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CITY OF SEATTLE
MAYOR'S OFFICE

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

FREEDOM FOUNDATION,

Petitioner,

v.

CITY OF SEATTLE and RALPH NEIS and
LOW INCOME HOUSING INSTITUTE,

Respondents,

No. _____

LAND USE PETITION

Petitioner alleges as follows:

FACTS

1. Petitioner Freedom Foundation is a nonprofit organization representing the interests of thousands of individuals and businesses in

1 7. Petitioner's Name and Mailing Address. Petitioner is the Freedom
2 Foundation. Petitioner's name and mailing addresses are as follows:

3 Freedom Foundation
4 2403 Pacific Ave SE,
5 Olympia, WA 98501

6 8. Petitioner's Attorney: The following is Petitioner's attorney:

7 Richard M. Stephens, WSBA #21776
8 Stephens & Klinge LLP
9 10900 NE 8th Street, Suite 1325
10 Bellevue, Washington 98004
11 (425) 453-6206

12 9. Local Jurisdiction, Name and Address. The local jurisdiction whose
13 Decision is at issue is the Respondent City of Seattle. The mailing address for the
14 City is as follows:

15 City of Seattle
16 Department of Construction and Inspections
17 700 Fifth Avenue, Suite 2000
18 Seattle, WA 98124

19 10. Applicants for Land Use Decision at Issue. The Applicants for the
20 Decision at issue are Ralph Neis and the Low Income Housing Institute. The
21 mailing address for Mr. Neis and the Low Income House Institute is:

22 2407 1st Avenue Suite 200
23 Seattle, WA 98121

 11. Identification of Decision Making Body and Decision. This land use
petition seeks review of a final decision by the City of Seattle, granting a

1 construction permit on June 6, 2018. A copy of this Decision is attached hereto as
2 Exhibit 1.

3 12. Identification of Parties Under RCW 36.70C.040(2)(b) through (d).

4 Subsections (b) through (d) of RCW 36.70C.040(2) provide that certain persons
5 are to be included as parties to the review of the land use petition. No other
6 persons appear to be required to be named parties. If the City believes that
7 another party is needed for just adjudication of this petition, the City should
8 notify Petitioner of this immediately pursuant to RCW 36.70C.050.

9 13. Petitioner's Standing: Petitioner has standing because, as an
10 organization, it represents the interests of people and businesses who are
11 negatively impacted by governmental decision-making at the state and local
12 level, including decisions granting permission to engage in land uses that impact
13 the environment and the working and living conditions of people in Washington.
14 Such interests here include the quality of life in residing, working and owning
15 property and businesses in the South Lake Union area, the area impacted by the
16 Decision at issue. The impact from the Decision will be immediate in the
17 accumulation of 65 people living in tents in this area, by encouraging loitering
18 and substandard living conditions in this particular area. The purpose of
19 environmental review is to allow the City (and members of the public, such as
20 those who reside or work in the area) to evaluate the environmental impacts of
21 the proposal before the proposal is authorized.
22
23

1 14. Concise Statement of Alleged Errors. The City issued the Decision
2 authorizing the applicants to build and operate a transitional encampment. The
3 Decision improperly ignores the requirement in Seattle Municipal Code (SMC)
4 Section 23.42.056F that limits transitional encampments in the City to three.

5 15. The City's Decision was handled as a Type I land use decision under
6 SMC section 23.76.004. The Decision was processed as a Type I decision which
7 was done administratively with no notice, opportunity to comment or a
8 disinterested decision maker. However, this proposal is not exempt from review
9 under the State Environmental Policy Act (SEPA). It is not categorically exempt
10 under SMC 24.05.800B or under any other categorical exemption. In issuing its
11 Decision, the City failed to undertake the required environmental review.

12 16. SMC 23.42.056 contains numerous requirements for approval of
13 transition encampments, including the requirement that the operator conduct
14 community outreach prior to making application, establishing a community
15 advisory committee, complying with an operations plan and being on the
16 qualified encampment roster by the Human Services Director. Because the
17 process by which the Decision was approved did not include any public notice or
18 administrative hearing, Petitioner has not had access to proof that these or any
19 requirements were met before the City issued the Decision. Counsel for
20 Petitioner has requested documents under the Public Records Act related to this
21 Decision, although no documents have yet been produced in response to that
22 request. Because the Decision was not the result of an open public process,
23

1 Petitioner reserves the right to assert additional errors once the records related
2 to this Decision are produced.

3 17. The City's Decision is the result of an unlawful procedure and
4 failure to follow a prescribed process under RCW 36.70C.130(1)(a); is an
5 erroneous interpretation of the law under RCW 36.70C.130(1)(b); is not
6 supported by evidence that is substantial when viewed in light of the whole
7 record below under RCW 36.70C.130(1)(c); and is a clearly erroneous application
8 of the law to the facts under RCW 36.70C.130(1)(d).

9 18. Concise Statement of Facts. Petitioners alleges the following facts:
10 Petitioners incorporate by reference the facts stated in Paragraphs 1 to 17 above.

11 19. On May 30, 2018, Applicants filed for a permit. Although counsel for
12 Petitioners have requested copies of documents related to this permit through a
13 public records act request, the documents have not yet been provided and
14 Petitioners have not seen what was actually filed. The City Department of
15 Construction and Inspections issued a Construction Permit No. 6668333-CN on
16 June 6, 2018. Again, Petitioner has seen no documents related to this permit,
17 other than the permit itself which was available on the City's website.

18 20. SMC 23.42.056 allows a Type I Master Use permit to be issued for a
19 transitional encampment interim use subject to several criteria. One criterion is
20 compliance with community outreach standards. SMC 23.42.056 A.1.a. The
21 applicant failed comply this requirement. Subsection b requires the
22 establishment of a Community Advisory Committee which includes on individual
23

1 identified by each stakeholder group in the geographic area where the proposed
2 encampment would be located as best suited to represent their interests. The
3 applicant failed to comply with this requirement.

4 21. The property at issue is zoned SM-SLU 100/95 and, therefore, the
5 threshold for review under SEPA is 30,000 square feet. The area of use of the
6 encampment is over 30,000 square feet. Review under SEPA should have been
7 undertaken before the permit issued and that the decision should not have been
8 processed as a Type I decision, but as a Type II decision.

9 22. Request for Relief. Petitioner requests all relief to which it and the
10 people it represents are entitled under LUPA. The Court should reverse the
11 City's Decision to grant the construction permit.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioners now respectfully request the Court to award the
14 following relief:

- 15
- 16 A. An order consistent with request for relief set forth above in the Land
17 Use Petition Act claim or to effectuate any other ruling of the Court determined
18 after briefing and argument;
- 19 B. Costs and attorney fees in this action as allowed by law; and
- 20 C. Such other and further relief as the Court deems just and equitable.

21 RESPECTFULLY SUBMITTED this 27th day of June, 2018.

22 STEPHENS & KLINGE LLP

23
STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

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By: 
Richard M. Stephens, WSBA #21776
Attorneys for Petitioner

Exhibit 1

Permit Number:
6668333-CN



CITY OF SEATTLE Construction Permit

Seattle Department of
Construction and Inspections
700 Fifth Ave, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8600

APN #:	Site Address: 801 Aloha ST SEATTLE, WA 98109
	Building ID: NONE
	Location:
	Legal Description: ALL OF BLK 8, EDEN ADDN & TH1 PTN OF LTS 1-4, BLK 80 LY W OF ALLEY DEEDED TO
	Records Filed At: 802 ROY ST

OWNER RALPH NEIS LOW INCOME HOUSING INSTITUTE 2407 1ST AVE SUITE 200 SEATTLE, WA 98121 Ph: 206-765-6730	CONTRACTOR	Application Date: 05/30/2018 Issue Date: 06/06/2018 Expiration Date: 12/06/2019 <hr/> Fees Paid: \$640.50 As of Print Date: 06/06/2018
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Description of Work: Temporary use to allow a transitional encampment for up to 65 people on property owned by the City of Seattle. The proposal includes tent spaces, portable toilets, an outdoor kitchen, and related accessory facilities. The anticipated duration for the encampment is 4-weeks from 6/1/18 to 6/28/18

Permit Remarks:

Building Code: 2015 SBC	Building Info:	Housing & Dwelling Unit this Permit:	Zoning/Overlay:
SDCI Valuation: \$1,000	Basements:		SM-SLU 100/95
Occupancy Cert Required: N	Stories:		Council District 7
Special Inspections: N	Mezzanines:		DESIGN_REVIEW_GUIDELI
Land Use Conditions: N			URBAN_VILLAGE Yes,
Non-Separated Uses: N	Site Final Required: N		FREQ_TRANSIT_SRVC_CO
			Additional Information on File

Occupancy per Building Code					
Floors	Type	Occupancy Group	Occupancy Type	Asmby Load	Fire
Vacant	Not	Not Reviewed			None

Approved Use per Land Use Code	
Use	Location
Community Center	0

A/P #	Related Cases/Permits
6670670-CN	Construction Permit
6670669-CN	Construction Permit
6670668-CN	Construction Permit
6670672-CN	Construction Permit
6670667-CN	Construction Permit
6670671-CN	Construction Permit
Additional Information on File	

Project Contacts	Name	Phone
Zoning Reviewer	William Mills	206-684-8738
Addressing Reviewer	Angelique Moser	NA

Applicant Signature: _____ **Date:** _____

Permitted work must not progress without prior inspection approval. When ready for inspection, make request with the Seattle Department of Construction and Inspections at (206) 684-8900 or on the internet at: www.seattle.gov/dpd/permits/inspections/. Provide the permit number, site address, and contact phone. Permission is given to do the above work at the site address shown, according to the conditions hereon and according to the specification pertaining thereto, subject to compliance with the Ordinances of the City of Seattle. Correct information is the responsibility of the applicant. Permits with incorrect information may be subject to additional fees.

You Must Have a Paper Copy of Your Approved and Stamped Plan Set Available at Your Job Site for the City Inspector to Review. If You Do Not Have Your Plans Printed and Ready for Review, You May Fail Your Inspection.

POST THIS SIDE OUT:

TO THE CONTRACTOR/OWNER,

Additional permits may be required for work occurring under this permit. This permit does not authorize Sewer, Public Right-of-Way Shoring, Drainage and Street Use, Fire Department, Boiler, Electrical, Elevator, Furnace, Gas Piping, Plumbing, or Sign permits. If other permits are required, they must be applied for separately from this permit. The requirements for all other permits related to this Permit, must be completed prior to the Final Inspection of this permit.

This Permits Final Inspection is required. The premises must not be occupied until the Final Inspection is provided and occupancy is authorized by the Seattle Department of Construction and Inspections.

ISSUED PERMIT STATUS: You can check the status of issued permits on the internet at: www.seattle.gov/dpd

INSPECTION REQUESTS: Please clarify which inspections your project requires before proceeding with your project.

You may request an inspection on the internet or by phone. Inspection requests received **before 7:00 AM** are scheduled for the same working day. Inspection requests received **after 7:00 AM** are scheduled for the next working day. Inspectors are available between the hours of 7:30 AM and 8:30 AM.

- A) **Internet:** www.seattle.gov/dpd/permits/inspections/ Under **Scheduling an Inspection** click **Requesting an inspection online.**
- B) **24 hour inspection request line at (206) 684-8900, cell phones are discouraged** due to frequent connection problems.
- C) **Customer Service at (206) 684-8950** between the hours of 7:30 AM and 4:30 PM.

BEFORE BEGINNING CONSTRUCTION:

- A) Before **First Ground Disturbance**, request an inspection of installed **Erosion Control Measures**.
- B) When there is **Special Inspections**, Land Use conditions, and/or unusual design elements, a **Pre Construction Conference** is required prior to construction. Call 684-8860 to request a Pre Construction conference.
- C) If this permit requires a **Soil Bearing Capacity** special inspection by a Geotechnical Engineer, that approval is required **before** the foundation pour. The Building Inspector will accept the Geotechnical Engineer's approval **signature below**.
- D) When **Special Inspections** are required, notify the Special Inspection Agency at least 24 hours in advance.

DURING CONSTRUCTION:

Seattle DCI inspectors will provide a copy of each inspection report. These reports must either be kept with this Permit, or kept together where they can be conveniently referenced. Request an inspection for the following installations:

PROPERTY LINES MUST BE ESTABLISHED BY SURVEY STAKES PRIOR TO SETBACK/FOUNDATION INSPECTION.

a. FIRST GROUND (non disturbance areas, erosion control, tree protection)	f. INSULATION (Slab, Walls, Ceiling)
b. SETBACK (Location)	g. MECHANICAL COVER (If HVAC is authorized by this permit)
c. FOUNDATION (Footings, Walls) [Soil bearing, Reinforcing steel, Foundation drainage]	h. MECHANICAL FINAL (If HVAC is authorized by this permit)
d. STRUCTURAL (Shear Wall, HD's/Straps, Diaphragms)	i. SITE FINAL (If required by this permit)
e. FRAMING (Sub floor prior to sheathing, Walls, Ceiling)	j. FINAL INSPECTION (After all other related permit requirements are completed)

PRIOR TO FINAL BUILDING APPROVAL:

Other permit approval sign-offs may be required prior to the Final Inspection of this permit. To speed-up Final approval of this permit, we recommend you acquire other permit final approvals in the signature boxes provided below.

SOIL BEARING Approved By _____ Date _____	BOILER Approved By _____ Date _____	SEATTLE FIRE DEPARTMENT Approved By _____ Date _____
ELECTRICAL Approved By _____ Date _____	ELEVATOR Approved By _____ Date _____	LAND USE/DESIGN REVIEW Approved By _____ Date _____
PLUMBING / GASPIPING / BACKFLOW Approved By _____ Date _____	SITE / SIDE SEWER Approved By _____ Date _____	SDOT - PRVT CONTRACT/ST. USE Approved By _____ Date _____
MECHANICAL / REFRIGERATION Approved By _____ Date _____	OTHER Approved By _____ Date _____	STREET TREES / ARBORIST Approved By _____ Date _____

KING COUNTY SUPERIOR COURT
CASE ASSIGNMENT AREA DESIGNATION and CASE INFORMATION COVER SHEET
(CICS)

Pursuant to King County Code 4A.630.060, a faulty document fee of \$15 may be assessed to new case filings missing this sheet.

CASE NUMBER: _____
(Provided by the Clerk)

CASE CAPTION: Freedom Foundation v. City of Seattle
(New case: Print name of person starting case vs. name of person or agency you are filing against.)
(When filing into an existing family law case, the case caption remains the same as the original filing.)

Please mark one of the boxes below:

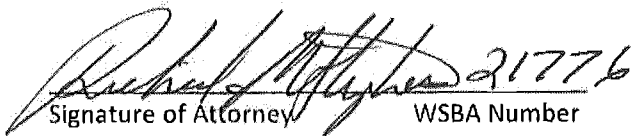
Seattle Area, defined as:

All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

Kent Area, defined as:

All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

I certify that this case meets the case assignment criteria, described in King County LCR 82(e).


Signature of Attorney WSBA Number

6/27/18
Date

or

Signature of person who is starting case

Date

Address, City, State, Zip Code of person who is starting case if not represented by attorney

**KING COUNTY SUPERIOR COURT
CASE ASSIGNMENT AREA DESIGNATION and CASE INFORMATION COVER SHEET**

CIVIL

Please check the category that best describes this case.

APPEAL/REVIEW

- Administrative Law Review (ALR 2)***
(Petition to the Superior Court for review of rulings made by state administrative agencies. (e.g. DSHS Child Support, Good to Go passes, denial of benefits from Employment Security, DSHS, L & I))

- DOL Revocation (DOL 2)***
(Appeal of a DOL revocation Implied consent-Test refusal ONLY.) RCW 46.20.308(9)

- Subdivision Election Process Review (SER 2)***
(Intent to challenge election process)

- Voter Election Process Law Review (VEP 2)***
(Complaint for violation of voting rights act.)

CONTRACT/COMMERCIAL

- Breach of Contract (COM 2)***
(Complaint involving money dispute where a breach of contract is involved.)

- Commercial Contract (COM 2)***
(Complaint involving money dispute where a contract is involved.)

- Commercial Non-Contract (COL 2)***
(Complaint involving money dispute where no contract is involved.)

- Third Party Collection (COL 2)***
(Complaint involving a third party over a money dispute where no contract is involved.)

JUDGMENT

- Abstract, Judgment, Another County (ABJ 2)**
(A certified copy of a judgment docket from another Superior Court within the state.)

- Confession of Judgment (MSC 2)***
(The entry of a judgment when a defendant admits liability and accepts the amount of agreed-upon damages but does not pay or perform as agreed upon.)

- Foreign Judgment (from another State or Country) (FJU 2)**
(Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.)

- Tax Warrant or Warrant (TAX 2)**
(A notice of assessment by a state agency or self-insured company creating a judgment/lien in the county in which it is filed.)

- Transcript of Judgment (TRJ 2)**
(A certified copy of a judgment from a court of limited jurisdiction (e.g. District or Municipal court) to a Superior Court.)

PROPERTY RIGHTS

- Condemnation/Eminent Domain (CON 2)*
(Complaint involving governmental taking of private property with payment, but not necessarily with consent.)
- Foreclosure (FOR 2)*
(Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.)
- Land Use Petition (LUP 2)*
(Petition for an expedited judicial review of a land use decision made by a local jurisdiction.) RCW 36.70C.040
- Property Fairness (PFA 2)*
(Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64.)
- Quiet Title (QTI 2)*
(Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.)
- Residential Unlawful Detainer (Eviction) (UND 2)
(Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.)
- Non-Residential Unlawful Detainer (Eviction) (UND 2)
(Commercial property eviction.)

OTHER COMPLAINT/PETITION

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
(Petition to force or confirm private binding arbitration.)
- Bond Justification (MSC 2)
(Bail bond company desiring to transact surety bail bonds in King County facilities.)
- Change of Name (CHN 5)
(Petition for name change, when domestic violence/antiharassment issues require confidentiality.)
- Certificate of Rehabilitation (MSC 2)
(Petition to restore civil and political rights.)
- Certificate of Restoration of Opportunity (MSC 2)
(Establishes eligibility requirements for certain professional licenses)
- Civil Commitment (sexual predator) (PCC 2)
(Petition to detain an individual involuntarily.)
- Deposit of Surplus Funds (MSC 2)
(Deposit of extra money from a foreclosure after payment of expenses from sale and obligation secured by the deed of trust.)
- Emancipation of Minor (EOM 2)
(Petition by a minor for a declaration of emancipation.)
- Foreign Subpoena (MSC 2)
(To subpoena a King County resident or entity for an out of state case.)

- Frivolous Claim of Lien (MSC 2)
(Petition or Motion requesting a determination that a lien against a mechanic or materialman is excessive or unwarranted.)
- Injunction (INJ 2)*
(Complaint/petition to require a person to do or refrain from doing a particular thing.)
- Interpleader (MSC 2)
(Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).)
- Malicious Harassment (MHA 2)*
(Suit involving damages resulting from malicious harassment.) RCW 9a.36.080
- Non-Judicial Filing (MSC 2)
(See probate section for TEDRA agreements. To file for the record document(s) unrelated to any other proceeding and where there will be no judicial review.)
- Other Complaint/Petition (MSC 2)*
(Filing a Complaint/Petition for a cause of action not listed.)
- Public records Act (PRA 2)*
(Actions filed under RCW 42.56.)
- Receivership (MSC 2)
(The process of appointment by a court of a receiver to take custody of the property, business, rents and profits of a party to a lawsuit pending a final decision on disbursement or an agreement.)
- Relief from Duty to Register (RDR2)
(Petition seeking to stop the requirement to register.)
- Restoration of Firearm Rights (RFR 2)
(Petition seeking restoration of firearms rights under RCW 9.41.040 and 9.41.047.)
- School District-Required Action Plan (SDR 2)
(Petition filed requesting court selection of a required action plan proposal relating to school academic performance.)
- Seizure of Property from the Commission of a Crime-Seattle (SPC 2)*
(Seizure of personal property which was employed in aiding, abetting, or commission of a crime, from a defendant after conviction.)
- Seizure of Property Resulting from a Crime-Seattle (SPR 2)*
(Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction. (e.g., remuneration for, or contract interest in, a depiction or account of a crime.))
- Structured Settlements- Seattle (MSC 2)*
(A financial or insurance arrangement whereby a claimant agrees to resolve a personal injury tort claim by receiving periodic payments on an agreed schedule rather than as a lump sum.)
- Vehicle Ownership (MSC 2)*
(Petition to request a judgment awarding ownership of a vehicle.)
- TORT, ASBESTOS**
- Personal Injury (PIN 2)*
(Complaint alleging injury resulting from asbestos exposure.)
- Wrongful Death (WDE 2)*
(Complaint alleging death resulting from asbestos exposure.)

- TORT, MEDICAL MALPRACTICE**
- Hospital (MED 2)*
(Complaint involving injury or death resulting from a hospital.)
- Medical Doctor (MED 2)*
(Complaint involving injury or death resulting from a medical doctor.)
- Other Health care Professional (MED 2)*
(Complaint involving injury or death resulting from a health care professional other than a medical doctor.)
- TORT, MOTOR VEHICLE**
- Death (TMV 2)*
(Complaint involving death resulting from an incident involving a motor vehicle.)
- Non-Death Injuries (TMV 2)*
(Complaint involving non-death injuries resulting from an incident involving a motor vehicle.)
- Property Damages Only (TMV 2)*
(Complaint involving only property damages resulting from an incident involving a motor vehicle.)
- Victims Vehicle Theft (VVT 2)*
(Complaint filed by a victim of car theft to recover damages.) RCW 9A.56.078
- TORT, NON-MOTOR VEHICLE**
- Implants (PIN 2)*
- Other Malpractice (MAL 2)*
(Complaint involving injury resulting from other than professional medical treatment.)
- Personal Injury (PIN 2)*
(Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.)
- Products Liability (TTO 2)*
(Complaint involving injury resulting from a commercial product.)
- Property Damages (PRP 2)*
(Complaint involving damage to real or personal property excluding motor vehicles.)
- Property Damages-Gang (PRG 2)*
(Complaint to recover damages to property related to gang activity.)
- Tort, Other (TTO 2)*
(Any other petition not specified by other codes.)
- Wrongful Death (WDE 2)*
(Complaint involving death resulting from other than professional medical treatment.)
- WRIT**
- Habeas Corpus (WHC 2)
(Petition for a writ to bring a party before the court.)
- Mandamus (WRM 2)**
(Petition for writ commanding performance of a particular act or duty.)
- Review (WRV 2)**
(Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.)

* The filing party will be given an appropriate case schedule at time of filing.

** Case schedule will be issued after hearing and findings.