

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Smith & Lowney PLLC
Knoll Lowney, WSBA # 23457
Claire Tonry, WSBA # 44497
2317 E. John St.
Seattle, WA 98122

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

SEATTLE/KING COUNTY COALITION)
ON HOMELESSNESS, ACLU OF)
WASHINGTON, and TRANSIT RIDERS)
UNION.)
Plaintiffs,)
vs.)
COMPASSION SEATTLE, KING)
COUNTY, and JULIE WISE, in her official)
capacity.)
Defendants.)

No.
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

Proposed Seattle Charter Amendment 29 (“CA 29”) is outside of the scope of the local initiative process and should be enjoined from the ballot. Unlike the state initiative process, there are “multiple limits on the local initiative power.” *Protect Public Health v. Freed*, 192 Wn.2d 477, 482 (2018). Courts routinely conduct pre-election review of local initiatives and referenda and will remove such a measure from the ballot if it is beyond the scope of the local initiative power.

Pre-election “scope” challenges do not turn on the merits of the proposal, and this case is not about the illegality of CA 29’s policies, although those are also likely in violation of the state and

1 federal constitutions.¹ Rather, this lawsuit will focus on the process. CA 29 cannot move forward to
2 the ballot because its sponsors chose an unlawful process to pursue their policy goals, ignoring well-
3 established limits to the local initiative process.

4 Homelessness is a humanitarian crisis that requires great focus and resources, as recognized
5 by the Washington Legislature. To advance the goal of ending homelessness, the Legislature has
6 established a comprehensive statutory scheme for homelessness planning and decision-making that
7 precludes the use of the local initiative process. The statutory scheme established in RCW Chapter
8 43.185C and related laws includes multiple avenues for CA 29 sponsors and other stakeholders to
9 influence homelessness policy, but the local initiative process is not one of them. *Whatcom County*
10 *v. Brisbane*, 125 Wn.2d 345, 351 (1994) (“The absence of any mention of referenda indicates the
11 statute's rejection of referendum rights.”) The charter amendment’s six-year lifespan is also
12 inconsistent with the statutory requirement that local homelessness plans be updated every five years,
13 or more frequently to retain consistency with state homelessness plans. Perhaps most importantly,
14 the Legislature gave the “legislative authority” of local governments the exclusive authority to enact
15 local homelessness response plans, which renders CA 29 beyond the scope of the initiative power.
16 *Mukilteo Citizens for Simple Gov’t v. City of Mukilteo*, 174 Wn.2d 41, 51 (2012) (“When the
17 legislature enacts a general law granting authority to the legislative body (or legislative authority) of
18

19
20
21
22 ¹ For example, CA 29 would enshrine the clearing of homeless encampments on public property in the City’s Charter
23 despite a lack of adequate alternative places for homeless individuals to go in Seattle, violating the state and federal
24 constitutions. *See e.g. Martin v. Boise*, 920 F.3d 584, 617 (9th Cir. 2019) (finding that that cities violate the federal
25 constitution’s prohibition on cruel punishment when they criminalize “being homeless in public spaces” and “conduct
that is an unavoidable consequence of being homeless” including “sitting, lying, or sleeping on the streets.”); *City of
Seattle v. Drew*, 70 Wn.2d 405, 423 P.2d 522 (1967) (It is fundamental that no ordinance may unreasonably or
unnecessarily interfere with a person's freedom, whether it be to move about or to stand still. The right to be let alone is
inviolable; interference with that right is to be tolerated only if it is necessary to protect the rights and the welfare of
others.”).

1 a city, that legislative body's authority is not subject to repeal, amendment, or modification by the
2 people through the initiative or referendum process.”)

3 While CA 29’s sponsors are impatient for action on homelessness, as are we all, CA 29
4 jettisons the significant action that is already underway. In late 2019, after years of work, the City of
5 Seattle and King County established a Regional Homelessness Authority (“Regional Authority”) to
6 unify their response to the county-wide crisis of homelessness. Through the binding interlocal
7 agreement creating the Regional Authority (“ILA”), Seattle and King County agreed to jointly plan
8 and fund homelessness response, with a decision-making process focusing on equity and inclusion of
9 those with lived experience of homelessness at every level. CA 29 would instead adopt a six-year
10 “go it alone” plan for Seattle – following none of the Regional Authority’s procedures and
11 reallocating some or all of the money pledged to the Regional Authority – and thus constitutes a
12 fundamental repudiation of the ILA. By modifying (and undermining) the City’s established policy
13 to pursue coordinated investments in homelessness response through the Regional Authority, and
14 other policies, CA 29 enters into the realm of “administrative matters” which are beyond the scope of
15 the initiative process.
16

17 Finally, CA 29’s promise to waive the zoning code to facilitate the construction of 2,000 new
18 units of shelter or housing violates the most well-established limitation on the scope of the local
19 initiative and referendum process. “[Z]oning ordinances and regulations are beyond the power of
20 initiative or referendum in Washington because the power and responsibility to implement zoning
21 was given to the legislative bodies of municipalities, not to the municipality as a whole.” *1000*
22 *Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174 (2006) (internal citations omitted).
23

24 While Plaintiffs agree with some of CA 29’s purported goals, these goals cannot be advanced
25 by the local initiative process. Electioneering and soundbites are neither an appropriate nor a legal

1 method for addressing a complex and evolving regional crisis. Moreover, allowing homelessness
2 policy to be established by local initiative would open a floodgate to local initiative and referenda on
3 homelessness, which could be used to further criminalize homelessness or derail action to address
4 affordable housing and homelessness.

5 Plaintiffs seek a declaration that CA 29 is beyond the scope of the local initiative power and
6 an order enjoining it from appearing on the ballot.

7 **II. PARTIES**

8 2.1 Seattle/King County Coalition on Homelessness is a membership organization that
9 works to challenge systemic causes of homelessness and advocate for housing justice. The Coalition
10 on Homelessness works with its members to advance solutions to homelessness and uphold the rights
11 of people experiencing homelessness. The Coalition’s members include community-based
12 organizations, agencies, and groups across King County that provide shelter, housing, and services to
13 people without homes, and to those who were once homeless.
14

15 2.2 ACLU of Washington (“ACLU-WA”) is the state affiliate of the ACLU, the nation’s
16 premier defender of civil rights and civil liberties. ACLU-WA works to ensure justice, freedom, and
17 equality are realities for all people in Washington state, with particular attention to the rights of
18 people and groups who have been historically disenfranchised – including those experiencing
19 housing instability. Its over 135,000 members, supporters and activists include Seattle taxpayers and
20 residents who would be harmed by the passage of CA 29. If CA 29 proceeds to the ballot, ACLU-
21 WA would be forced to expend its resources to defeat the measure.
22

23 2.3 Plaintiff Transit Riders Union is a democratic membership organization of working
24 and poor people fighting for better public transit, affordable housing, and a better quality of life in
25 the Seattle area. Its 500-plus members include people who are experiencing housing insecurity or

1 homelessness and Seattle taxpayers. If CA 29 proceeds to the ballot, Transit Riders Union would be
2 forced to expend its resources to defeat the measure.

3 2.4 Plaintiffs' members include taxpayers. Plaintiffs provided notice to the Attorney
4 General requesting that he take action to protect taxpayers from the costs of holding an illegal
5 election on CA 29 and that request was declined. **Ex. A.** Plaintiffs therefore represent the interests of
6 taxpayers in this lawsuit.

7 2.4 Defendant is Compassion Seattle, a political committee and the sponsor of CA 29.

8 2.5 Due to the request for injunctive relief, additional necessary parties are King County,
9 a political subdivision of the State of Washington, and King County Elections Director Julie Wise,
10 named only in her official capacity.

11 **III. JURISDICTION AND VENUE**

12 3.1 This Court has subject matter jurisdiction over this action under chapter 7.24 RCW
13 and chapter 7.40 RCW and chapter 29A.68 RCW.

14 3.2 Venue is proper in King County, Washington, including under RCW 4.12.020.

15 **IV. FACTUAL BACKGROUND**

16 **A. The Legislature adopted a comprehensive statutory scheme for addressing the**
17 **homelessness crisis.**

18 4.1 In 2005, the State Legislature enacted the Homelessness Housing and Assistance Act,
19 which was subsequently updated in 2018 by the Washington Housing Opportunity Act, codified in
20 RCW Chapter 43.185C (collectively the "Act"). The Legislature continued to modify the statutory
21 scheme as the crisis has worsened, with the most recent enactments during the 2021 session.

22 **1. The Act recognizes the State's interest in combating homelessness and establishes**
23 **a coordinated, statewide effort to meet state policy goals.**

1 4.2 The Act’s original findings established homelessness response as a matter of
2 statewide concern:

3 The support and commitment of all sectors of the statewide community is critical to the
4 chances of success in ending homelessness in Washington. *While the provision of housing*
5 *and housing-related services to the homeless should be administered at the local level to best*
6 *address specific community needs, the legislature also recognizes the need for the state to*
7 *play a primary coordinating, supporting, and monitoring role. There must be a clear*
8 *assignment of responsibilities and a clear statement of achievable and quantifiable goals.*

9 RCW 43.185C.005 (emphasis added).

10 4.3 The Act created a comprehensive statewide scheme to address homelessness,
11 including the creation of a “homeless housing program to develop and coordinate a statewide
12 strategic plan aimed at housing homeless persons.” RCW 43.185C.020.

13 **2. The Act creates a process for establishing state homelessness policy and**
14 **statewide planning.**

15 4.4 Under RCW 43.185C.040(1), the Department of Commerce is required to prepare a
16 “five-year homeless housing strategic plan”² to be submitted to the Legislature by July 1, 2019, and
17 every five years thereafter. The strategic plan must address: “performance measures and goals to
18 reduce homelessness;” existing resources; new or innovative funding, program, or service strategies
19 to pursue; drivers of homelessness; and implementation strategies. *Id.*

20 4.5 The department must then provide annual and biennial reporting on its plan. RCW
21 43.185C.045 requires “By December 1st of each year, the department must provide an update of the
22 state’s homeless housing strategic plan and its activities for the prior fiscal year.” In addition, “The
23 department shall . . . report biennially to the governor and the appropriate committees of the
24 legislature an assessment of the state's performance in furthering the goals of the state five-year
25

² The Legislature originally required the department of commerce and local governments to do homelessness planning on a ten-year horizon, but the 2018 Act required planning on a five-year basis with annual updates.

1 homeless housing strategic plan and the performance of each participating local government in
2 creating and executing a local homeless housing plan which meets the requirements of this chapter.”
3 RCW 43.185C.040(4). The report must include “year-to-year comparisons, highlights of program
4 successes and challenges, and information that supports recommended strategy or operational
5 changes.” *Id.* It lists examples of performance measures that may be tracked. *Id.*

6 **3. Local homelessness planning must be closely coordinated with statewide**
7 **objectives and processes.**

8 4.6 The Act provides a comprehensive process for adopting local homelessness plans,
9 coordinated by the department of commerce and the governing body of the local authority.

10 “To guide local governments in preparation of local homeless housing plans due December 1,
11 2019, the department shall issue by December 1, 2018, guidelines consistent with this chapter
12 and including the best available data on each community's homeless population. Program
13 outcomes, performance measures, and goals must be created by the department in
14 collaboration with local governments against which state and local governments' performance
15 will be measured.”

16 RCW 43.185C.040(3).

17 **4. The Legislature gave city and county councils exclusive authority to adopt local**
18 **homelessness response plans following specified stakeholder processes.**

19 4.7 The Legislature created a process where local planning is informed by specified
20 stakeholders with expertise, but it made the “local government legislative authority” (the City
21 Council or County Council) the exclusive authority to enact local homelessness housing plans.

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

1 RCW 43.185C.050 (emphasis added).

2 4.8 The Legislature conferred broad authority on local legislative bodies to include a wide
3 range of activities in their local homelessness plans. Eligible activities under the local plans include:

- 4 (a) Rental and furnishing of dwelling units for the use of homeless persons;
5 (b) Costs of developing affordable housing for homeless persons, and services for formerly
6 homeless individuals and families residing in transitional housing or permanent housing and
7 still at risk of homelessness;
8 (c) Operating subsidies for transitional housing or permanent housing serving formerly
9 homeless families or individuals;
10 (d) Services to prevent homelessness, such as emergency eviction prevention programs
11 including temporary rental subsidies to prevent homelessness;
12 (e) Temporary services to assist persons leaving state institutions and other state programs to
13 prevent them from becoming or remaining homeless;
14 (f) Outreach services for homeless individuals and families;
15 (g) Development and management of local homeless plans including homeless census data
16 collection; identification of goals, performance measures, strategies, and costs and evaluation
17 of progress towards established goals;
18 (h) Rental vouchers payable to landlords for persons who are homeless or below thirty
19 percent of the median income or in immediate danger of becoming homeless; and
20 (i) Other activities to reduce and prevent homelessness as identified for funding in the local
21 plan.

22 RCW 43.185C.050.

23 4.9 The Legislature requires that the local task forces that develop local homelessness
24 plans include certain stakeholders with expertise, including at least one person with lived experience
25 of homelessness. RCW 43.185C.010(18) (requiring task force to include at least a representative of
King County and Seattle, at least one homeless or formerly homeless person, and, if feasible, a
homeless service provider). *See also* RCW 43.185C.160(1) (task force may include “counties, cities,
towns, housing authorities, civic and faith organizations, schools, community networks, human
services providers, law enforcement personnel, criminal justice personnel, including prosecutors,
probation officers, and jail administrators, substance abuse treatment providers, mental health care
providers, emergency health care providers, businesses, real estate professionals, at large
representatives of the community, and a homeless or formerly homeless individual.”);

1 43.185C.100(1) (State offers technical assistance on “appropriate parties to participate on local
2 homeless housing task force”).

3 4.10 In other sections of the Act, the Legislature confirmed the exclusive authority of the
4 local legislative authorities to enact a homelessness plan. *See* RCW 43.185C.080(1) (“A city
5 choosing to operate a separate homeless housing program . . . shall adopt a local homeless housing
6 plan meeting the requirements of this chapter for county local plans. However, *the city may by*
7 *resolution of its legislative authority accept the county's homeless housing task force as its own and*
8 *based on that task force's recommendations adopt a homeless housing plan specific to the city.*”)
9 (emphasis added); *id.* at (2) (“All subcontracts shall be consistent with the *local homeless housing*
10 *plan adopted by the legislative authority of the local government*, time limited, and filed with the
11 department and shall have specific performance terms.”) (emphasis added).

12 **4. The coordinated planning process governs distribution of State funds.**

13 4.11 These local plans govern the distribution of state funding. “The department may
14 approve applications [from grants from the homeless housing account] only if they are consistent
15 with the local and state homeless housing program strategic plans.” RCW 43.185C.070(3). *See also*
16 RCW 43.185C.090 (“The department shall allocate grant moneys from the homeless housing account
17 to finance in whole or in part programs and projects in approved local homeless housing plans . . .”)

18 4.12 A local government “must provide an annual report on the current condition of
19 homelessness in its jurisdiction, its performance in meeting the goals in its local homeless housing
20 plan, and any significant changes made to the plan If a local government fails to report or
21 provides an inadequate or incomplete report, the department must take corrective action, which may
22 include withholding state funding” RCW 43.185C.040.
23
24
25

1 **5. In 2021, the statutory scheme for homelessness planning and decision-making**
2 **became even more comprehensive by involving a diverse stakeholder process and**
3 **an extensive expert investigation.**

4 4.13 In 2021, the Legislature enacted ESSHB 1277 (Chapter 214, Laws of 2021), which
5 increased the State's investments into homelessness response with a new \$100 document recording
6 surcharge, to fund a wide variety of housing strategies largely focused on those living unsheltered at
7 the time of initial engagement, including vouchers, housing acquisition and emergency housing,
8 rapid rehousing, and related services. ESSHB 1277 took effect July 25, 2021.

9 4.14 ESSHB 1277 requires the department to involve a diverse group of stakeholders in
10 development of performance measures and benchmarks:

11 (4) The department must ensure equity by developing performance measures and
12 benchmarks that promote both equitable program access and equitable program
13 outcomes. Performance measures and benchmarks must be developed by the
14 department in consultation with stakeholder groups, including persons at risk of
15 homelessness due to unpaid rent, representatives of communities of color, homeless
16 service providers, landlord representatives, local governments that administer
17 homelessness assistance, a statewide association representing cities, a statewide
18 association representing counties, and affordable housing advocates.

19 ESSHB 1277, Sec. 2. The Legislature required such benchmarks to ensure that race and ethnicity of
20 the households served are proportional to the number of people at risk of homelessness in each
21 county. *Id.*

22 4.15 ESSHB 1277 updated the requirements for the state's homeless housing strategic plan
23 under RCW 43.185C.045 requiring county-level assessment of the new programs. *Id.* In addition,
24 by December 15, 2021, the department, in consultation with the stakeholder group, must create a set
25 of performance metrics for each county receiving funds under the new law, and the counties'
performance under those metrics will determine the allocation of a portion of funds. RCW
43.185C.060(2).

1 4.16 The Legislature also commenced an expert process to inform the state’s homelessness
2 strategy:

3 The legislature intends to provide for an examination of the economic, social, and
4 health causes of current and expected patterns of housing instability and
5 homelessness, and to secure a common understanding of the contribution each has to
6 the current crisis. The legislature intends for this examination to result in a widely
7 accepted strategy for identifying how best to address homelessness in ways that: (A)
8 Address the root causes of the problem; (B) clearly assign responsibilities of state and
9 local government to address those causes; (C) support local control and provision of
services at the local level to address specific community needs, recognizing each
community must play a part in the solution; (D) respect property owner rights and
encourage private sector involvement in solutions and service; and (E) develop
pathways to permanent housing solutions and associated services to break the cycle of
housing insecurity and homelessness.

10 4.17 The State chose the William D. Ruckelshaus Center to conduct the investigation and
11 “facilitate meetings and discussions to develop and implement a long-term strategy to improve
12 services and outcomes for persons at risk or experiencing homelessness and develop pathways to
13 permanent housing solutions.” ESSHB 1277, Sec. 6. The center must work with a defined group of
14 stakeholders, legislators, and representatives of the executive branch, conduct extensive fact finding
15 and stakeholder discussions “for the purpose of identifying options and recommendations to develop
16 and implement a long-term strategy to improve the outcome and services for persons at risk or
17 experiencing homelessness and develop pathways to permanent housing solutions . . .” *Id.*

18 **B. Seattle and other regional governments entered into an interlocal agreement to create a
19 regional homelessness authority.**

20 4.18 The Act supports local governments to work collectively through interlocal
21 agreements to address homelessness housing. *See e.g.*, RCW 43.185C.160 (“two or more local
22 governments may work in concert to develop and execute a joint homeless housing plan, or to
23 contract with another entity to do so according to the requirements of this chapter.”); RCW
24 36.22.178(2) (certain funds “shall be allocated . . . according to an interlocal agreement between the
25

1 county and the cities within the county . . .”); RCW 43.185C.080(2) (“Local governments applying
2 for homeless housing funds may subcontract with any other local government, housing authority,
3 community action agency or other nonprofit organization for the execution of programs contributing
4 to the overall goal of ending homelessness within a defined service area.”)

5 4.19 In 2016, Seattle and King County began the process of unifying their homelessness
6 response through establishing the King County Regional Homelessness Authority.³ It took three
7 years of effort by both governments and consultants to create an inter-local agreement (“ILA”)
8 establishing the Regional Authority. Seattle and King County enacted ordinances entering into the
9 binding ILA in late 2019. *See* Seattle Ordinance 126021 with ILA attached.

10 4.20 On the passage of Ordinance 126021, Seattle Mayor Jenny Durkin said “Today is a
11 historic day. After many years of talk, today we act as a region to move forward together to provide
12 comprehensive services using evidence-based practices and centering people with lived experience
13 of homelessness, to bring more people inside. In 2020, we set forth on a new path to consolidate
14 services that are too fractured and don’t serve individuals experiencing homelessness.” Ordinance
15 126021 stated:
16

17 WHEREAS, the City and King County signed a memorandum of understanding on May 3,
18 2018, proposing a partnership to more effectively and consistently coordinate their provision
19 of [homeless] services, and received a consultant’s report providing guidance on how such a
20 joint effort could be structured.”

21 WHEREAS, cities and counties are authorized to enter into interlocal cooperation agreements
22 in accordance with chapter 39.34 RCW (“Interlocal Cooperation Act”) to jointly provide
23 services; and

24 WHEREAS, the City and King County have determined that a cooperative undertaking to
25 coordinate services with an equitable operational framework, centering on people with lived

³<https://www.seattle.gov/documents/Departments/Housing/Programs%20and%20Initiatives/Levy/Oversight%20Committee%20Documents/KCHRA%20ILA%20and%20Gov%20Structure%20infographic.pdf>

1 experience of homelessness, will enable and facilitate joint planning program funding, and
2 establishing standards for and accountability of programs, thereby improving the delivery of
services and enhancing outcomes for those receiving such services; and

3 WHEREAS, the City and King County have committed to assessing the needs and specific
4 recommendations for homelessness solutions through a Regional Action Plan.

5 *Id.*

6 4.21 Ordinance 126021 stated that in carrying out the ILA, certain additional
7 expectations/intent would be met, including: amendments to the ILA’s goals, policies, and plans
8 would be made by affirmative vote of at least eight Governing Committee members; the Regional
9 Authority’s Five-Year Plan, subsequent plans, sub-regional plans, and use of funds and services
10 would be evidence based and consistent with the Regional Authority’s guiding principles attached to
11 the ILA; the Implementation Board would credibly represent and be accountable to Marginalized
12 Demographic Populations (as defined in ILA); and provided oversight mechanisms. *Id.* The
13 Ordinance also provided a process for transitioning staff of the Human Services Department and
14 Seattle Department of Human Resources to the Regional Authority. *Id.*

15 4.22 The ILA constituted a binding agreement between Seattle and King County to jointly
16 develop goals, policies, and plans to address homelessness. It stated “The parties hereby agree that
17 the establishment of the Regional Authority is necessary to consolidate homelessness response
18 systems under one regional entity . . .” ILA, Art. IV, Sec. 3. The ILA established guiding principles
19 for decision-making and operation, including that the decisions shall be driven by data and equity
20 principles, involve stakeholders, and subject to accountability measures. *Id.*

21 4.23 The ILA requires the Regional Authority to develop an initial work plan and then,
22 within 18 months of operation, a Five-Year Plan. *Id.* The Five-Year Plan must include specific,
23 measurable actions, outcomes and goals to guide the Regional Authority’s operations. *Id.*

24 4.24 The ILA committed both Seattle and King County to fund the Regional Authority.

25 The City committed to paying the Regional Authority “no less than \$73,000,000 for 2020 . . . and for
COMPLAINT- 13

1 each of the following three years . . .” ILA, Art. VII, Sec. 1(b)(2). The ILA requires the City to enter
2 into a separate Master Agreement laying out the process for providing resources to the Regional
3 Authority.

4 4.25 The ILA sets forth the process for decision-making through a Governing Committee
5 and Implementation Board, both of which include a regionally balanced board that also includes
6 members having lived experience of homelessness. ILA, Article VIII. The Implementation Board
7 must also represent a wide range of stakeholders. *Id.* at Sec. 2. “The Implementation Board shall be
8 responsible for operations and management of the Regional Authority and shall provide strategic
9 vision, community accountability and robust oversight for the Regional Authority.” *Id.* at 2(i). Its
10 duties include “Develop and recommend Goals, Policies, and Plans to the Governing Committee.”
11 *Id.*; see Art. I (defining Goals, Policies, and Plans as major strategic planning documents that guide
12 the Regional Authority’s operations, including but not limited to the Five-Year Plan.)

13
14 4.26 Since 2019, the City, County, and Regional Authority have been engaged in
15 transferring homelessness money, staff, and programs from the City and County to the Regional
16 Authority. The Governing Committee and Implementation Board have been established, staff has
17 been hired, and planning to achieve the ILA requirements is well underway.

18 **C. CA 29 seeks to use the initiative process to dictate the City’s homelessness response plan**
19 **for six years.**

20 4.27 CA 29 seeks to use the initiative process to codify a homelessness housing plan into
21 the City Charter, where it would dictate the City’s future actions and budgets related to homelessness
22 response until it sunsets six years after enactment. Defendant claims that CA 29 seeks to “make an
23 immediate and tangible impact on homelessness, compelling the city through a citizens’ initiative
24
25

1 that amends the city charter to require the city to take specific, measurable actions” on mental health
2 and homelessness.⁴

3 4.28 CA 29 mandates numerous goals, priorities, policies, and processes to govern the
4 City’s homelessness response, as demonstrated by the following passages:

- 5 ○ It is City's goal that no one should have to live outdoors in public spaces.
- 6 ○ It is City policy to fully support, advance and invest in any regional
7 governmental homelessness authorities.
- 8 ○ It is City policy to and the City shall work to end chronic homelessness and
9 racial disparities in the homeless population by investing City funds in practices
10 and strategies, including emergency and permanent housing that effectively
11 engage, shelter and house those who live in public spaces; and, work to retain
12 individuals in housing; both with particular focus on the chronically homeless
13 and those with the greatest barriers and greatest community impact.
- 14 ○ It is City policy that the effectiveness of strategies and services designed to
15 transition homeless individuals to housing be measured and reported, with
16 specific attention to those who are chronically homeless and facing greatest
17 barriers to engagement, shelter and housing.
- 18 ○ It is City policy to and the City shall measure and report which City services,
19 activities, and practices may contribute to people entering or experiencing
20 homelessness.
- 21 ○ Those reports to the public shall occur at least every three months . . .
- 22 ○ It is the City's policy to make available emergency and permanent housing to
23 those living unsheltered so that the City may take actions to ensure that parks,
24 playgrounds, sports fields, public spaces and sidewalks and streets ("public
25 spaces") remain open and clear of unauthorized encampments.
- The City shall develop policies and procedures to address those individuals who
remain in public spaces, balancing the City's strong interest in keeping public
spaces clear of encampments and the possible harm to individuals caused by
closing encampments.

⁴ <https://compassionseattle.org>

- 1 ○ The City shall prioritize matching willing individuals to housing based on their
2 specific needs and situation and, as appropriate, to accommodate disabling
3 conditions and family type in housing.
- 4 ○ While there is no right to camp in any particular public space, it is City policy
5 to avoid, as much as possible, dispersing people, except to safe and secure
6 housing, unless remaining in place poses particular problems related to public
7 health or safety or interferes with the use of the public spaces by others.

8 **Ex. B, Attach. 1 (Text of CA 29).**

9 4.29 CA 29 also specifies numerous performance measures for homeless services, as
10 shown by the following excerpts:

- 11 ○ It is City's goal that no one should have to live outdoors in public spaces.
- 12 ○ [The City] shall . . . support an innovative and effective regional service network.
- 13 ○ [The] City shall work to end chronic homelessness and racial disparities in the
14 homeless population by investing City funds in practices and strategies,
15 including emergency and permanent housing that effectively engage, shelter and
16 house those who live in public spaces; and, work to retain individuals in housing;
17 both with particular focus on the chronically homeless and those with the
18 greatest barriers and greatest community impact.
- 19 ○ It is City policy that the effectiveness of strategies and services designed to
20 transition homeless individuals to housing be measured and reported, with
21 specific attention to those who are chronically homeless and facing greatest
22 barriers to engagement, shelter and housing.
- 23 ○ It is City policy to and the City shall measure and report which City services,
24 activities, and practices may contribute to people entering or experiencing
25 homelessness.
- The City in conjunction with King County and through any agreement with a
 governmental or non-governmental organization, shall help fund low-barrier,
 rapid-access, mental health and substance use disorder treatment and services
 ("behavioral health services") with particular focus on individuals who are
 chronically homeless and face the greatest barriers to engagement; and also shall
 help fund and deploy a behavioral health rapid-response field capability that is

1 coordinated where appropriate with City and county non-law enforcement crisis
2 response systems and programs.

- 3 ○ The City shall fund culturally distinct approaches to behavioral health services
4 to individuals for whom those are effective.
- 5 ○ The City-funded behavioral health programs and services shall be in
6 combination with access to emergency housing in enhanced shelters, tiny
7 houses, hotel-motel rooms, other forms of non-congregate temporary housing
8 ("emergency housing") or permanent housing for those living in shelters and
9 outdoors in public spaces.
- 10 ○ It is the City's policy to make available emergency and permanent housing to
11 those living unsheltered so that the City may take actions to ensure that parks,
12 playgrounds, sports fields, public spaces and sidewalks and streets ("public
13 spaces") remain open and clear of unauthorized encampments.
- 14 ○ The housing and services provided shall acknowledge and be tailored to
15 individual needs and cultural differences and be appropriately person-centered.
- 16 ○ The City shall prioritize matching willing individuals to housing based on their
17 specific needs and situation and, as appropriate, to accommodate disabling
18 conditions and family type in housing.
- 19 ○ The City, or its designee, shall appropriately utilize pathways to permanent
20 housing and prioritize individuals or family needs in order to limit emergency
21 housing stays to no longer than necessary.
- 22 ○ Within six months of the effective date of this Charter Amendment the City shall
23 provide for 1,000 units (in addition to those already funded) of emergency or
24 permanent housing with services including access to behavioral health services
25 and necessary staffing to serve people with the highest barriers.
- Within one year of the adoption of this Charter Amendment the city shall
provide another 1,000 units (in addition to those already funded) of emergency
or permanent housing with services including access to behavioral health
services and necessary staffing to serve people with the highest barriers.

- 1 ○ Services to individuals experiencing homelessness shall include identifying and
2 addressing factors known to drive the overrepresentation of Black, Indigenous
3 and People of Color among people experiencing chronic homelessness.
- 4 ○ Provision shall also be made to include culturally competent services and
5 workforce standards to address safety, appropriate compensation, and working
6 conditions that allow contractors to recruit, retain and stabilize a diverse, skilled
7 and culturally competent workforce.
- 8 ○ The housing and services provided will acknowledge and be tailored to
9 individual needs and cultural differences and be appropriately person centered.

10 *Id.*

11 4.30 CA 29 also requires reporting and evaluation of the amendment’s performance. *See*
12 *id.* (“It is City policy that the effectiveness of strategies and services designed to transition homeless
13 individuals to housing be measured and reported, with specific attention to those who are chronically
14 homeless and facing greatest barriers to engagement, shelter and housing. It is City policy to and the
15 City shall measure and report which City services, activities, and practices may contribute to people
16 entering or experiencing homelessness. Those reports to the public shall occur at least every three
17 months and include clear and specific outcomes to be established by the City.”)

18 4.31 One of the most controversial elements of CA 29 is its policy on homelessness
19 encampments, which seeks to modify Seattle’s existing encampment policies.

20 **D. CA 29 circumvents the statutorily mandated homelessness response planning process.**

21 4.32 CA 29 did not follow the planning process required under RCW 43.185C.050. CA 29
22 was not recommended by a housing task force that meets the statutory criteria of RCW 43.185C,
23 such as including a representative of King County and Seattle, and at least one homeless or formerly
24 homeless person. It was not designed to meet State planning standards or be consistent with the
25 State’s 5-year plan. And it is not being put before the City’s legislative authority.

1 **E. CA 29 circumvents the Regional Authority’s decision-making process, including the**
2 **requirement to include individuals with lived experience in decision-making.**

3 4.33 Defendant pays lip service to the Regional Authority, but CA 29 would constitute a
4 repudiation of a regional approach to the homelessness crisis and breaches the spirit and letter of the
5 ILA.

6 4.34 CA 29 did not follow the ILA process for decision-making, including consideration
7 by the Implementation Board or Governing Board.

8 4.35 CA 29 was written without input by persons with lived homelessness experience.

9 4.36 CA 29 would dictate all homelessness policy for the City, preventing the City from
10 making joint decisions through the ILA’s procedures.

11 4.37 CA 29 would dictate how Seattle spends its funds for homelessness response.
12 Depending on how the charter amendment is interpreted, it could leave little or nothing to support the
13 Regional Authority.

14 4.38 According to the City’s analysis, the capital costs to implement CA 29 ranges between
15 \$ 30 million and \$839 million, and the annual costs of ongoing operations required by CA 29 ranges
16 from \$40 million to over \$97 million. **Ex. B** (Fiscal Analysis) at 1. The low end is based upon the
17 assumption that the only costs would be in providing 2,000 new units of shelter or housing; it
18 assumes that all other provisions would be ineffectively and therefore have zero costs. *Id.* at 2.

19 **F. CA 29 promises to waive the zoning code to facilitate construction of 2,000 new units of**
20 **emergency or permanent housing.**

21 4.39 A centerpiece of CA 29 is its promise to waive the zoning code to facilitate the
22 construction of 2,000 new units of emergency or permanent housing. The ballot title shown to voters
23 on the petition reflects this promise.

24 4.40 Defendant’s website contains the following in its Frequently Asked Questions page:
25

1 **The Charter Amendment allows the city government to waive land use regulations to**
2 **expedite the siting of emergency housing units. What does this mean and how will it**
3 **impact neighborhoods?**

4 The intent of the zoning waiver is to enable the city government to more quickly site
5 emergency housing — like tiny houses on a vacant lot in the city — during the declared civil
6 emergency related to homelessness. There are just too many examples of the city government
7 being unable, or unwilling, to overcome existing barriers to quickly establish emergency
8 housing. For example, the 46-unit tiny home village in the Interbay industrial-commercial
9 neighborhood was established after five years of recommended changes to zoning and land
10 use in the area. The zoning waiver allows for the temporary streamlining of the permitting
11 process during the declared civil emergency related to homelessness so we can create
12 emergency housing units and bring unsheltered people inside and then open our parks,
13 playgrounds, sports fields, sidewalks and other public spaces to everyone’s use. The waiver
14 does not change underlying zoning or waive any of the city’s life safety regulations, such as
15 the fire code or building safety code.⁵

16 4.41 The land use waiver has been put forth in local media as a reason for voters to support
17 the measure:

18 “During a civil emergency related to homelessness, such as the one that has been effect in
19 Seattle for several years, [CA 29] commits the city to expediting the production of emergency
20 and permanent housing serving homeless individuals through several de-regulatory steps,
21 including: waiving land use code and regulations to site projects faster; waiving permitting
22 fees; pushing permit applications to the front of the line; and refunding to the projects all
23 City-imposed costs, fees and City-collected sales taxes on all project expenditures . . .”⁶

24 **V. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

25 5.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

5.2 Courts review before elections a local initiative or referendum to determine, notably,
whether “the proposed law is beyond the scope of the initiative power.” *City of Port Angeles v. Our*
Water - Our Choice!, 170 Wn.2d 1, 7 (2010). This body of law applies to charter amendments and

⁵ <https://compassionseattle.org/faq>

⁶ <https://www.theurbanist.org/2021/04/02/burgess-charter-amendment-would-swipe-revenue-and-credit-for-payroll-tax-he-opposed/>

1 has been used to strike a city charter amendment from the ballot. *Spokane Entrepreneurial Ctr. v.*
2 *Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 101 (2016).

3 5.3 A controversy exists between Plaintiffs and Defendants regarding whether the subject
4 matter of CA 29 is within the scope of the initiative power.

5 5.4 Pre-election review of a local initiative is permitted where, as here, there is a dispute
6 regarding whether the subject matter of the proposed initiative is beyond the scope of the local
7 initiative power. If the invalid initiative were to be placed on the ballot, Plaintiffs' members would be
8 required to expend significant resources to oppose the initiative and would be threatened with future
9 initiatives on a wide variety of homelessness matters.

10 5.5 Plaintiffs seek a declaration that CA 29 is invalid because it is beyond the scope of the
11 local initiative power on multiple grounds, as follows:

12 **A. The proposed charter amendment is inconsistent with the statutory scheme for**
13 **homelessness response planning.**

14 5.6 CA 29 is invalid because the use of the local initiative and referendum process is
15 fundamentally incompatible with the statutory scheme for homeless response planning and is invalid
16 for each of three reasons.

17 5.7 **First**, the local initiative and referendum process cannot be used where, like here, the
18 Legislature has adopted a comprehensive scheme for decision-making that does not contemplate
19 local initiatives or referenda and/or would be frustrated by their use. *Whatcom County v. Brisbane*,
20 125 Wn.2d 345, 351 (1994) (“The purpose of the Growth Management Act, RCW 36.70A, would be
21 frustrated if the people of Whatcom County were permitted by referendum to amend an ordinance
22 adopted to implement the goals of a comprehensive land use plan. . . The absence of any mention of
23 referenda [in the Growth Management Act] indicates the statute's rejection of referendum rights.”);
24 *Seattle Building & Construction Trades Council*, 94 Wn.2d at 747, 750 (the court looked broadly at
25

1 the statutes and history of the I-90 expansion to conclude that the legislature intended that the city's
2 approval was a matter for the city municipal authorities and therefore not subject to initiative).

3 5.8 The Washington Supreme Court has invalidated local initiatives where, as here, the
4 Legislature requires coordinated planning. *See Brisbane*, 125 Wn.2d 345 (1994) (striking the
5 referenda because “the GMA seeks coordinated planning. ... allowing referenda is structurally
6 inconsistent with this mandate.”); *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 180-
7 181, 188 (2006) (use of a referendum “is inconsistent with integrated, comprehensive planning.”).

8 5.9 The system of homelessness response decision-making, while implemented at the
9 local level, is a matter of statewide concern and therefore is not subject to local initiative and
10 referenda. *See, e.g., Snohomish County v. Anderson*, 123 Wn.2d 151, 159 (1994) (“Permitting the
11 referendum would jeopardize an entire state plan and thus would extend beyond a matter of local
12 concern.”)

13 5.10 **Second**, adopting a static 6-year plan for homelessness housing through charter
14 amendment is inconsistent with the Act, which requires the City to update its homelessness response
15 plans on a five-year basis and to update the local plan as needed to conform to the state plan.
16 Chapter 43.185C requires planning on a five-year horizon with annual updates. *See* RCW
17 43.185C.040(1) (state must prepare and publish a “five-year homeless housing strategic plan” by
18 2019 and “every five years thereafter.”); RCW 43.185C.045(1) (requiring annual “update on the
19 state’s homeless housing strategic plan.”) Local governments too must prepare a “five-year
20 homeless housing plan” and keep it updated to reflect changes in the state plans. RCW
21 43.184C.050(1). A six-year static plan is inconsistent with the statute and prevents Seattle from
22 being nimble, responsive, innovative, and coordinated in responding to the homelessness crisis – all
23 undermining the statutory scheme. Moreover, CA 29 would commit the city to funding and
24
25

1 prioritizing a particular set of actions for the next six years, but these priorities were not developed
2 through the coordinated planning processes mandated under the statutory scheme.

3 5.11 **Third**, the statutory scheme vests final decision-making authority for homelessness
4 planning with the City Council. “An initiative is beyond the scope of the initiative power if the
5 initiative involves powers granted by the legislature to the governing body of a city, rather than the
6 city itself. ... When the legislature enacts a general law granting authority to the legislative body (or
7 legislative authority) of a city, that legislative body's authority is not subject to repeal, amendment, or
8 modification by the people through the initiative or referendum process.” *Mukilteo Citizens for*
9 *Simple Gov't v. City of Mukilteo*, 174 Wn.2d 41, 51 (2012) (internal citations omitted). “Stated
10 another way, the people cannot deprive the city legislative authority of the power to do what the
11 constitution and/or a state statute specifically permit it to do.” *City of Sequim v. Malkasian*, 157
12 Wn.2d 251, 265 (2006).

13 **B. CA 29 is “administrative” and beyond the initiative power because it seeks to modify**
14 **(and undermine) the provisions of the ILA and addresses mostly administrative**
15 **matters.**

16 5.12 “[A]dministrative matters, particularly local administrative matters, are not subject to
17 initiative or referendum.” *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 8 (2010).
18 In *Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 108
19 (2016), the court invalidated a measure that would impact zoning, holding “The city of Spokane has
20 already adopted processes for zoning and development. This provision would modify those processes
21 for zoning and development decisions, which falls under our description of an administrative matter
22 since it deals with carrying out and executing laws or policies already in existence.” The Court
23 stated the rule:

24 [A]dministrative matters, particularly local administrative matters, are not subject
25 to initiative or referendum. *Generally speaking, a local government action is*

1 *administrative if it furthers (or hinders) a plan the local government or some power*
2 *superior to it has previously adopted. We have noted that “[d]iscerning whether a*
3 *proposed initiative is administrative or legislative in nature can be difficult.” In one*
4 *case, we described the question as “whether the proposition is one to make new law or*
5 *declare a new policy, or merely to carry out and execute law or policy already in*
6 *existence.”*

7 *Spokane Entrepreneurial Ctr.*, 185 Wn. 2d at 107-08 (emphasis added; internal citations
8 omitted). *Accord Our Water-Our Choice!*, 170 Wn.2d 1, 13, 15.

9 5.13 The City of Seattle and King County have chosen to exercise their authority to address
10 homelessness jointly, consistently with state law, through the Regional Homelessness Authority.
11 Through their ILA, the City and County adopted goals, policies, and plans for addressing
12 homelessness, including a commitment to fund their implementation. The City and County further
13 determined that the RHA would develop the specific plans to implement the ILA’s legislative
14 determinations using specified processes which center input from those who have experience and
15 expertise. Implementation of the City’s homelessness response is thus an administrative matter
16 delegated to the Regional Authority and subject to Department of Commerce oversight and
17 coordination. Seattle citizens cannot use the initiative process to bypass the Regional Authority’s
18 process and mandate particular actions and budget line items to implement homelessness policy.

19 5.14 CA 29 addresses administrative matters and is thus beyond the scope of the initiative
20 process because it would (1) address matters that were rendered administrative through chapter
21 43.185C RCW and the ILA; (2) hinder the RHA’s implementation of the policy pronouncements in
22 the ILA and State law; (3) modify existing zoning policy, as discussed below; and (5) address other
23 administrative matters.

24 **C. CA 29 seeks to exercise zoning authority, which is beyond the scope of the local**
25 **initiative process.**

5.15 Because zoning authority is statutorily granted to the City Council, “it is not subject to
repeal, amendment, or modification by the people” through initiative. *Mukilteo Citizens*, 174 Wn.2d

1 at 51. *See also Our Water -Our Choice!*, 170 Wn.2d 1, 10 (Holding initiative beyond scope of
2 initiative process in part because “The legislature has explicitly vested the power to decide whether
3 or not to fluoridate in the board of commissioners of a water district. RCW 57.08.012. Nothing in
4 chapter 57.08 RCW creates the power of initiative or referendum to check such board decisions.”)

5 5.16 CA 29 purports to expedite the construction of 2,000 units of shelter or housing by
6 waiving the land use code for homelessness housing. By attempting to modify the zoning code, CA
7 29 runs afoul of the most well-established limit on the scope of local initiative process. As early as
8 1976, the State Supreme Court held that only the legislative body can modify zoning codes:

9
10 RCW 35A.11.020 and RCW 35A.63.072 vest the city council with the power to adopt and
11 modify a zoning code. Thus, the legislature granted the power here exercised to the legislative
12 body of respondent and not to the corporate entity. This grant of power precludes a
referendum election. *See State ex rel. Guthrie v. Richland*, 80 Wn.2d 382, 494 P.2d 990
(1972); *State ex rel. Haas v. Pomeroy*, 50 Wn.2d 23, 308 P.2d 684 (1957).

13 *Leonard v. Bothell*, 87 Wn. 2d 847, 853 (1976). This rule has been followed consistently:

14 [Z]oning ordinances and regulations are beyond the power of initiative or referendum in
15 Washington because the power and responsibility to implement zoning was given to the
16 legislative bodies of municipalities, not to the municipality as a whole. *Lince v. City of
17 Bremerton*, 25 Wn. App. 309, 312-13, 607 P.2d 329 (1980) (citing *Leonard v. City of
18 Bothell*, 87 Wn.2d 847, 854, 557 P.2d 1306 (1976)); *see generally* J.R. Kemper,
19 *Annotation, Adoption of Zoning Ordinance or Amendment Thereto as Subject of Referendum*,
20 72 A.L.R.3d 1030 (1976) (surveying cases).

21 *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174 (2006). *Accord Save our State Park v. Bd.
22 of Clallam County Comm’rs*, 74 Wn.App. 637 (1994) (“*Lince*, *Leonard*, and *Anderson* establish
23 collectively that initiative and referendum are not compatible with zoning ordinances. In fact, the
24 recent *Anderson* case appears to us to be a fairly sweeping rejection of referendum (and presumably
25 initiative) in zoning matters.”)

24 VI. SECOND CAUSE OF ACTION – INJUCTIVE RELIEF

25 6.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

Exhibit A



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

General Services Division
PO Box 40122 • Olympia WA 98504-0122 • (360) 586-7777

July 23, 2021

Knoll Lowney
Smith & Lowney, PLLC
2317 E. John St.
Seattle, WA 98112

Re: Potential litigation regarding “Compassion Seattle”

Dear Mr. Lowney:

I write in response to your letter dated July 21, 2021. You request on behalf of your client, Transit Riders Union, that our office bring an action seeking to prevent the Seattle Charter Amendment known as “Compassion Seattle” from being placed onto the ballot using taxpayer funds.

We consider litigation at the request of taxpayers in appropriate situations. Based upon review of your letter, we cannot conclude that the action you request would clearly serve the interests of the public in their capacity as taxpayers. We therefore decline to take the actions you request, but do so without expressing any view as to whether your claims may have potential merit.

To the extent your request is made as a prerequisite to asserting taxpayer standing, please understand that this letter expresses no view as to whether the requirements for taxpayer standing would be met.

I trust that this information will be helpful.

Sincerely,

s/Jeffrey T. Even
JEFFREY T. EVEN
Deputy Solicitor General

Exhibit B

July 6, 2021

MEMORANDUM

To: City Council
From: Jeff Simms, Traci Ratzliff, Asha Venkataraman, and Ketil Freeman, Analysts
Subject: Cost Analysis of Proposed Charter Amendment 29

On April 15, 2021, Proposed Charter Amendment Number 29 (the amendment) was filed with the Office of the City Clerk. The amendment concerns actions to address homelessness, keep areas clear of encampments, fund mental health and substance use treatment, provide 2,000 units of emergency or permanent housing, expedite the development of emergency and permanent housing, and provide General Fund revenue for homelessness and human services.

In response to multiple Council office inquiries regarding the potential costs of the amendment's provisions, Central Staff prepared the following analysis. The majority of provisions in the amendment would need to be clarified either by policy or legislation if the amendment is placed on the ballot and approved by voters. For that reason, any provision that may affect policy but does not have a clearly associated cost is not examined in detail in this memo.

This memo will first examine the General Fund provisions of the amendment. The analysis of homelessness and human services spending estimates that current spending on homelessness and human services could be interpreted as already exceeding the 12 percent funding requirement in Section 3 of the amendment by as much as \$37 million. Conversely, it could be interpreted that Section 3 requires an additional \$88 million of spending on homelessness and human services programs.

After examining the General Fund implications, the memo examines the potential interpretations and associated costs of specific provisions. The memo shows a range of potential costs for provisions that could potentially require new expenditures. In summation, the amendment is estimated to require from \$30 million to more than \$839 million in one-time capital funding and from \$40 million to more than \$97 million in on-going annual operational funding (see Table 1).

Table 1: Range of Charter Amendment Cost Estimates

Provision	Low End Estimate		High End Estimate	
	Capital	On-Going Operations	Capital	On-Going Operations
Behavioral Health and Substance Abuse Services		\$0 ¹	\$131,000,000	\$44,000,000
2,000 Housing or Shelter Units	\$30,000,000 ²	\$40,000,000	\$700,000,000 ³	\$46,000,000
Refunding or Waiving Fees and City-Imposed Costs		\$0 ⁴	More than \$7,600,000 ⁵	Unknown
Provider Capacity and Stability		\$0 ⁶	-	Unknown
Diversion		\$0 ⁷	\$0	\$7,200,000 ⁸
Total	\$30,000,000	\$40,000,000	\$839,000,000+	\$97,000,000+

¹Assumes language “Help Fund” means this requirement has been met.

²Assumes building 2,000 new tiny homes without leveraging federal and state funding streams that could potentially reduce the funding required to fulfill this provision.

³Assumes building 2,000 new Permanent Supportive Housing (PSH) units without leveraging federal and state capital funding. Operations and services costs are in addition to this amount and range from \$24 million a year for light services to \$46 million a year for 2,000 units of permanent supportive housing.

⁴Assumes the declared emergency related to homelessness would be ended.

⁵Provides estimated sales tax and permit fee reimbursements for 2,000 PSH units. Additional costs would be incurred for other “city-imposed” costs, as well as for future affordable housing and permanent supportive housing projects.

⁶Assumes [ORD 125865](#) fulfills this requirement.

⁷Assumes current investments in diversion meet the requirement.

⁸Estimated cost to expand the pre-filing diversion program to serve all people whose charges is connected to a lack of housing, income instability, or behavioral health using the estimated number of civil infractions in 2021 as a proxy for the number of people who would be served.

General Fund Provisions

The amendment’s Section 3 would require the City to create and appropriate no less than 12 percent of annual General Fund (GF) revenue into a fund designated for homelessness and human services. It reads, “There shall be placed in the Human Services Fund such moneys as may be budgeted annually for such programs including not less than 12 percent of the City’s annual general fund revenues; grants, gifts and bequests for human service purposes received from the general public, businesses and philanthropy; and such other moneys as may be provided by ordinance...” This requirement does not impose new policy or programmatic requirements for service delivery. By itself, the 12 percent requirement merely establishes a funding level that would be available to support the other amendment provisions. It is therefore useful to examine uncertainties related to how to calculate the 12 percent before estimating the cost of other provisions.

The term “annual General Fund revenue” used in Section 3 is not defined in the amendment. A reasonable interpretation is that the term is intended to reflect funds that would be directed to the City’s general fund on an annual basis. However, both the Mayor and the Council can create additional funds and determine what revenue goes into those funds. For instance, the City recently created the Sweetened Beverage Tax Fund, and through this action, the City redirected revenue to a new fund that would have otherwise been considered GF revenue.

In regard to homelessness services, the ability to determine what is annual GF revenue is especially relevant because sizable grants for homelessness and human services are not deposited into the GF, including the Continuum of Care Grant, Emergency Solutions Grant, and Community Development Block Grant (CDBG); these grants are deposited into an existing fund titled the Human Services Fund. Treating these grants as something other than GF revenue does not align with how grants are treated in many other parts of the City. For example, CDBG funds are deposited into the GF for every other department except the Human Services Department (HSD). Thus, whether all grants and transfers were intended to be included in the term “annual General Fund revenue” is subject to interpretation and potentially further clarification by legislation. As shown in Table 2, removing all grants and transfers in other departments from the calculation of “General Fund revenue” reduces the 12 percent funding floor from \$191 million in 2021 to \$181 million.

Table 2: Example Interpretations of “12% of General Fund Revenue” Based on April 2021 Revenue Forecast

Example	Funding Level	Description
Example 1	\$191 million	12% of all General Fund Revenue, <u>including</u> grants and transfers currently deposited into the General Fund
Example 2	\$181 million	12% of all General Fund Revenue, <u>excluding</u> grants and transfers currently deposited into the General Fund

A determination of what constitutes spending on homelessness and human services is also subject to interpretation and further clarification. For example, the amendment does not specify that spending must be in HSD, but policymakers could choose that interpretation to avoid making determinations on what spending in other departments constitutes homelessness or human service spending. For example, the Office of Housing makes substantial capital and operational investments in affordable housing and permanent supportive housing that could be included in an aggregation of homelessness and human services spending but have historically not been classified as homelessness spending. Table 3 provides illustrative interpretations of spending on homelessness and human services in the 2021 Adopted Budget ranging from a low-end amount of \$103 million to as much as \$218 million, but even more interpretations are possible.

The low-end example (Example A in Table 3) could include only expenditures from the General Fund in HSD (i.e., excluding other funds, such as the existing Human Services Fund) that are specifically on the type of programs discussed in the amendment (i.e., homelessness and health services). In recent years, the City Budget Office and Central Staff have attempted to calculate City-wide homelessness spending. In the 2021 Adopted Budget, Central Staff found an additional \$15.6 million is spent on homelessness activities outside of HSD, plus another \$2 million from the Housing Levy that is spent on rental assistance. Thus, Example B in Table 3 concludes that the estimated amount of City-generated funds currently spent across all departments on the programs discussed in the amendment would likely result in an estimate of \$118 million to \$120 million, depending on how to classify the Housing Levy expenditures.

Table 3: Example Interpretations of “Homelessness and Human Services” Spending in the 2021 Adopted Budget

Example	Funding Level	Description
Example A	\$103 million	HSD homelessness and health expenditures using General Fund (excludes grants, homelessness spending in other departments, and other human services)
Example B	\$118 - 120 million	Citywide homelessness and health expenditures using General Fund (includes other departments, excludes grants and other human services)
Example C	\$175 million	HSD expenditures using General Fund (includes other human services, excludes grants and homelessness spending in other departments)
Example D	\$191 - 193 million	Citywide homelessness and human services expenditures using General Fund (includes other departments and other human services, excludes grants)
Example E	\$218 million	Citywide homelessness expenditures and human services expenditures using General Fund (includes Emergency Solutions Grant, Community Development Block Grant, McKinney-Vento Homeless Assistance Grants, and Housing Levy)

Alternatively, Example C in Table 3 interprets the amendment language as the amount of General Fund in HSD spent on any homelessness or human service, not just those discussed in the amendment. Such an interpretation would include expenditures on aging and disability services, domestic violence prevention, food banks, and a variety of other programs. This approach would estimate current spending at \$175 million. Example D in Table 3 increases the estimate to a range of \$191 million to \$193 million by including all spending in Example C plus homelessness spending in other departments as discussed in example B.

There are a range of other programs in other departments that could potentially be labeled “human services.” For example, nearly \$10 million of GF in the Department of Education and Early Learning supports early childhood programs, which could be considered a human service program. Because there is not an existing aggregation of all human services spending across all City departments, none of the example interpretations for this section include human services expenditures in other departments.

An example of a high-end estimate of the funding allocation (using the 2021 Adopted Budget for estimation purposes) that could move into a newly created fund to fulfill the requirements of the amendment could include all the amounts included in Example D while also including grant funds that are directly related to homelessness services in HSD but not currently deposited into the GF. For example, if the Emergency Solutions Grant, CDBG, and McKinney-Vento Homeless Assistance Grants (e.g., Continuum of Care grant) are added to Example D, then current funding levels would be \$218 million and exceed the 12 percent floor required by

the amendment. If work was undertaken to identify human services spending across all City departments, that amount could increase, and including housing expenditures in the Office of Housing would further increase this amount.

Overall, policies or legislation to clarify an adopted amendment could reach substantially different determinations on whether and how much additional funding for homelessness and human services is required by the amendment based on how to interpret “12 percent of General Fund revenue” and “homelessness and human services” funding. On one end, an interpretation based on 2021 spending could estimate a required increase of as much as \$88 million (estimate from Example 1 in Table 2 minus the current funding described in Estimate A in Table 3). On the other, it could be interpreted that existing funding already exceeds the required amount by \$37 million (the current funding described in Estimate E of Table 3 minus the required funding described in Estimate 2 in Table 2).

Section 3 of the amendment also requires that the City fund homelessness and human services “without delaying or disrupting full restoration of general fund support for the Department of Parks and Recreation to facilitate repair and restoration of parks and as required by the Interlocal Agreement authorized by City [Ordinance 124468](#).” This provision is referring to the interlocal agreement established between the City and the Metropolitan Park District (MPD) after its approval by voters in 2014. This interlocal agreement requires the City to maintain or exceed a “baseline” level of annual GF support, adjusted yearly for inflation, for the Department of Parks and Recreation, unless the City Council concludes that an urgent economic circumstance requires a lower level of GF support. The City Council, via [Resolution 31951](#), suspended the baseline GF funding amount for 2021 because of the COVID-19 public health emergency. This action resulted in the City allocating \$6 million less of GF revenues to the Department of Parks and Recreation than would have been required to meet the baseline funding requirement.

In the event that the amendment goes into effect, there are multiple ways that the City could interpret the phrase “without delaying or disrupting full restoration.” At minimum, it appears that a resolution reducing the baseline level of funding could not point to implementation of this amendment as a basis for a lower level of GF support for MPD.

Cost Implications of Individual Sections

This section analyzes the specific provisions of the amendment that appear to have cost implications. All of these provisions could be interpreted in multiple ways that will need to be determined by policy or legislation. In some cases, the City could decide that the amendment would have no effect or does not mandate new activities. For many of the provisions, any increase in services could differ substantially in costs due to the scale of the expansion, and expansions could be affected by provider capacity or the ability to engage clients in new services.

Sec. 2 Paragraph 2: Behavioral Health and Substance Use Disorder Services

The amendment states that the City “shall help fund low-barrier, rapid-access, mental health and substance use disorder (SUD) treatment and services (‘behavioral health services’), culturally distinct approaches to service delivery, and a “behavioral health rapid-response field capability that is coordinated where appropriate with City and county non-law enforcement crisis response systems and programs.” King County currently provides and pays for most behavioral health services within the City of Seattle, but the City currently pays for the Crisis Response Team (formerly located in the Seattle Police Department), the Downtown Emergency Service Center (DESC) Mobile Crisis Team, the Mobile Integrated Response Team (also known as Health One), the Law Enforcement Assisted Diversion program, and overall support of the joint health department for the City and County, especially specific funding to support access to methadone and buprenorphine. Therefore, it is possible that the requirements of this provision to “help fund” behavioral health services are already met by existing City expenditures, and the City could determine that no new expenditures are required by the amendment language.

In contrast, this section could also be read as a requirement to expand behavioral health and substance abuse treatment services either to some degree or to meet the full anticipated needs for behavioral and mental health services. The scale of any such expansion is subject to interpretation, but the amendment indicates that any expansion should have a particular emphasis on those experiencing chronic homelessness or having “the greatest barriers to engagement.” The interpretation of the scale of service expansion (if any) could have significant cost implications, as shown in Table 4.

A specific clause in paragraph 2 could indicate a limit on the scale of any service expansion required by the amendment. That clause reads “[behavioral health and substance abuse treatment] services shall be in combination with access to emergency housing in enhanced shelters, tiny houses, hotel-motel rooms, other forms of non-congregate temporary housing (‘emergency housing’) or permanent housing for those living in shelters and outdoors in public spaces.” It is subject to interpretation as to whether this language means that the City must:

1. offer people experiencing homelessness both these services and (separately) access to non-congregate housing and shelter; or
2. co-locate all services offered per this provision in shelter or housing.

If the interpretation is the latter, then it would seem to imply that the behavioral health service expansion should be done in combination with the expansion of 2,000 emergency and permanent housing units described in the amendment’s Section 2, Paragraph 4 (discussed later in this memo).

Regardless of how the required scale of any expansion is interpreted, a significant increase in service capacity will require time both for the City to provide or contract for additional services and to undertake the work that will increase the acceptance of services. Furthermore, the estimates here rely on a large number of assumptions that could vary greatly in the context of a substantial increase in behavioral and mental health services or when undertaken with a

particular focus on people experiencing homelessness. The estimates below should be considered illustrative. Additional work would be necessary to more precisely estimate the cost of any new policy.

Table 4: Estimated Costs for Behavioral and Mental Health Service Expansions, by Scale of Expansion

Example	Description	Capital Costs	Operational Costs
Example A	Assumes current services fulfill requirement to “help fund” behavioral health services.	-	-
Example B	All homeless in Seattle needing services	\$131,000,000	\$44,000,000
Example C	Unsheltered homeless in Seattle needing services	\$43,000,000	\$19,000,000
Example D	Provide services in conjunction with 2,000 new emergency or permanent housing beds	\$1,000,000 ¹	\$22,000,000
Example E	Chronically homeless in Seattle	\$33,000,000	\$17,000,000

¹Assumes only out-patient services provided. So only capital costs for the crisis response teams are reflected. Additional capital costs would likely be necessary for respite and detoxification facilities, some of which could potentially be developed in combination with emergency housing units.

The estimates in Table 4 rely greatly on survey data from the annual [point in time count \(PIT\)](#) of people experiencing homelessness. It should be noted that data collected in the PIT does not differentiate the type of SUD an individual has. Although other sources provide information on potential service usage by opioid and stimulant users, no survey data was available to inform potential interest in specific types of treatment for people with alcohol use disorder. For that reason, the survey results in the [Washington State Syringe Exchange Health Survey](#) for people with stimulant use disorder are used to project potential service usage by people with alcohol use disorder. There are only limited medication assisted treatment options for both disorders, which likely would result in greater reliance on other types of treatment.

Similarly, the published PIT does not provide sufficient data to identify how many people experiencing homelessness have any mental health disorder but not SUD. Because out-patient counseling for SUD would be similar to out-patient services for mental health disorders, the proportion of people reporting psychiatric or emotional conditions in the PIT was used to estimate all people who would require counseling for either SUD or mental health disorders.

Medicaid and other insurance would cover the cost for most of any service expansion, but it would still be necessary to provide funding for individuals not covered by insurance. Data obtained from the Healthcare for the Homeless Network indicates that 16 percent of the people they serve did not have insurance coverage, even Medicaid. It was assumed that a similar proportion of any new treatment services would not be covered by Medicaid or any other insurance. Because the county-wide Mental Illness and Drug Dependency (MIDD) Sales

Tax currently covers case management and pharmaceutical costs for patients not covered by Medicaid, it was assumed that there would not be additional costs for any expansion of medication assisted treatment.

Insurance would not cover the capital costs necessary to create the treatment facilities where these services would be delivered. This memo estimates capital costs using the cost of existing projects and estimates for how many people could be served by each created residential, respite, or detoxification bed based on the average length of stay in those facilities. Because capital costs vary greatly from project to project, an exact estimate of capital costs is not feasible and actual costs could differ substantially from the amounts in Table 4.

Initiating, supporting retention in treatment, and maintaining recovery for individuals experiencing homelessness, particularly with the goal of being low-barrier, rapid access, and with a particular focus on those with substantial service needs as described in the amendment, would require having an intensive outreach component. Although many homelessness outreach and case management programs may support connection to treatment for behavioral health disorders, two existing programs only serve people experiencing unsheltered homelessness who have behavioral health disorders: the outreach component of JustCARE, which is conducted by Evergreen Treatment Services' REACH program, and DESC's Homeless Outreach Stabilization and Transition (HOST) team. These programs have substantially different models and goals. For that reason, the midpoint between the average cost per person for each program was used to estimate the cost per person for intensive outreach and support. That midpoint was used to develop the estimates in Table 4 and is the cost shown in Table 5.

Similarly, there are two programs in Seattle that provide a rapid response field capability that is coordinated with, but not a component of, law enforcement: the Mobile Integrated Response team (also known as Health One) and DESC's Mobile Crisis Response Team. This memo uses the midpoint in the average cost for these two programs to estimate what any expansion of the rapid response behavioral health field capacity would cost. It is assumed this type of response, as described in the amendment, requires the capability to respond to all crisis calls, not just those involving a specific population. For that reason, all of the estimates in Table 4 assume full coverage of the entire City. However, any expansion of services could also limit such a response to certain portions of the City.

The examples in Table 4 do not represent every option available for responding to the amendment's requirements related to behavioral health services. Rather than expanding treatment to meet certain levels of need or serve specific populations, policymakers could choose to create or expand certain programs or treatment modalities to create a service system with specific characteristics. Table 5 lists program models that could initiate or expand with such an approach. Each of the models in Table 5 comprised part of the assumptions in Table 4 above.

Table 5: Average Capital and Operational Costs of Behavioral Health Programs

Treatment Modality	Description	Estimated Capital Costs Per Unit	Estimated Operational Costs Per Unit
Counseling	Out-patient counseling potentially coupled with medication	N/A	\$8,300
In-patient Residential Services	Assumed \$400 per day with an average stay of 90 days	\$469,000	\$36,000
Respite and Detoxification Programs	Assumed \$400 per day with an average stay of 22 days in respite	\$469,000	\$8,800
Intensive Outreach Team	Outreach team to locate homeless and unsheltered individuals and support entrance and maintenance of recovery	N/A	\$5,000
Crisis Response Team	Rapid response field capacity coordinated with law enforcement	N/A	\$8 million for City-wide response

Section 2, Paragraph 4: 2,000 Additional Housing or Shelter Units

The language in this section requires the City to “provide for” the creation of 1,000 new units of “emergency or permanent housing with services” within six months and another 1,000 new units in the subsequent six months. “Provide for” can be interpreted in a variety of ways, ranging from making a financing commitment to appropriating funds to a unit becoming operational, perhaps including a combination of each. The language does not preclude units that had been planned for, only “those already funded.” As a result, new funding, such as from the tax created in [ORD 126108](#) (Jump Start Seattle Tax) or funding from the State that has not already been appropriated by a budget ordinance, even if planned for, could be counted toward meeting the required number of new units. It is also possible that units that have been built or nearing completion but will not be operational until after the effective date of the requirement could be counted. For example, units developed by the Office of Housing or properties acquired through American Rescue Plan Act, could be acquired or built prior to the amendment’s effective date but count toward the requirement for new units if they are not operational until late 2021 or in 2022.

The City can utilize any combination of different units in meeting the requirement, as long as the units are “non-congregate”, which is another undefined term that is subject to interpretation. As shown in Table 6, a range of such emergency and permanent housing programs exist with varying operational and capital costs. Not all of these programmatic options are discussed in this memo but each could be a viable option for achieving the 2,000-unit requirement.

Table 6: Average Capital and Operational Costs of Non-Congregate Shelter and Housing Programs in Seattle

Housing or Shelter Program	Average Capital Cost Per Unit	Average Operational Cost (Annual) Per Unit
Tiny Home Village	\$15,000	\$20,000
Hotel Sheltering	\$33,000 - \$39,000	\$23,000 - \$64,000
Rapid Re-Housing	-	\$17,000 - \$35,000
Affordable Housing with Light Services	\$350,000	\$12,000 - \$14,000
Permanent Supportive Housing	\$350,000	\$23,000

The emergency or permanent housing option with the lowest capital cost to create the unit is tiny home villages, which would require an estimated \$15,000 per tiny home for startup. The annual operating cost for a tiny home is approximately \$20,000 per unit, assuming a village of 40 units. Example A in Table 7 assumes this approach. The most expensive option for meeting this requirement would be the creation of permanent supportive housing (PSH), which has an average capital cost of \$350,000 per unit and annual operating cost of \$23,000 per unit. Example C in Table 7 assumes this approach. There are numerous possible combinations of these two approaches, as well as combinations that include the other shelter and housing types shown in Table 6, that could be implemented. Example B in Table 7 envisions a scenario where half the new units are tiny homes and half are PSH.

Regardless of the combination of units created, it is unlikely that the City could fully develop 2,000 additional units of housing or shelter within 12 months, even if the City leverages previously planned development to meet this requirement. This is informed by past experience developing all forms of housing and shelter. New construction of affordable housing projects typically requires two to three years to complete. The 120 new tiny home units expected to open in the fall of 2021 will have required eight to nine months to locate and commence service. The majority of emergency shelters currently funded by HSD utilize settings that potentially would not meet the requirements of the amendment, absent further clarification of the term “non-congregate”. The only scenario allowing for full development of new units could be if the Office of Housing or the Human Services Department is able to purchase existing buildings or those nearing completion that could immediately be used as PSH or emergency housing.

Table 7: Example Approaches to Meet Requirements of Section 2, Paragraph 5

Example	New Funding Required			
	One-Time	Ongoing in 2022	Total 2022	Future Annual Operations
Example A: All Tiny Home Villages	\$30,000,000	\$10,000,000	\$40,000,000	\$40,000,000
Example B: Half Tiny Homes and Half PSH	\$365,000,000	-	\$365,000,000	\$43,000,000
Example C: All Permanent Supportive Housing	\$700,000,000	-	\$700,000,000	\$46,000,000 ¹

¹Represents first year service cost that must be adjusted for inflation in future years.

A variety of pre-existing funding sources will support new shelter and housing units in 2022 that could potentially help meet the requirement for 2,000 new units. These include the Jump Start Seattle Tax; funds appropriated in [Council Bill \(CB\) 120093](#) from the American Rescue Plan Act; PSH units already in development with support from the Office of Housing; State capital and acquisition funding; funds provided by the State for the operation, maintenance, and service costs of PSH; and the Health through Housing Sales Tax. However, these investments in totality might not meet the requirement to provide for 2,000 new units. The cost estimates in this memo assume the City does not “count” any of these anticipated housing units towards the amendment’s 2,000-unit requirement.

Sec. 2 Paragraph 5: Land Use Code, Regulations, City-Imposed Costs, and Fees

The amendment requires a range of waivers and reimbursements for emergency and permanent housing capital projects that would require clarification or interpretation. The first sentence in this section outlines three policies, all subject to what is permitted by State law. Part (a), which requires waiving land use code and regulation requirements, may not have any effect since its implementation would likely conflict with the State’s Growth Management Act. Part (b) calls for the waiver of permitting fees. An analysis of recent affordable housing projects reveals that approximately \$1,200 to \$2,000 per unit of the project’s cost is derived from actual permitting fees with an average of \$1,700 among the selected projects. As discussed below related to the reimbursement of City-imposed costs, this would require City appropriations to offset these costs, not simply waiving the collection of these fees. Finally, it is already City practice to prioritize affordable housing permits to expedite the development process, as required in part (c).

The new policy set forth in the final sentence requires the refund of “all City imposed costs, fees, and the City’s portion of the sales tax” during a civil emergency related to homelessness. If the current [state of emergency](#) related to homelessness was ended, this section would have no effect. The ongoing Homelessness State of Emergency was initially declared in November 2015. Under a declaration of a civil emergency, the Council cedes authority to the Mayor to allow the Executive Branch to quickly respond to address imminent threats to public health, safety, and welfare. However, to operationalize her emergency authority, the Mayor must issue emergency orders that are filed with the City Clerk (see [Seattle Municipal Code Sections 10.02.020 through 10.020.030](#)). The most recent order issued pursuant to the Homelessness State of Emergency was filed in September 2017. The Mayor can unilaterally end a civil emergency by proclamation. The Council can end a civil emergency by a resolution adopted by at least two-thirds of Councilmembers.

There are additional potential interpretations of this language for which this memo does not attempt to quantify the estimated cost. For instance, a variety of requirements could be interpreted as “City-imposed,” such as requirements to meet City-adopted versions of State construction codes like the fire code and energy code or street improvements related to a project, but this memo assumes that the amendment did not envision construction codes, which could be far ranging, as part of this policy. Similarly, this memo does not include a cost

estimate for waiving hook-up fees, in part because such fees range substantially. These include pass-through charges, such as the King County Capacity Charge, and other City water and/or sewer charges. Also excluded from this analysis are any capital costs for required street or right-of-way improvements or required utility infrastructure costs, which vary greatly from project to project and cannot be estimated.

Information from the Office of Housing indicates that approximately 60 percent of the cost to develop a PSH unit is subject to City sales tax. City sales tax includes a 0.85 percent tax that goes into the City GF and a 0.15 percent tax for the Seattle Transportation Benefit District. Table 8 below summarizes these assumptions and provides the estimated total of these fees and costs for creating 2,000 new units of PSH.

State law would require that additional GF expenditure cover any waiver of permits, fees, and city-imposed costs. Specifically, [RCW 82.02.020](#) prohibits local governments from “impos[ing] any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land.” There are some enumerated exceptions, including fees charged for regulatory services, like permit fees. However, the State Supreme Court has been clear that those costs cannot be shifted to other permit applicants. As a result, the reimbursements and waivers from this section of the amendment would require support from City appropriations.

Table 8: Estimated Average City-imposed Costs and Fees for Affordable Housing or PSH Units

Cost or Fee	Estimated Average Cost	Estimate for 2,000 Affordable Housing or PSH Units
Construction Codes	Assume Excluded	N/A
Permitting Fees	Average of \$1,700 Per Unit	\$3,400,000
Hook Up Fees	No Estimate Provided	Unknown
Sales Tax	1% Tax Applied to 60% of Unit Cost	\$4,200,000
Street and Right of Way Improvements	No Estimate Provided	Unknown
	Total	\$7,600,000

Analysis above for meeting the requirement to create 2,000 new units of emergency or permanent housing also includes an example where 2,000 new tiny homes are created. Table 9 summarizes estimates for meeting the requirements of Section 2, Paragraph 5 for tiny homes. As with PSH and affordable housing, this memo provides no estimates for policy interpretations that would result in reimbursing costs related to construction codes or utility hookup fees for tiny homes. Tiny home villages, because they are considered an interim or temporary use, do not trigger street or right-of-way improvements. Therefore, no street and right of way improvement costs are assumed for them. Based on recent permitting costs for three recent tiny home villages, this memo assumes an average of \$1,730 in permitting fees per village. Creating 2,000 new tiny homes would require 50 new villages if there were 40 units in each village. Assuming similar permitting costs for these new villages, nearly \$87,000 in GF support

would be required. Finally, this memo estimates construction of each actual tiny home would require about \$3,500 worth of materials. So reimbursing City sales taxes for those costs for 2,000 units would result in a loss of \$70,000 in GF revenue.

Table 9: Estimated Average City-imposed Costs and Fees for Tiny Home Villages

Cost or Fee	Estimated Average Cost	Estimate for 2,000 Tiny Homes
Construction Codes	Assume Excluded	N/A
Permitting Fees	Average of \$1,700 per Village of 40 Units	\$86,000
Hook Up Fees	No Estimate Provided	Unknown
Sales Tax	1% Tax Applied to Tiny Home Materials	\$70,000
Street and Right of Way Improvements	No Improvements Required	N/A
Total		\$156,000

Sec. 2 Paragraph 6: Compensation and Workforce Stability

It is subject to interpretation as to what providing “appropriate compensation, safety, and working conditions that support a stable and competent work force” would entail. Human services providers have articulated substantial concern over the wages paid to employees and the impact of low wages on recruitment and retention. However, it will ultimately be a policy decision as to the means to address that challenge. Policy makers could interpret that existing policies already meet the requirements of this provision. For example, [CB 120093](#), appropriating funds from the American Rescue Plan Act, provides \$4.3 million to address provider capacity, and [ORD 125865](#) requires the City provide an annual contract increase for all human services contracts based on the consumer price index..

Alternatively, policy makers could seek unspecified levels of investment to increase wages in this sector. For example, a 3.8 percent increase to eligible HSD contracts contributed entirely to wages may be sufficient to increase salaries for workers earning \$26 per hour by \$1 per hour. Based on the 2021 Adopted Budget, where a 1.9 percent contract increase for human services contracts required \$2.9 million in funding, a 3.8 percent increase in 2022 would require nearly \$6 million.

Section 2, Paragraph 6: Diversion

The amendment would require that “consistent with the City’s public safety obligations, programs shall be implemented to divert individuals from the criminal justice system whose law violations are connected to a lack of housing, income instability, or behavioral health issues.” The language does not specify the offenses to which diversion should apply, stage at which diversion should occur, populations that should be served, or services that constitute diversion. “Diversion” can be defined or interpreted in a variety of ways, ranging from diversion from any contact with the criminal legal system to diversion at various stages throughout the system, including programs such as pre-filing or pre-trial diversion. The City currently funds a pre-filing

diversion program for young adults, supports the Law Enforcement Assisted Diversion (LEAD) program, and supports programs that preclude engagement with law enforcement, such as Health One and nurse call lines. Because of the range of programming that diversion could include the requirements of this section are subject to interpretation and potentially further clarification by legislation. One potential interpretation could be that this requirement is already fulfilled due to the City’s pre-existing funding for diversion programs. Any significant program expansion would require time both for providers to build capacity and to engage clients in the services, especially if the level of expansion significantly exceeds current service levels.

In addition, the charter amendment characterizes actions taken by an individual as a “law violation.” Though law enforcement must have probable cause that a person committed a crime before making an arrest, conducting a search, or receiving a warrant, determination that the law was violated must occur in court, and the diversion programs currently supported by the City occur before a ruling in court. It is possible the amendment would require programs that interact with individuals after guilt has been established, but this memo assumes that the language was intended to point to programs that divert an individual from criminal justice involvement.

Table 10 provides cost estimates for expanding existing diversion programs that could be part of any increase in services as a result of the amendment. The City could interpret these programs as meeting the amendment’s requirement or expand them to provide more alternatives to a police response to divert people allegedly committing crimes in relation to a lack of housing, income instability, or behavioral health issues towards alternative responses.

Table 10: Average Operational Costs City-Funded Diversion Programs

Diversion Program	Estimated Cost Per Person Served	Estimated Cost to Meet Full Program Demand
Alternatives to Police Involvement	Varies	TBD
Pre-filing Diversion	\$6,000	\$4,800,000 - \$7,200,000
Law Enforcement Assisted Diversion	\$6,800	TBD

If diversion is interpreted as broadly routing people away from any contact with the criminal legal system, several programs could satisfy that requirement without any additional action, including programming providing alternatives to calling the police or 911. The Nurse Helpline in HSD is a nurse call line for homeless services agencies so that customers utilizing homeless services programs would have the option to contact medical professionals on these lines rather than calling 911. This program was funded in the 2021 Adopted Budget at \$40,000 annually. It could also include Health One, which is discussed above. Any expansion of these programs could be done to multiple levels of scale, such as providing nurse support to a certain type of facility or providing coverage to an identified region.

Diversion could be interpreted as programs that bypass criminal justice involvement for an individual who would otherwise be arrested on suspicion of having committed a crime. The City

currently provides more than \$6 million annually for a pre-arrest diversion program called Let Everyone Advance with Dignity (LEAD, formally known as Law Enforcement Assisted Diversion), which bypasses the normal criminal justice system by directing qualifying clients to a trauma-informed, intensive case management program that connects individuals to a range of support services. The 2020 funding plan for the program anticipated serving 1,500 clients with funding from the City, County, and Ballmer Foundation at an average cost of approximately \$6,800 per person served. Per Council Budget Action [HSD-006-A-003](#), work is currently underway to estimate the number of priority qualifying referrals Citywide for the LEAD program and the associated funding necessary to support those services. As such, no estimate for expanding LEAD is provided here.

If the City were to interpret “diversion” as routing people already involved in the criminal legal system from having a criminal record or going to court, other programs could be included here. Currently, the City Attorney’s Office runs a pre-filing diversion program for young adults aged between 18 and 24 for low-level misdemeanors. While the program is not specifically designed for it, there is some potential for overlap between violations connected to lack of housing, income instability, or behavioral health issues and participants in the pre-filing diversion program. The City Attorney’s Office is currently conducting a racial equity toolkit to determine whether and how to expand pre-filing diversion to other offenses and to those older than 25 and estimates that the expanded program would cost \$900,000. Serving an average of 150 people annually, the per-person cost would be \$6,000.

Estimating the cost of diverting clients committing violations connected to lack of housing, income instability, or behavioral health issues depends on the basis for the estimate. For example, if the estimate is based on diverting those currently going through Mental Health and Community Court, this would cost the City \$4.8 million. Through the end of April 2021, Mental Health Court saw 174 clients and Community Court saw 95 clients. Extrapolating this number of clients to how many clients these specialty court would see in all of 2021, Mental Health Court would see an estimated 522 clients and Community Court would see an estimated 285 clients, for a total of 807 clients. Adding 807 people to an expanded pre-filing diversion program at a cost of \$6,000 per person results in this \$4.8 million cost.

However, if the estimate is based on diverting criminal or civility infractions (criminal trespass in the first degree and the second degree, trespass in parks, entering and remaining in parks, consuming or possessing an open container of liquor in public, sitting or lying on sidewalks, and urinating in public, often referred to as crimes of poverty), the numbers change. In 2019, 1,195 charges were filed for a variety of [civility infractions](#). Assuming each of these charges account for one indigent or housing unstable client, it would cost the City \$7.2 million to divert these clients.

Given that such a high percentage of clients going through Seattle Municipal Court are indigent or homeless, many more than just the clients in these specialty courts or on civility charges could be eligible for diversion if their violations are connected to their income or housing status. Adding these clients to diversion would increase the cost of the program accordingly. It

is also possible that the clients in these categories have more than one charge each and that some of these clients are not homeless or indigent, so further analysis of where there are overlaps or changes to account for income or housing status would refine these estimates.

Next Steps

If the amendment obtains the required number of signatures to be placed on the ballot and such signatures are verified by King County Elections, the Council will be required to pass a bill or adopt a resolution authorizing King County Elections to place the Charter amendment on the ballot for the general election occurring on November 2, 2021. If the amendment is adopted by a majority of voters, it will become part of the City Charter within five days after the certification of the election.

Attachments:

1. Text of Proposed Charter Amendment 29

cc: Dan Eder, Interim Director
Aly Pennucci, Policy and Budget Manager

Attachment 1: Text of Proposed Charter Amendment 29

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SEATTLE

The People of the City of Seattle, exercising their power to amend the City Charter by popular vote under Article XX, Section 2 of the City Charter, enact the following new article to the Charter of the City of Seattle.

Section 1. A new Article IX is added to the City Charter as follows:

ARTICLE IX. PROVISION OF HOMELESS SERVICES

Section 1.

Consistent with this Charter's preamble, it is necessary to protect and enhance the health, safety, environment and general welfare of all people and to support the economic vitality and sustainability of the City for the benefit of all of the people of Seattle.

Section 2.

First. The City shall fund and provide services to improve the lives of all residents of the City. It is City's goal that no one should have to live outdoors in public spaces. The City shall coordinate and engage with the public, community-based organizations, non-profit service providers, philanthropic organizations, businesses, and collective bargaining representatives, to understand and address current and emerging human service needs. It is City policy to fully support, advance and invest in any regional governmental homelessness authorities. When the City works with other public and private entities to meet its obligations under this Charter Article IX it shall collaborate to ensure successful outcomes and support an innovative and effective regional service network. It is City policy to and the City shall work to end chronic homelessness and racial disparities in the homeless population by investing City funds in practices and strategies, including emergency and permanent housing that effectively engage, shelter and house those who live in public spaces; and, work to retain individuals in housing; both with particular focus on the chronically homeless and those with the greatest barriers and greatest community impact. It is City policy that the effectiveness of strategies and services designed to transition homeless individuals to housing be measured and reported, with specific attention to those who are chronically homeless and facing greatest barriers to engagement, shelter and housing. It is City policy to and the City shall measure and report which City services, activities, and practices may contribute to people entering or experiencing homelessness. Those reports to the public shall occur at least every three months and include clear and specific outcomes to be established by the City.

Second. The City in conjunction with King County and through any agreement with a governmental or non-governmental organization, shall help fund low-barrier, rapid-access, mental health and substance use disorder treatment and services ("behavioral health services") with particular focus on individuals who are chronically homeless and face the greatest barriers to engagement; and also shall help fund and deploy a behavioral health rapid-response field

capability that is coordinated where appropriate with City and county non-law enforcement crisis response systems and programs. The City shall fund culturally distinct approaches to behavioral health services to individuals for whom those are effective. The City-funded behavioral health programs and services shall be in combination with access to emergency housing in enhanced shelters, tiny houses, hotel-motel rooms, other forms of non-congregate temporary housing (“emergency housing”) or permanent housing for those living in shelters and outdoors in public spaces. For purposes of this Article IX, “permanent housing” is defined as housing that complies with applicable life, safety and health standards for indoor accommodations and includes occupants’ rights as tenants.

Third. It is the City’s policy to make available emergency and permanent housing to those living unsheltered so that the City may take actions to ensure that parks, playgrounds, sports fields, public spaces and sidewalks and streets (“public spaces”) remain open and clear of unauthorized encampments. The City shall develop policies and procedures to address those individuals who remain in public spaces, balancing the City’s strong interest in keeping public spaces clear of encampments and the possible harm to individuals caused by closing encampments. The housing and services provided shall acknowledge and be tailored to individual needs and cultural differences and be appropriately person-centered. The City shall prioritize matching willing individuals to housing based on their specific needs and situation and, as appropriate, to accommodate disabling conditions and family type in housing. The City, or its designee, shall appropriately utilize pathways to permanent housing and prioritize individuals or family needs in order to limit emergency housing stays to no longer than necessary. While there is no right to camp in any particular public space, it is City policy to avoid, as much as possible, dispersing people, except to safe and secure housing, unless remaining in place poses particular problems related to public health or safety or interferes with the use of the public spaces by others. In those circumstances where the City does not close an encampment, the City may still require individuals to shift their belongings and any structures to ensure safety, accessibility and to accommodate use of public spaces.

Fourth. Within six months of the effective date of this Charter Amendment the City shall provide for 1,000 units (in addition to those already funded) of emergency or permanent housing with services including access to behavioral health services and necessary staffing to serve people with the highest barriers. Within one year of the adoption of this Charter Amendment the city shall provide another 1,000 units (in addition to those already funded) of emergency or permanent housing with services including access to behavioral health services and necessary staffing to serve people with the highest barriers.

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

and the City's portion of the sales tax on all project expenditures, paid on or after the enactment of this Article IX and during a declared civil emergency related to homelessness.

Sixth. Services to individuals experiencing homelessness shall include identifying and addressing factors known to drive the overrepresentation of Black, Indigenous and People of Color among people experiencing chronic homelessness. Provision shall also be made to include culturally competent services and workforce standards to address safety, appropriate compensation, and working conditions that allow contractors to recruit, retain and stabilize a diverse, skilled and culturally competent workforce. The housing and services provided will acknowledge and be tailored to individual needs and cultural differences and be appropriately person centered. Additionally, consistent with the City's public safety obligations, programs shall be implemented to divert individuals from the criminal justice system whose law violations are connected to a lack of housing, income instability, or behavioral health issues.

Seventh. The actions herein required shall be executed consistent with any plan or actions established or implemented by a regional government authority, provided that a regional plan and activities may be employed by the City to satisfy this Article IX so long as the requirements of this Article IX are satisfied.

Section 3.

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

Section 4.

This Article IX shall sunset and become null and void on December 31, 2027.

Section 5.

The provisions of this Article IX are to be liberally construed to achieve its purposes. Nothing in this Article IX shall be construed to interfere with contracts existing at the time of this Article's enactment, including contracts with regional governmental authorities. The terms and provisions of this Article IX are severable; if any are found invalid this shall not affect the validity of the remainder. This Article IX shall take effect and be in force immediately upon its enactment and shall supersede all preexisting ordinances and rules in conflict herewith.