

Proposed Substitute House Bill 1380 (H-1717.1/25)

House Appropriations Committee

By Representative Gregerson

House Bill 1380:

- Requires that any city or town, code city, or county laws that regulate the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public be objectively reasonable as to time, place, and manner.
 - Creates a private cause of action for injunctive or declaratory relief to challenge the objective reasonableness of such a law.
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Proposed Substitute House Bill 1380 (H-1717.1/25) makes the following changes to HB 1380:

- Specifies that the objective reasonableness requirement applies not only to the local laws, themselves, but also to the enforcement of any such local laws regulating the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public.
- Specifies that objective reasonableness must be determined through an assessment of the totality of the circumstances and must consider the following factors:
 - the need to protect public safety and health, including the safety and health of both persons experiencing homelessness and the general public;
 - the availability and accessibility of alternative shelter or housing options for persons experiencing homelessness in the jurisdiction;
 - the impact on persons experiencing homelessness, including their ability to access essential services, maintain personal safety, and meet basic needs such as keeping warm and dry; and
 - the proportionality of the law to the issue it seeks to address, including a requirement that such laws avoid excessive or extreme measures that are not justified by the totality of the circumstances.
- Requires a court to give special consideration to the following factors when determining whether a local law or enforcement of such law is objectively reasonable in an action brought under the bill:
 - the specific characteristics and intended use of the public property in question;
 - the unique needs and circumstances of the local community, including the prevalence and characteristics of homelessness in the area; and
 - the potential long-term effects of the local law or enforcement of such law on both persons experiencing homelessness and the general public.
- Defines city or town, code city, or county "laws" for the purposes of the bill to include any city or town, code city, or county ordinances, policies, rules, regulations, or other official controls.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-1717.1/25

ATTY/TYPIST: MFW:ajr

BRIEF DESCRIPTION: Allowing objectively reasonable regulation of the utilization of public property.

1 AN ACT Relating to allowing objectively reasonable regulation of
2 the utilization of public property; adding a new section to chapter
3 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new
4 section to chapter 36.01 RCW; creating a new section; and declaring
5 an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Evictions and homelessness are increasing and are at
9 unprecedented levels across our state, demanding urgent action;

10 (b) Many families across Washington state have been displaced or
11 are at risk of displacement due to skyrocketing housing costs and an
12 ongoing severe shortage of affordable housing;

13 (c) The absence of cohesive state guidance has resulted in an
14 arbitrary patchwork of legislation regarding the use of public
15 spaces, resulting in an inefficient use of state and local resources;
16 and

17 (d) State and local governments have a shared responsibility in
18 addressing the homelessness crisis and transitioning unsheltered
19 residents into housing.

20 (2) The legislature intends to:

1 (a) Encourage the efficient use of state and local resources by
2 providing clear guidance to local governments on how to balance
3 public safety with the urgent need to transition people experiencing
4 homelessness to safe and stable housing;

5 (b) Protect local governments whose ordinances are objectively
6 reasonable against litigation, including any private right of action
7 for monetary damages; and

8 (c) Encourage local governments to enact objectively reasonable
9 time, place, and manner regulations to manage public spaces
10 effectively and preserve public peace, health, and safety for the
11 benefit of the entire community.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21
13 RCW to read as follows:

14 (1) Any city or town law that regulates the acts of sitting,
15 lying, sleeping, or keeping warm and dry outdoors on public property
16 that is open to the public, and any enforcement of such laws, must be
17 objectively reasonable as to time, place, and manner. Objective
18 reasonableness must be determined through an assessment of the
19 totality of the circumstances. This assessment must consider the
20 following factors:

21 (a) The city or town law or enforcement of such law must consider
22 the need to protect public safety and health, including the safety
23 and health of both persons experiencing homelessness and the general
24 public;

25 (b) The city or town law or enforcement of such law must consider
26 the availability and accessibility of alternative shelter or housing
27 options for persons experiencing homelessness in the jurisdiction;

28 (c) The city or town law or enforcement of such law must consider
29 the impact on persons experiencing homelessness, including their
30 ability to access essential services, maintain personal safety, and
31 meet basic needs such as keeping warm and dry; and

32 (d) The city or town law or enforcement of such law must be
33 proportional to the issue it seeks to address and must avoid
34 excessive or extreme measures that are not justified by the totality
35 of the circumstances.

36 (2) It is an affirmative defense to a charge of violating a city
37 or town law described in subsection (1) of this section that the law
38 is not objectively reasonable.

1 (3) A person may bring an action for injunctive or declaratory
2 relief to challenge the objective reasonableness of a city or town
3 law described in subsection (1) of this section or enforcement of
4 such law. The action must be brought in the superior court of the
5 county in which the city or town that enacted the law is located.

6 (4) In determining whether a city or town law or enforcement of
7 such law is objectively reasonable in an action brought under
8 subsection (3) of this section, a court must give special
9 consideration to the following factors:

10 (a) The specific characteristics and intended use of the public
11 property in question;

12 (b) The unique needs and circumstances of the local community,
13 including the prevalence and characteristics of homelessness in the
14 area; and

15 (c) The potential long-term effects of the city or town law or
16 enforcement of such law on both persons experiencing homelessness and
17 the general public.

18 (5) In any action brought pursuant to subsection (3) of this
19 section, the court in its discretion may award reasonable attorneys'
20 fees to a prevailing plaintiff if the plaintiff:

21 (a) Was not seeking to vindicate an interest unique to the
22 plaintiff; and

23 (b) At least 90 days before the action was filed, provided
24 written notice to the governing body of the city or town that enacted
25 the law being challenged of the plaintiff's intent to bring the
26 action, and the notice provided the governing body with actual notice
27 of the basis upon which the plaintiff intends to challenge the law.

28 (6) Nothing in this section creates a private right of action for
29 monetary damages for any person.

30 (7) This section applies to all causes of action commenced on or
31 after the effective date of this section, and to all city or town
32 laws existing on or after the effective date of this section,
33 regardless of when the cause of action arose or when the city or town
34 laws were enacted. To this extent, this section applies
35 retroactively, but in all other respects it applies prospectively.

36 (8) For the purposes of this section:

37 (a) "City or town law" includes any city or town ordinances,
38 policies, rules, regulations, or other official controls; and

1 (b) "Keeping warm and dry" means using measures necessary for an
2 individual to survive outdoors given the environmental conditions but
3 does not include using any measure that involves fire or flame.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 35A.21
5 RCW to read as follows:

6 (1) Any code city law that regulates the acts of sitting, lying,
7 sleeping, or keeping warm and dry outdoors on public property that is
8 open to the public, and any enforcement of such laws, must be
9 objectively reasonable as to time, place, and manner. Objective
10 reasonableness must be determined through an assessment of the
11 totality of the circumstances. This assessment must consider the
12 following factors:

13 (a) The code city law or enforcement of such law must consider
14 the need to protect public safety and health, including the safety
15 and health of both persons experiencing homelessness and the general
16 public;

17 (b) The code city law or enforcement of such law must consider
18 the availability and accessibility of alternative shelter or housing
19 options for persons experiencing homelessness in the jurisdiction;

20 (c) The code city law or enforcement of such law must consider
21 the impact on persons experiencing homelessness, including their
22 ability to access essential services, maintain personal safety, and
23 meet basic needs such as keeping warm and dry; and

24 (d) The code city law or enforcement of such law must be
25 proportional to the issue it seeks to address and must avoid
26 excessive or extreme measures that are not justified by the totality
27 of the circumstances.

28 (2) It is an affirmative defense to a charge of violating a code
29 city law described in subsection (1) of this section that the law is
30 not objectively reasonable.

31 (3) A person may bring an action for injunctive or declaratory
32 relief to challenge the objective reasonableness of a code city law
33 described in subsection (1) of this section or enforcement of such
34 law. The action must be brought in the superior court of the county
35 in which the code city that enacted the law is located.

36 (4) In determining whether a code city law or enforcement of such
37 law is objectively reasonable in an action brought under subsection
38 (3) of this section, a court must give special consideration to the
39 following factors:

1 (a) The specific characteristics and intended use of the public
2 property in question;

3 (b) The unique needs and circumstances of the local community,
4 including the prevalence and characteristics of homelessness in the
5 area; and

6 (c) The potential long-term effects of the code city law or
7 enforcement of such law on both persons experiencing homelessness and
8 the general public.

9 (5) In any action brought pursuant to subsection (3) of this
10 section, the court in its discretion may award reasonable attorneys'
11 fees to a prevailing plaintiff if the plaintiff:

12 (a) Was not seeking to vindicate an interest unique to the
13 plaintiff; and

14 (b) At least 90 days before the action was filed, provided
15 written notice to the governing body of the code city that enacted
16 the law being challenged of the plaintiff's intent to bring the
17 action, and the notice provided the governing body with actual notice
18 of the basis upon which the plaintiff intends to challenge the law.

19 (6) Nothing in this section creates a private right of action for
20 monetary damages for any person.

21 (7) This section applies to all causes of action commenced on or
22 after the effective date of this section, and to all code city laws
23 existing on or after the effective date of this section, regardless
24 of when the cause of action arose or when the code city laws were
25 enacted. To this extent, this section applies retroactively, but in
26 all other respects it applies prospectively.

27 (8) For the purposes of this section:

28 (a) "Code city law" includes any code city ordinances, policies,
29 rules, regulations, or other official controls; and

30 (b) "Keeping warm and dry" means using measures necessary for an
31 individual to survive outdoors given the environmental conditions but
32 does not include using any measure that involves fire or flame.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.01
34 RCW to read as follows:

35 (1) Any county law that regulates the acts of sitting, lying,
36 sleeping, or keeping warm and dry outdoors on public property that is
37 open to the public, and any enforcement of such laws, must be
38 objectively reasonable as to time, place, and manner. Objective
39 reasonableness must be determined through an assessment of the

1 totality of the circumstances. This assessment must consider the
2 following factors:

3 (a) The county law or enforcement of such law must consider the
4 need to protect public safety and health, including the safety and
5 health of both persons experiencing homelessness and the general
6 public;

7 (b) The county law or enforcement of such law must consider the
8 availability and accessibility of alternative shelter or housing
9 options for persons experiencing homelessness in the jurisdiction;

10 (c) The county law or enforcement of such law must consider the
11 impact on persons experiencing homelessness, including their ability
12 to access essential services, maintain personal safety, and meet
13 basic needs such as keeping warm and dry; and

14 (d) The county law or enforcement of such law must be
15 proportional to the issue it seeks to address and must avoid
16 excessive or extreme measures that are not justified by the totality
17 of the circumstances.

18 (2) It is an affirmative defense to a charge of violating a
19 county law described in subsection (1) of this section that the law
20 is not objectively reasonable.

21 (3) A person may bring an action for injunctive or declaratory
22 relief to challenge the objective reasonableness of a county law
23 described in subsection (1) of this section or enforcement of such
24 law. The action must be brought in the superior court of the county
25 that enacted the law.

26 (4) In determining whether a county law or enforcement of such
27 law is objectively reasonable in an action brought under subsection
28 (3) of this section, a court must give special consideration to the
29 following factors:

30 (a) The specific characteristics and intended use of the public
31 property in question;

32 (b) The unique needs and circumstances of the local community,
33 including the prevalence and characteristics of homelessness in the
34 area; and

35 (c) The potential long-term effects of the county law or
36 enforcement of such law on both persons experiencing homelessness and
37 the general public.

38 (5) In any action brought pursuant to subsection (3) of this
39 section, the court in its discretion may award reasonable attorneys'
40 fees to a prevailing plaintiff if the plaintiff:

1 (a) Was not seeking to vindicate an interest unique to the
2 plaintiff; and

3 (b) At least 90 days before the action was filed, provided
4 written notice to the governing body of the county that enacted the
5 law being challenged of the plaintiff's intent to bring the action,
6 and the notice provided the governing body with actual notice of the
7 basis upon which the plaintiff intends to challenge the law.

8 (6) Nothing in this section creates a private right of action for
9 monetary damages for any person.

10 (7) This section applies to all causes of action commenced on or
11 after the effective date of this section, and to all county laws
12 existing on or after the effective date of this section, regardless
13 of when the cause of action arose or when the county laws were
14 enacted. To this extent, this section applies retroactively, but in
15 all other respects it applies prospectively.

16 (8) For the purposes of this section:

17 (a) "County law" includes any county ordinances, policies, rules,
18 regulations, or other official controls; and

19 (b) "Keeping warm and dry" means using measures necessary for an
20 individual to survive outdoors given the environmental conditions but
21 does not include using any measure that involves fire or flame.

22 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of
24 the state government and its existing public institutions, and takes
25 effect immediately.

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