at 10.
[278] *Id.*
[279] Hanna Brooks Olsen, *What Does a Sweep Cost, Anyway?*, REAL CHANGE NEWS (Nov. 8, 2017), http://realchangenews.org/2017/11/08/what-does-sweep-cost-anyway.

to care for people's basic needs more efficiently, reducing the costs of policing and medical care for unhoused people. Centralizing a group of people with some common social service needs can allow social service providers to meet with clients more regularly.

Further, the mere fact of a stable living arrangement can improve a person's ability to address issues that contribute to homelessness—like loss of income, mental health challenges, chemical dependency, or physical illness—and transition back into housing. Cities should respond to concerns that permitting homeless encampments enables people to remain unhoused should clarify the existing barriers to shelter and transitional housing and emphasize how permitted encampments can serve the same purposes as shelters by providing stable living environments where people experiencing homelessness can effectively access the services they need to become housed again.

C. Pedagogical Opportunities

Photo: Seattle Pacific University[280]

Universities that host homeless encampments should underscore the unique pedagogical opportunities that encampments provide for the collegiate community. If encampment residents desire and support working with students, the encampment environment can offer a microcosm of service-learning opportunities. From socio-economical determinants to health to practical applications for dental students and law students studying public benefits, residents' needs present valuable learning opportunities for students at universities that host encampments. Perhaps most important, direct interaction with people experiencing homelessness can have a transformative effect on students, breaking down stereotypes and inspiring students to become compassionate citizens. In this way, hosting homeless encampments can support universities' values and missions around community engagement and religious or moral responsibilities.[280]

However, universities should be careful that their pedagogical activities do not cross the line into appropriating the experiences of unhoused people. "[O]verly stud[ying]" residents can detract from the community-building objectives of hosting an encampment by dehumanizing residents and subjecting them to invasive questioning.[281] Universities should work closely with the encampment when planning courses around hosting, so boundaries are clear and encampment residents are not subjected to more pedagogical engagement than they are comfortable with. Universities should also be mindful that individual residents' feelings may change during the stay and should respect their wishes for more privacy.

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[280] Kirk Johnson, *A Homeless Camp In Our Back Yard? Please, a University Says*, New York Times (Feb. 27, 2018), https://www.nytimes.com/2018/02/27/us/homeless-camp-seattle.html; *About SPU's Homeless Initiative*, *supra* note 78.

[281] TC3@UW, *supra* note 25, at 14–15.

D. Continuing Efforts for Permanent Solutions to Homelessness

> Permitted encampments are not themselves a solution to homelessness.

Finally, all messaging around encampments should clarify that permitted encampments are not themselves a solution to homelessness. While some individuals may prefer living in encampments long-term, conditions can still be harsh and volatile sometimes. Cities that cannot provide for a sizeable number of homeless people through shelters and other traditional rehousing options must understand that sanctioned encampments are not sustainable options for many people. Authorized encampments are best understood as interim solutions to improve the immediate conditions of people experiencing homelessness while the particular city invests in and develops permanent solutions like low-income housing, transitional housing, mental health services, affordable healthcare, supervised consumption sites, low-barrier employment opportunities, or all of the above.

CONCLUSION

Authorized encampments can be effective interim solutions to homelessness in communities where traditional shelters options are inadequate to meet the needs of people experiencing homelessness. However, cities implementing permitted encampments should be aware of the critical opportunities and challenges encampments present, and they should carefully consider how they plan to address the most significant issues relevant to the locality. There are five recommendations for how to approach created a successful sanctioned encampment program:

1. **Start with Research.** Many communities are experimenting with sanctioned encampments in response to the quickly intensifying homelessness crisis. Cities considering implementing authorized encampments should look to those who came before for insights, rather than reinventing the wheel.
2. **Identify Goals.** These goals must be more specific than "ending homelessness." Is the goal of the encampment to respond to a specific health crisis, so speed is more important than developing sustainable self-governance? Is creating an intentional community important, so residents should be allowed to stay for longer periods and develop skills that could transfer to income-generating work? Or is the goal simply to improve the immediate conditions of people experiencing homelessness while more shelter and transitional housing is built? The fundamental purpose of the encampment will inform how to measure its success, and how to approach operations, legal obligations, and messaging. Decide on the objectives of the encampments from the outset and build evaluation metrics that reflect those goals.
3. **Be Realistic.** The goals identified under the previous recommendation must be realistic. If the goal is for the encampment to serve as a stopover point to more specialized interventions, the city must be realistic about how long it will take for each person to access and transition into the next steps. Cities must also acknowledge the reality that not every person experiencing homelessness can access encampments—space limitations, sobriety requirements, and zero-tolerance policies for people with criminal histories can functionally exclude people just as shelters often do. Cities need understand the limits of encampments and not punish the remaining unhoused people for whom permitted encampments are not a viable option. Relatedly, cities and operators should be careful not to oversell the merits of sanctioned encampments to themselves and to other stakeholders; the existence of permitted encampments should not enable complacency.
4. **Set and Follow Clear Expectations.** Powers, rights, and duties regarding governance and enforcement in the encampment should be exceedingly clear to all involved. Operators should develop straightforward rules and regulations and follow them consistently. Similarly, roles should be delineated between governing bodies, service providers, and resident security forces, so any issues that arise can be dealt with swiftly, without causing more confusion or disruption. In the same vein, the neighboring community should share a clear understanding about the role and operations of the

encampment, so neighbors can effectively support the successful operation of the encampment.

5. **Genuinely Commit to Community Structure.** Whatever governance structure or overall goals of the encampment, all parties involved must genuinely commit to and respect the objectives of the encampment. Any alterations to rules or regulations should be in service to the encampment's mission to maintain the integrity of the project.

Each recommendation is vital to the success of any model of sanctioned encampment. But most important, parties implementing authorized encampments must do so thoughtfully, with clarity, and with genuine input from the residents of the encampment and the surrounding community.

Appendix

A. City of Seattle Permitted Encampment Evaluation, June 28, 2017
B. Contract Between Tent City 3 & Seattle Pacific University
C. Seattle Pacific University Letter to Parents
D. Seattle Pacific University Letter to Students
E. Contract Between Tent City 3 & University of Washington
F. TC3@UW Evaluation Report, Winter 2017
G. Dignity Village Entrance Agreement
H. Contract Between Dignity Village & City of Portland, Oregon

5 Things the City Can Do to Respond to Homelessness with Compassion

1) Develop a robust group of **first-responders** who are trained to deal with mental health and addiction crises who would be the ones to connect people living on the streets with services. These first-responders could also address livability issues like needles in parks, garbage in neighborhoods, and low-level theft if victims did not want to involve the police.

2) Declare a **moratorium on sweeps** of homeless camps. Until we can offer adequate alternatives, sweeping people from one part of the city is just an expensive and harmful way to deal with the housing crisis.

3) Provide **basic services for hygiene** for people living on the street, including restrooms, water, and garbage disposal. Many of resident complaints stem from the lack of adequate infrastructure for people living on the streets. Addressing basic needs will solve a great part of the problem.

4) **Legalize temporary camps** on city-owned property, as well as providing services to make them clean, safe and viable. There are already successful examples of city-sanctioned camps so let's expand this model.

5) **Track arrests** of homeless people, publish data on a city website, and hold responsible parties accountable for achieving a drastic reduction of arrests. We should not have to rely on the investigative journalism of the Oregonian to learn basic facts about how the city deals with its homeless population.

Parsons, Susan

From: Kimberly McCullough <KMcCullough@aclu-or.org>
Sent: Sunday, August 26, 2018 9:10 AM
To: Parsons, Susan
Cc: Elliott Young
Subject: FW: Homeless Petition: Next Steps

Sarah,

Please reserve my spot to speak at City Council on October 3rd. I believe Elliott Young has already spoken to you about this, but that you need to hear from me directly.

Thank you!

Kimberly McCullough, J.D.
Pronouns: she, her, they, their

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ACLU
Oregon

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From: Elliott Young [mailto:eyoung@lclark.edu]
Sent: Friday, August 24, 2018 12:21 PM
To: Kimberly McCullough <KMcCullough@aclu-or.org>
Cc: Ricardo Lujan <RLujan@aclu-or.org>
Subject: Re: Homeless Petition: Next Steps

Yes, Kimberly, that sounds good.

If you could email Susan.Parsons@portlandoregon.gov at the City to reserve your spot for the Oct. 3rd meeting that would be great. She is about to release the spots I had reserved so she needs top hear from individuals.

Cheers,
Elliott

1020

Request of Kimberly McCullough to address Council regarding compassionate response to homelessness (Communication)

OCT 03 2018
PLACED ON FILE

Filed SEP 25 2018

MARY HULL CABALLERO
Auditor of the City of Portland

By _____ Deputy

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	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Eudaly		
Wheeler		

IT TAKES A VILLAGE

Practical Guidance for Authorized Homeless Encampments

SEATTLE U
SCHOOL OF LAW

HOMELESS RIGHTS
ADVOCACY PROJECT

It Takes a Village

Practical Guidance for Authorized Homeless Encampments

Author

Evanie Parr

Editor

Sara K. Rankin

Electronic copy available at: https://ssrn.com/abstract=3173224

Photo: Real Change News[120]

treatment of homeless people in Seattle.[120] Over the next several years, Nickelsville encampments frequently shifted locations in response to "sweeps"[121] by city officials, but the organization was eventually approved to operate permitted encampments following City Council's approval of the authorized encampment ordinance in March 2015.[122] Today, Nickelsville operates three authorized encampments: Ballard Nickelsville, Georgetown Village, and Othello Village.[123]

SHARE/WHEEL fills a similar managerial role for two of the other sanctioned encampments: Interbay Tent City 5 and Licton Springs Village.[124] Seattle Housing and Resource Effort (SHARE) and the Women's Housing Equality Enhancement League (WHEEL), collectively SHARE/WHEEL, are partner organizations of current and formerly homeless men and women, operating shelters and tent cities in King County, Washington.[125]

The Low-Income Housing Institute (LIHI) is a Seattle-based organization that provides permanent, supportive, and transitional housing services.[126] Besides operating several of the

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[120] Dr. Wes Browning, Opinion, *Dr. Wes: Nickelsville is the Mayor's Fault*, Real Change News (Sept. 17, 2008), http://realchangenews.org/2008/09/17/dr-wes-nickelsville-mayor-s-fault; Gillis, *supra* note 112; John Iwasaki, *Homeless Start Settling in Fuchsia 'Nickelsville'*, Seattle PI (Sept. 22, 2008), http://www.seattlepi.com/local/article/Homeless-start-settling-in-fuchsia-Nickelsville-1285979.php; Erik Lacitis, *150 Tents for Homeless Spring Up on Industrial Land Owned by Seattle*, The Seattle Times (Sept. 23, 2008, updated Sept. 25, 2008), https://www.seattletimes.com/seattle-news/150-tents-for-homeless-spring-up-on-industrial-land-owned-by-seattle.

[121] "Sweep" refers to the common government practice of removing tents and other belongings from an encampment and forcing residents to leave the site. *See* Junejo, *supra* note 8 at 15–20 (discussing how sweeps significantly disrupt residents' lives, fail to effectively relocate residents to shelters, and raise potential claims for constitutional violations).

[122] Seattle, Wash., Land Use Code § 23.42.056 (2015); Daniel Beekman, *Seattle City Council Clears Way for 3 New Homeless Camps*, The Seattle Times (Mar. 30, 2015, updated July 29, 2015), https://www.seattletimes.com/seattle-news/politics/seattle-city-council-clears-way-for-3-new-homeless-camps/; Daniel Beekman, *Only 2 Groups Get OK to Operate New, City-Regulated Tent Cities*, The Seattle Times (Jun. 19, 2015, updated July 29, 2015), https://www.seattletimes.com/seattle-news/politics/only-2-groups-get-ok-to-operate-new-city-regulated-tent-cities/.

[123] *Seattle City-Sanctioned Encampments*, *supra* note 9.

[124] *Id.*

[125] *About Us*, Seattle Housing and Resource Effort/Women's Housing Equality and Enhancement League, http://www.sharewheel.org/aboutus.

[126] *About*, Low Income Housing Institute, https://lihi.org/about/; Telephone Interview with Bradford Gerber, Tiny House and Volunteer Programs Coordinator, Low Income Housing Institute (October 12, 2017).

Village was not fulfilling its purpose as a transitional living space.[162] As a result, the Village agreed to reactivate a dormant policy limiting individual stays to two years.[163] However, extensions are available for people on subsidized housing wait lists, or awaiting decisions from the Social Security Administration, as long as they actively comply with the respective process.[164] And, to preserve institutional knowledge, villagers serving in leadership positions can receive extensions to complete their terms.[165] However, the Village has no term limits for their leadership positions, so villagers can (and sometimes do) stay for several years.[166]

Photo: Dignity Village[154]

Dignity Village has been described as "volatile, precarious, and incredibly resilient" due to its self-governance structure.[167] For example, the Village has struggled to find member-residents with the skills to fill certain roles required by its nonprofit status.[168] While some residents developed ownership over their duties, this process can result in a lack of delegation.[169] Further, since some residents have lived in the Village for eight or even ten years, certain perspectives and sources of power became entrenched, so innovative ideas are often shut down quickly.[170]

3. Summary of Challenges & Opportunities

Both self-governed encampments struggle to strike the optimal balance between their values of dignity and autonomy with the necessity for oversight and checks and balances. One common incident is illustrative of this dilemma:[171]

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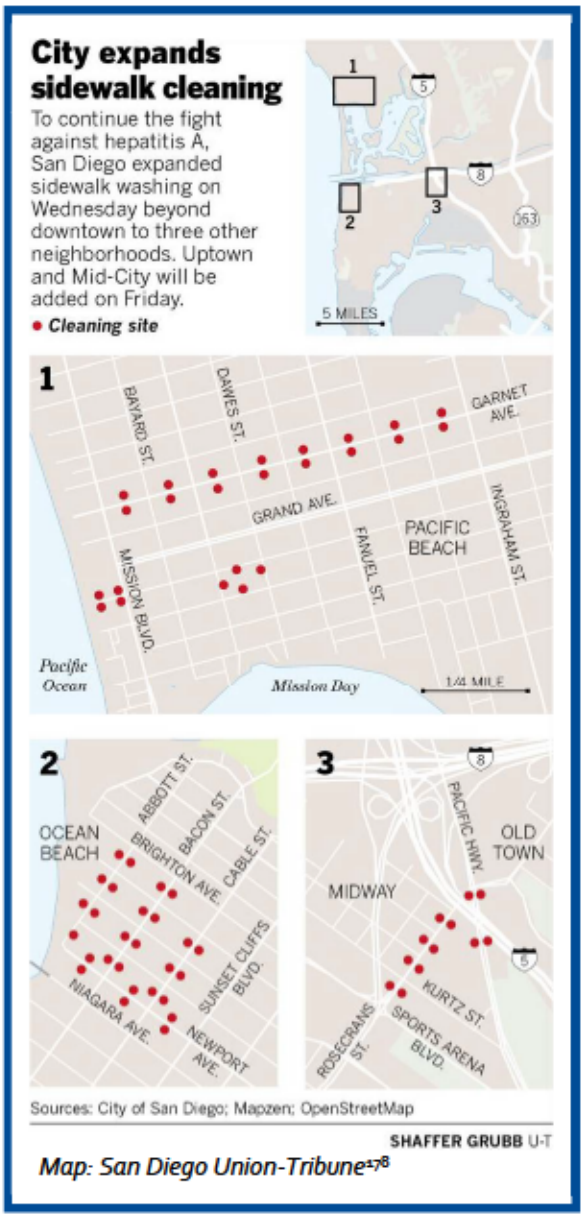
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] This incident is entirely hypothetical, but it represents the kinds of issues that can come up in any encampment and how the self-governance structure can complicate their resolution.



Map: San Diego Union-Tribune[178]

disproportionately affected the homeless population. More than 370 people have been hospitalized and of the 20 people who have died, 11 were homeless."[177]

In an initial response to the outbreak, the City brought in crews to power-wash sidewalks with bleach in downtown neighborhoods frequently populated by homeless people.[178] Unhoused people camping in downtown areas of San Diego had to remove all of their belongings for the cleaning, but when they returned later, they were met by police who told them "the area had to be cleared to break the cycle that has caused the hepatitis a virus to spread."[179] Though most people cooperated, some were arrested, and no one was provided prior notice of this police action.[180]

To keep homeless people away from the downtown areas most plagued by the sanitation issue, San Diego opened a sanctioned alternative camping site on city-owned land. On a city maintenance yard, the site provides space for 136 individuals, bathrooms, storage, and 24-hour security.[181] The Alpha Project, a local nonprofit that provides transitional housing, emergency service, and other outreach and case management services, operates the "transitional campsite" and provides transportation in and out of the camp for residents with medical appointments or other business in the downtown area.[182] However, residents of the encampment

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[177] Gary Warth, *More Homeless Arrested Following Hepatitis A Outbreak*, THE SAN DIEGO UNION-TRIBUNE (Nov. 13, 2017), http://www.sandiegouniontribune.com/news/homelessness/sd-me-homeless-arrest-20171109-story.html [hereinafter Warth, *More Homeless Arrested*].

[178] Gary Warth, *Homeless Cleared Out, City Expands Sidewalk Washing*, THE SAN DIEGO UNION-TRIBUNE (Sept. 27, 2017), http://www.sandiegouniontribune.com/news/hepatitis-crisis/sd-me-homeless-eviction-20170927-story.html [hereinafter Warth, *Homeless Cleared Out*].

[179] *Id.*; Associated Press, *San Diego Increases Homeless Citations in Hepatitis Outbreak*, KPBS (Sept. 28, 2017), http://www.kpbs.org/news/2017/sep/28/san-diego-increases-homeless-citations-hepatitis-o/.

[180] Warth, *Homeless Cleared Out*, *supra* note 178.

[181] Susan Murphy, *San Diego Launches Campground for the Homeless*, KPBS (Oct. 9, 2917), http://www.kpbs.org/news/2017/oct/09/san-diego-launches-homeless-campground/.

[182] Gary Warth, *City-Sanctioned Homeless Camp to Open Monday*, THE SAN DIEGO UNION-TRIBUNE (Oct. 4, 2017), http://www.sandiegouniontribune.com/news/hepatitis-crisis/sd-me-homeless-camp-20171002-story.html.