**Concerning the hosting of the homeless by religious organizations.**

**ESHB1754 – 2019-20; Overview after passage, as of March 9, 2020**

The Religious Freedom Restoration Act – 1993 (RFRA), centered the protections for the exercise of faith. Courts and other authorities were disparate on religious practice, going so far as to declare houses of worship could only be used for worship and other restrictions. In 2000 as a follow up to the RFRA, Congress passed the Religious Land Use and Institutional Persons Act (RLUIPA). In part this law addressed the use of property owned or controlled by faith communities. RLUIPA continues the basis of its guidelines protecting religious practice and does so in light of land and property use. RLUIPA’s principal guideline is this:

*SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.
(a) SUBSTANTIAL BURDENS-
(1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--
(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest.*

Here in Washington state, violations of RLUIPA have been excessive. Examples abound. From outright denial that any faith community can host those unsheltered on any portion of its property indoors or outside, or to “allowances” of one faith community able to host for a term, such as one congregation every 18 months while all others are enjoined, or to a hosting being declined when no sprinklers are installed indoors. Many other denial reasons exist.

**Basically it is conceded in most quarters that every faith community can choose to host the homeless on their property without seeking jurisdictional permission**. At the same time, RLUIPA does allow for “a compelling governmental interest” being applied when, without imposing a substantial burden, “the least restrictive means of furthering that compelling governmental interest” is lifted.

This bill is essentially a compromise that sets a consistent floor for permitting and ordinances to regulate faith communities hosting the homeless. Above the floor are the remedies faith communities may use without burden, and these can be extensive and open-ended. Beneath the floor are hosting actions where compromises with jurisdictions will exist. Again, prior to considering this bill’s governance, it is conceded in most quarters that every faith community can choose to host the homeless on their property without seeking jurisdictional permission. But what this bill can offer by partnering with jurisdictions and others, services that many faith communities lack, are pathways toward moving from temporary hosting to permanently housing the unsheltered persons with other community partners. Additionally, the most adaptive option within this bill is use of the Memorandum of Understanding (MOU) between a congregation and a jurisdiction. Agreements may be uniquely crafted without the need for the public ordinance/permit process, as long as the terms within the MOU honor the terms and the floor of the bill.

Some provisions for the purpose of this bill:

1. This bill succeeds ESHB9156-2010 in describing guidelines for faith communities to host the homeless on property owned or controlled by a religious organization, and further,
2. Describes limits on jurisdictions in their discretion to protect the health and safety of both residents in temporary settings that are hosted by religious organizations and the surrounding community.
3. The Legislature encourages jurisdictions and religious organizations to work collaboratively on behalf of persons who are homeless as religious organizations fulfill their mission to serve the homeless.

The bill provisions repeat three times to address the three jurisdictions in Washington State; which are, County, City, and Code City. In each setting a religious organization may host the homeless on property owned or controlled by that organization inside buildings on the property or outside on the property. Conditions for some hosting is outlined in the bill as a compromise between jurisdictions and religious organizations as conditions for the exercise of federal rights under RLUIPA. Jurisdictions have choices, such as, 1) they may decline to permit and/or may decline to pass ordinances, 2) they may use ordinances and/or permits according to provisions in the bill, or 3) they may use a MOU whose terms can vary among local religious organizations as long as the terms coincide with the provisions of this bill; that is, do not lessen the rights accorded religious organizations herein, and/or do not limit other faith communities within the jurisdiction from the exercise of their rights under federal law and the established agreements in this bill. NOTE: “Religious organizations” span all worship spaces and faiths. As a result, the word also used appropriately can be “congregations.” The word “churches” fails to describe all faith communities.

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The hostings included in the bill for religious organizations are outdoor encampments, indoor including overnight hosting, safe parking, and tiny houses on site. A jurisdiction may not legislate in a way that:

1. Imposes conditions other than those necessary to protect health and safety and that do not substantially burden the religious organization regarding housing or shelter;
2. Requires insurance to be acquired for the liability of a jurisdiction as religious organizations host the homeless or requires a religious organization to indemnify a jurisdiction;
3. Imposes permit fees, where used, in excess of the actual costs associated with the review and approval of permit applications, and a jurisdiction may reduce or waive permit fees for religious organizations hosting the homeless.

**Outdoor encampments**

A jurisdiction may not limit a religious organization hosting an outdoor encampment on its property or on property it controls:

1. To fewer than six (6) months during any calendar year, but can indicate a separation of time of no more than three (3) months between hostings at the same site;
2. To fewer than four (4) consecutive months;
3. To limit the number of simultaneous religious organization outdoor encampments within the same jurisdiction during any period of time, except to limit multiple and simultaneous hostings within one-thousand (1,000) feet of another active camp.

**Safe Parking**

A jurisdiction may not limit a religious organization hosting on-site safe parking on its property or on property it controls:

1. By limiting other congregationally sponsored uses and parking to support such uses during hostings;
2. To no less than one (1) parking space for safe parking for every ten (10) on-site parking spaces, save another agreement to maintain jurisdictionally required parking, or save use of a MOU indicating agreed usages;
3. By acknowledging use of indoor restrooms or allowing use of outdoor portables;
4. By acknowledging proper wastewater disposal will be in place for hosted RVs.

**Indoor Overnight Shelter**

A jurisdiction may not limit a religious organization hosting overnight indoor shelter on its property or on property it controls:

1. Except to require the religious organization use space with two accessible, illuminated exits with panic bar doors, especially where there are no sprinklers;
2. Except where a fire marshal determines there are fire concerns and the jurisdiction may limit hosting if mitigations herein cannot be enacted as part of a fire plan;
3. Except that where safety requires, a jurisdiction may enter into a MOU, including local fire district inspections, an outline for appropriate emergency procedures, viable evacuation plans and posted safe means of egress, and a completed fire watch agreement;
4. Except to require smoke and carbon monoxide detectors and fire extinguishers;
5. Except to require monitors to spend the night awake, and who are familiar with emergency protocols, have suitable communication devices, and know how to contact the local fire authority.

**Temporary small houses**

A jurisdiction may not limit a religious organization hosting temporary small houses on its property or on property it controls:

1. To less than a one (1) year duration renewable as agreed via a MOU;
2. To a size different than one-hundred twenty (120) square feet, set outdoors at least six (6) feet apart;
3. Except to inspect electricity and heat, if provided;
4. Except to inspect space heaters, if provided;
5. Except to inspect doors and windows that lock, with the religious organization possessing keys to every unit;
6. Except to assure each unit has a fire extinguisher;
7. Except to require provision of adequate restrooms for individuals and separate facilities for families, along with handwashing and potable water for all.

**Managing agencies**

A jurisdiction may not limit a religious organization hosting the homeless on its property or on property it controls:

1. Except to require that a MOU must exist between a religious organization and a managing agency, if any, of any hosting, to protect health and safety;
2. Except to require, at minimum, hosted resident rights be protected to access social services on-site, and to interact individually with the religious organization to lift concerns;
3. Except to require a written Code of Conduct interactive with all those acting as hosts.

**Law Enforcement/Legal Agreements**

A jurisdiction may not limit a religious organization hosting the homeless on its property or on property it controls:

1. Except to insure sex offender checks occur (those identified may stay at the discretion and oversight of the religious organization);
2. Except to require vehicle residents be informed how to comply with law regarding the legal status for driver(s) and vehicles;
3. Except to require a written code of conduct covering area standards as to law.

**Homeless Client Management Information System (HMIS)**

A jurisdiction may not limit a religious organization hosting the homeless on its property or on property it controls:

1. Except where any public funding occurs, HMIS must be utilized with homeless guests as well as appropriate case management as Continuum of Care/system required;
2. Except the encouragement, where no public funding is received, that the religious organization partner with a local nonprofit for HMIS and case management;

**Prior ordinances**

If a jurisdiction has a prior ordinance for any of these hosting uses, to stay in effect it must:

1. Exist prior to the effective date of this bill;
2. Not categorically prohibit the hosting of the homeless by religious organizations;
3. Not have been previously ruled by a court to violate the religious land use and institutional persons act, 42, USC, Sec, 2000cc;
4. Not violate 2) and 3) above if it is a local amendment after the effective date of this bill.

**Nondiscrimination**

A jurisdiction may ensure that:

1. Any hosting that includes funding from the public sector may not refuse to host any resident or prospective resident because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as defined in RCW 49.60.040.

**Notice of hosting**

Prior to opening a hosting, a meeting must be held open to the public for a forum that includes public and neighborhood concerns, save in emergencies. The religious organization must provide written notice of the meeting at least a week prior but no later than 96 hours before the meeting to the jurisdiction, specifying the time, place, and purpose. Other conditions are included in the bill all intended for publicizing the meeting.

***For other questions, read the bill, or contact The Rev. Bill Kirlin-Hackett,*** ***itfh@comcast.net******, 425.442.5418***