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January 8, 2021

Jack Zeigler  
Policy and Rules Manager  
Department of Enterprise Services  
1500 Jefferson St. SE  
Olympia, WA 98501

Dear Mr. Zeigler:

We submit these comments on behalf of Just Housing Olympia, the Northwest Justice Project, and Columbia Legal Services. Just Housing Olympia is a Thurston County-based organization with housed and unhoused members that provides safety, health, and advocacy support to local encampments. In recent years, Just Housing Olympia has worked closely with people living in their vehicles and is currently providing intensive support for those living along Ensign Road in Olympia. This support includes working with local jurisdictions to participate in and support the creation of Safe Parking options in Thurston County. The Northwest Justice Project is a statewide civil legal aid organization that represents Washington residents living in poverty. Columbia Legal Services is a statewide nonprofit organization that advocates for laws that advance social, economic, and racial equity for people living in poverty. Northwest Justice Project and Columbia Legal Services have each represented and provided legal services to individuals living in vehicles and individuals experiencing homelessness.

We write to provide our comments on the proposed overnight and extended parking restrictions along Deschutes Parkway. Our organizations previously submitted joint comment to DES at an earlier phase of rulemaking in 2019.

We ask that DES cease efforts to implement the proposed rule changes and redirect resources towards supporting regional and ongoing efforts to create legal and safe parking options for people living in their vehicles in Thurston County. We believe the proposed rule changes will greatly harm many individuals who live in their vehicles and exacerbate the ongoing housing crisis in Thurston County. Impounding vehicles used as housing, particularly without prior notice and during a pandemic, also raises significant legal and constitutional questions.



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## **Homelessness and vehicle residence are increasing in Olympia and Thurston County**

The City of Olympia has previously described homelessness as the “the single most significant and urgent public concern facing the Olympia community.”<sup>1</sup> In recent years, Thurston County has witnessed a significant increase in the number of people living in their vehicles. Thurston County’s 2020 Point in Time Count showed a rise in the number of individuals sleeping in vehicles or RVs/boats from 2019, a population the report suggests may include a significant number of women with children.<sup>2</sup>

Families and individuals living in their vehicles are struggling to survive. For many individuals experiencing homelessness in Olympia, their vehicle may be their only form of shelter and their last refuge before resorting to sleeping unsheltered on the street. Thurston County’s homeless community members and neighbors come from many different walks of life and are rendered shelterless for many reasons. Some of the most common reasons for homelessness include eviction after job loss or struggles with serious physical disabilities. Vehicle residences provide a small measure of safety, security, and dignity for many in our community.

In addition to the rapid increase in the number of people living in their vehicles in Thurston County, we have simultaneously witnessed the ineffective and unjust shuffling around of people who are just trying to survive. This is due in large part to harmful ordinances in place in local jurisdictions, as well as the continued refusal of some jurisdictional entities to actively participate in the creation and support of safe and legal parking options.

### **Constant displacement harms vehicle residents and creates regional burdens**

Currently, there are no places within Thurston County where people who are living in their vehicles can park legally overnight or for an extended period of time. In Lacey, camping outside is criminalized and recreational vehicles are required to leave city limits after four hours. (Lacey Municipal Code 8.10; Lacey Municipal Code 10.14.020.) These laws are currently being challenged in court by the Northwest Justice Project.<sup>3</sup> In Olympia, recreational vehicles must leave city limits after being parked for more than 24 hours. (Olympia Municipal Code 10.16.030.) Requiring the navigation of parking ordinances like these and those proposed by DES place yet another heavy and unnecessary burden upon people who are living in their vehicles.

DES also holds some responsibility for the shuffling around of these vulnerable community members and the ways that a whack-a-mole approach to homelessness has exacerbated our regional crisis. Less than six months ago, over 30 people living in their vehicles were parked along Deschutes Parkway. In August of 2020, DES displaced this group of people while offering no legal alternative location for people to move to. What our community saw as a result was an instantaneous and drastic increase in the number of people living along Ensign Road in Olympia, near Providence St. Peter’s Hospital—our community’s main emergency and medical resource. The sudden and significant increase of people living in this area led to

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<sup>1</sup> <http://m.olympiawa.gov/~media/Files/Executive/CouncilResolutions/M-1942.pdf?la=en>

<sup>2</sup> [https://www.co.thurston.wa.us/health/sscp/PDF/2020%20Point%20in%20Time\\_Final.pdf](https://www.co.thurston.wa.us/health/sscp/PDF/2020%20Point%20in%20Time_Final.pdf)

<sup>3</sup> <https://www.theolympian.com/article245728595.html>

increased safety and health concerns, particularly around access to the hospital. In October, as a result of these concerns, the City of Olympia attempted to remove the encampment. However, this effort was halted after the Attorney General's Office warned it would violate Governor Inslee's eviction moratorium.<sup>4</sup> The Attorney General also noted that the City of Olympia needed to first consider residents' reasonable accommodation requests for time to find a safe place to park, made by a number of disabled residents under the Washington Law Against Discrimination and Americans with Disabilities Act, before taking any steps to remove those residents.

Since the stay of removal from Ensign Road, the City of Olympia and Thurston County have doubled down on efforts to create Safe Parking options for our community. Thurston County has committed \$530,000 toward this effort. The City of Olympia is exploring options to offer land to support a parking area. The Cities of Lacey and Tumwater are also at the table. These efforts represent progress for our community's regional response to homelessness. DES' effort to implement this proposed rule directly conflicts with the coordinated efforts of these local jurisdictions and, in addition, threatens to increase burden they carry as they struggle to respond to this crisis.

Despite the promising efforts of local jurisdictions working together towards the creation of Safe Parking options, our community is still short of the resources needed to actualize the projects currently stuck in the planning stages. With that in mind, it is our perspective that our entire community would be better served by DES ceasing these rulemaking efforts in favor of redirecting resources towards supporting these regional efforts. Considering the role that DES has thus far played in displacing people living in their vehicles to other local jurisdictions, we believe this is both the most effective and responsible path forward. If DES chooses to move forward with restricting parking overnight, we urge it not to enforce any new parking restrictions without first ensuring that there are alternative locations for houseless individuals to legally and safely park their vehicles and RVs. It is critical that any alternative locations offered to people are accessible 24 hours a day, and do not require people to move their vehicles daily. Again, joining regional efforts to create Safe Parking options is an option available to DES to ensure safe and alternative places for vehicle residents to park, prior to any parking changes being implemented.

Additionally, we urge DES to remove the proposed language in WAC 200-200-351 (3) which would provide for immediate impoundment without any prior notice for any individual who violates Deschutes Parkway parking laws. This type of "no notice" impound was previously reserved in this WAC section for situations where vehicles pose an immediate threat to public safety or where they obstruct the flow of traffic. Immediate impoundment without prior notice is unnecessary, legally suspect, and harmful to those who may live in their vehicles.

Implementing parking restrictions which may result in multiple impoundments or "sweeps" of individuals living in their vehicles is also harmful in light of the current pandemic. The CDC's official guidance on COVID-19 and individuals experiencing homelessness is:

If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to

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<sup>4</sup> <https://www.theolympian.com/news/local/article246817402.html>

disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.<sup>5</sup>

In keeping with this guidance, other jurisdictions have eliminated some forms of hour restrictions on parking and limited the towing of vehicles to situations where the vehicle poses a safety hazard.<sup>6</sup> As an alternative to displacement, other jurisdictions are also working to provide free waste pumps to RV occupants as a way to mitigate some of the environmental concerns related to vehicular living.<sup>7</sup>

### **Existing and pending legal cases suggest that restrictions such as that proposed by DES are impermissible**

The consequences for families living in vehicles who miss a parking sign or who cannot comply fully with the parking laws are dire. Unaffordable parking fines push low-income families deeper into poverty, and impoundment can cause loss of shelter entirely. The Washington State Supreme Court recently recognized that “...for the poor, impoundment often means forfeiture. While there are procedures for an owner to recover an impounded vehicle, for the poor who cannot afford the towing and storage fees, these procedures offer little relief.” *State v. Villela*, \_\_\_ Wn.2d \_\_\_ (2019), quoting *In re Impoundment of Chevrolet Truck*, 148 Wn.2d 145, 149, 60 P.3d 53 (2002) (Chambers, J., concurring).

Existing legal cases and pending cases also suggest that certain impoundment processes for individuals living in vehicles may be unconstitutional.

In *Martin v. Boise*, the 9<sup>th</sup> Circuit held that prohibiting sleeping or camping on public property is unconstitutional when those individuals have no meaningful alternative or place to go. The United States District Court for Oregon, Medford Division, recently held that such prohibitions are unconstitutional regardless of whether they are criminal or civil in nature.

In *City of Seattle v. Steven Long*, the Court of Appeals for Division I held that the impound process for vehicles, where someone’s vehicular home is held under threat of forced sale until they pay or agree to pay their impound debts, violates Washington State’s Homestead Act. It has been recommended that jurisdictions review their impound and towing procedures in light of this ruling.<sup>8</sup> This case also involves other significant legal issues, including whether a vehicle residence can be impounded when there are other alternatives to impoundment, and whether excessive fines and fees can be imposed. This case is currently pending on review before the Washington State Supreme Court. A decision in this case could potentially impact impound laws on a statewide basis.

In *Potter v. City of Lacey*, the United States District Court for the Western District of Washington is currently considering a challenge to a City of Lacey ordinance which, like DES’s proposed rule, resulted in expulsion of people living in RVs. The plaintiff asserts that Lacey’s

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<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>

<sup>6</sup> <https://www.capitolhillseattle.com/2020/03/with-its-citizens-asked-to-stay-home-seattle-easing-parking-restrictions-including-dreaded-72-hour-rule/>

<sup>7</sup> <https://www.npr.org/2021/01/03/951084913/homeless-in-seattle-get-help-from-city-waste-pumper>

<sup>8</sup> <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/August-2020-1/Living-in-Vehicles-Homestead-Rights.aspx>

ordinance banning RVs from parking for longer than four hours within Lacey city limits violates a number of state and federal constitutional protections because it effectively banishes people who rely on RVs for housing from Lacey.

### **The proposed rule will impact disabled individuals and implicates the ADA and WLAD**

We are also concerned about the impact of the proposed rule on disabled individuals who live in their vehicles. Thurston County's 2020 Point in Time Count found that one of the most common reasons for homelessness in Thurston County is struggle with serious disabilities (page 18). Title II of the Americans with Disabilities Act and the Washington Law Against Discrimination protect people with disabilities against policies that may burden them more than others. Public entities are required to provide reasonable modifications or accommodations to their policies and programs in order to avoid such discrimination. Many vehicle-sheltered residents live with disabilities that may make the proposed restrictions unduly burdensome. For instance, they may need to take medications that leave them unable to operate a vehicle during part of the day, or have accessibility needs that limit the number of other places they can place their vehicles. Forced moves may be discriminatory against specific disabled individuals. DES should halt its rule making efforts to more thoroughly consider the disproportionate impact this rule will have on disabled individuals. If DES does move forward with implementation, DES should create a simple process by which disabled, vehicle-sheltered individuals can request modifications to the rule under the ADA and WLAD.

In conclusion, rather than enacting restrictive parking regulations that may potentially run afoul of state or constitutional law and which will inevitably harm both people who are living in their vehicles and the ongoing efforts of local jurisdictions, we urge DES to do the following:

- Cease this rulemaking effort and instead redirect resources towards supporting local partners in creating effective and lasting solutions to our regional homelessness crisis;
- If DES does implement this rule, suspend enforcement as to vehicle-sheltered individuals pending creation of a Safe Lot or designation of other alternative parking space;
- If DES does implement this rule, remove the proposed language in WAC 200-200-351 (3) which would provide for immediate impoundment without any prior notice for any individual who violates Deschutes Parkway parking laws;
- If DES does implement this rule, create a simple process by which vehicle-sheltered individuals who live with disabilities can request reasonable modifications to the rule.

Sincerely,

Sarah Nagy, Staff Attorney  
Columbia Legal Services  
/s/

Carrie Graf  
Northwest Justice Project  
/s/

Tye Gundel  
Just Housing Olympia  
/s/