

SHARE/WHEEL, A Washington non-profit corporation, and EL CENTRO DE LA RAZA, a Washington non-profit corporation,	)	
	)	No. 49428-7-I
Respondents,	)	CONSENT DECREE
	)	
vs.	)	
	)	
THE CITY OF SEATTLE, A Washington municipal corporation, and MEREDITH GETCHES, Hearing Examiner, in her official capacity,	)	
	)	
Appellants.	)	
	)	
	)	

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**CONSENT DECREE**

This Consent Decree is entered into this 13th day of March, 2002, by and between SHARE/WHEEL (collectively known as “SHARE/WHEEL”), El Centro de la Raza (“El Centro”), and The City of Seattle (“City”), collectively the “Parties.”

**I. The Parties**

A. SHARE is a non-profit Washington corporation that advocates for and provides services for homeless persons. WHEEL is a part of SHARE.

B. El Centro is a non-profit Washington corporation that provides community services and advocates for the disadvantaged.

C. The City of Seattle, a Washington Municipal Corporation, through its Department of Design Construction and Land Use (“DCLU”), implements and enforces ordinances and codes to promote the safety and habitability of Seattle’s housing stock and to protect the character of its neighborhoods.

**II. Recitations and Procedural History**

A. The number of homeless persons in Seattle has increased dramatically from 1990 to 2002. The City’s funding for emergency shelter and transitional housing has

also increased. In 2002, the City budgeted \$8.8 million for emergency shelters and transitional housing, a six percent increase over 2001.

B. In spite of City budget expenditures, DCLU estimates that almost 1000 people in the City are without shelter each night. Other estimates are much higher.

C. To address in part the lack of emergency shelters and transitional housing, SHARE/WHEEL has established a temporary tent encampment as a homeless persons shelter in Seattle. Private property has been the usual location for such a tent encampment. Owners of private property offer to host a SHARE/WHEEL tent encampment. The duration and conditions of the encampment are negotiated between the host and SHARE/WHEEL.

D. The Land Use Code does not specifically authorize or prohibit the use of tents as shelter on private property. Title 23 SMC. The Land Use Code prohibits uses not specifically permitted unless those uses qualify for a temporary land use permit. SMC 23.42.040. DCLU therefore requires tent encampments to procure a temporary use permit.

E. El Centro hosted a SHARE/WHEEL tent encampment from July 2000 through January 2001. Neither SHARE/WHEEL nor El Centro applied to DCLU for a permit prior to the use of the property. After being cited by DCLU, SHARE/WHEEL applied for a temporary use permit on September 1, 2000. DCLU denied the temporary use permit. SHARE/WHEEL and El Centro appealed the denial to the City Hearing Examiner. The City Hearing Examiner affirmed the decision to deny the permit.

F. El Centro and SHARE/WHEEL appealed to Superior Court. Judge Thomas J. Majhan ruled on September 25, 2001, that the City had improperly denied the permit request and that the Hearing Examiner's decision should be reversed.

G. The City appealed the Superior Court decision. The parties applied for and were granted an extension of time for filing briefs from the Court of Appeals pending settlement discussions.

### **III. Agreement**

A. The City will terminate its appeal by moving the Court of Appeals for an order remanding its appeal, No. 49428-7-I, to King County Superior Court for entry of this consent decree.

B. The parties will file a joint motion in King County Superior Court for entry of this consent decree as an order, which will supercede all prior rulings.

C. SHARE/WHEEL and El Centro will seek dismissal with prejudice of all claims in King County Cause No. 01-2-10396-2 SEA not previously ruled upon.

D. SHARE/WHEEL waives any and all claims against the City for costs and attorneys fees arising out of administrative actions, and quasi-judicial and judicial proceedings relating to the temporary use permit and, further, waives any and all claims for reimbursement of permit fees paid to date.

E. El Centro waives any and all claims against the City for costs and attorneys fees arising out of administrative actions, and quasi-judicial and judicial proceedings relating to the temporary use permit and, further, waives any and all claims for reimbursement of permit fees paid to date.

F. The City hereby agrees that SHARE/WHEEL may establish a tent encampment within the city limits of the City of Seattle subject to the terms and conditions of this decree, including the provisions of J. 5(b) of this section.

G. SHARE/WHEEL and tent city residents paid \$2500.00 to DCLU on September 1, 2000, as the minimum land use review fee when it applied for the temporary use permit. SHARE/WHEEL asserts that it also incurred other expenses and fees related to the temporary use permit but not assessed by DCLU. The City asserts that SHARE/WHEEL and El Centro owe an hourly processing fee on the temporary land use permit of approximately \$8050.00. Due to the exceptional circumstances presented, and the pressing needs of the homeless persons who are served by SHARE/WHEEL and El Centro, the City hereby waives any and all claims against SHARE/WHEEL and against El Centro for permit processing or late fees on the condition that SHARE/WHEEL applies \$8050.00 to the provision of services to disadvantaged or homeless people beyond what it now provides, in cash money or in kind, within 180 days of the date that an order is entered. A report of the services provided will be delivered to the City within 30 days of completion of service delivery.

H. Due to the exceptional circumstances presented, and the pressing needs of the homeless persons who are served by SHARE/WHEEL and El Centro, the City further agrees to apply the application fee previously paid, and credit the permit processing fee described above in paragraph G, as full payment and satisfaction of future cost of administering this decree. DCLU will charge no additional administrative fees, penalties or other charges to El Centro or SHARE/WHEEL as a consequence of this consent decree.

I. The City waives any and all claims against SHARE/WHEEL and El Centro, not otherwise addressed in this decree, arising out of the temporary use permit, and administrative actions, and quasi-judicial and judicial proceedings relating to that permit.

J. The conditions of encampments established under this decree are as follows:

1. Agreement with the Host. SHARE/WHEEL shall enter into a written or oral agreement with a host property owner (“the host”), whether a religious community, school, private entity or public entity, regarding the establishment of a tent encampment. If the agreement is oral, SHARE/WHEEL shall memorialize the agreement in writing. The written or memorialized agreement shall state the maximum duration that the tent encampment will remain at the host site. SHARE/WHEEL shall send a copy of the written or memorialized agreement to DCLU.

2. Notice to the Host and DCLU. When SHARE/WHEEL enters into an oral or written agreement with a host, SHARE/WHEEL shall provide the host with a copy of this consent decree and send written notice of the host agreement to DCLU within three (3) calendar days of the agreement. That notice shall identify two contact persons for SHARE/WHEEL at the host site and two (2) contact persons who are representatives of the host, and provide daytime and nighttime contact details for all such persons.

3. Notice to the Community.

a. After entering into an oral or written agreement with a host, SHARE/WHEEL shall set a date, time and location for a community meeting. At least five (5) business days but no more than fourteen (14) days before the encampment begins at a site, the host and SHARE/WHEEL shall hold a community meeting. SHARE/WHEEL shall deliver or mail notice of the meeting to each residence, apartment, church, school and business or commercial establishment within a 300 foot or two block radius of the perimeter of the property hosting the encampment, whichever is greater. The notice shall indicate the date the encampment is to begin, the length of stay, the number of residents, the host location, the date, time and location of the community meeting. The notice shall also provide contact names and numbers for representatives of SHARE/WHEEL and DCLU. SHARE/WHEEL will mail a copy of the notice to DCLU at least five (5) business days before meeting.

b. The form of the notice shall be substantially similar to Attachment A to this agreement.

c. The foregoing are minimum notice requirements and SHARE/WHEEL will endeavor to work with the host to, wherever possible, provide more notice through host neighborhood, church or synagogue bulletins, school bulletins, community center bulletins or postings or other measures reasonably available in the host neighborhood.

4. Community Meeting. SHARE/WHEEL and the host will hold a community meeting on the encampment site if reasonable facilities exist, or otherwise at a location within a reasonable distance of the host site. The host and SHARE/WHEEL will explain the proposed encampment at the meeting and state its proposed duration. Questions and answers will be allowed. DCLU may attend the meeting .

5. Maximum Numbers.

a. The maximum number of residents at an encampment is 100.

b. SHARE/WHEEL may establish or maintain no more than one encampment at any one time within the limits of the City of Seattle, provided that no sooner than one year from the date this decree is entered, if a second encampment is needed and SHARE/WHEEL has identified funding, SHARE/WHEEL may initiate negotiations with the City for the modification of the one encampment limit. Any other encampments are outside this agreement.

6. Children. SHARE/WHEEL will not permit children to stay overnight at a tent encampment, except under exigent circumstances. If and when such circumstances occur and a child under the age of eighteen (18), either alone or accompanied by a parent or guardian, attempts to stay at a tent encampment, SHARE/WHEEL will immediately contact the Community Service Officers of the Seattle Police Department and Child Protective Services, and endeavor to find alternative shelter for the child and any accompanying parent(s) or guardian(s).

7. Buffers. Any tent encampment site shall have the following buffer from surrounding lots:

- a. a minimum 20 foot separation or setback in each direction from the boundary of the lot on which the encampment is located, but if not available;
- b. established vegetation sufficiently dense to obscure view and at least eight feet in height, but if neither a) nor b) is available;
- c. an eight-foot high, view-obscuring fabric fence will be established. A fabric fence will be the least preferred alternative but may be also used in combination with alternatives a) and b).

8. Parking.

a. On-Street Parking. The availability of on-street parking will be considered in choosing encampment sites if the encampment would displace on-site parking normally utilized by the host. SHARE/WHEEL shall endeavor not to displace established parking. SHARE/WHEEL will choose potential host sites where no displacement or minimal (such as one-day per week) displacement of parking will occur, wherever possible.

b. On-Site Parking. SHARE/WHEEL will chose potential host sites with available on-site parking for vehicles associated with the tent encampment, including delivery trucks, wherever possible.

9. Health Regulations. SHARE/WHEEL will permit inspections of its encampments by the Seattle & King County Public Health Department without prior notice. SHARE/WHEEL has previously complied with directives of the Seattle & King County Public Health Department. SHARE/WHEEL will implement all future directives of the Health Department within the time period specified by the Department.

10. Fire Safety Regulations. SHARE/WHEEL will permit inspections of its encampments by the Seattle Fire Department without prior notice. SHARE/WHEEL has previously complied with directives of the Seattle Fire Department. SHARE/WHEEL will implement all future directives of the Fire Department within 48 hours of notice.

11. DCLU Inspections. SHARE/WHEEL will permit inspections of its encampments by DCLU inspectors at reasonable times without prior notice for compliance with the terms of the consent decree.

12. Code of Conduct.

a. SHARE/WHEEL will implement and enforce at all times at every site, its code of conduct as part of this agreement. The code of conduct shall be amended to prohibit littering on the host site and in the host neighborhood. The current code of conduct shall be amended to require a trash patrol every other day in the host neighborhood. With the above-described amendments, the code of conduct requires that all residents abide by the following:

1. No drugs are permitted.
2. No alcohol is permitted.
3. No weapons are permitted.
4. All knives over 3 and one-half inches must be turned into SHARE/WHEEL for safekeeping.
5. No violence is permitted.
6. No open flames are permitted
7. No trespassing into private property in the host neighborhood is permitted.
8. No loitering in the host neighborhood is permitted.
9. Disturbing neighbors is not permitted.
10. No verbal abuse, intimidating remarks, yelling or degrading remarks against member(s) of the host or the host neighborhood is permitted.
11. No verbal abuse, intimidating remarks, yelling or degrading remarks between member(s) of SHARE/WHEEL is permitted.
12. No littering on the encampment site or in the host neighborhood is permitted.

b. Enforcement of the Code of Conduct. For the protection of the SHARE/WHEEL community, the host and the host neighborhood, SHARE/WHEEL will diligently enforce its code of conduct. SHARE/WHEEL will take the following enforcement actions:

1) Upon notice by DCLU to SHARE/WHEEL, or if SHARE/WHEEL learns of a potential violation of provisions 1-7 of the Code of Conduct as set forth above, SHARE/WHEEL will investigate and, if sustained, require the responsible resident(s) to leave immediately. If the complaint of violation was made by DCLU, the host or a host community member, SHARE/WHEEL will inform DCLU, the host or the host neighborhood member(s) of the results of its investigation and any action taken.

2) Upon notice by DCLU to SHARE/WHEEL, or if SHARE/WHEEL learns of a potential violation of provisions 8-12 of the Code of Conduct as set forth above, SHARE/WHEEL will investigate and, if sustained, notify the responsible resident(s) of the violation and issue them a warning. That warning will notify the responsible resident(s) that they are on probation and that a repeated violation of the Code of Conduct during the period that the encampment remains at the host site will cause SHARE/WHEEL to require them to leave the encampment immediately. SHARE/WHEEL will inform DCLU, the host or the host neighborhood member(s) of the results of its investigation and any action taken.

If SHARE/WHEEL fails to expel residents who violate the Code of Conduct as required in paragraphs 1) and 2) above, SHARE/WHEEL will be subject to the Dispute Resolution and Sanctions provision of this agreement set forth in paragraph M below.

13. Duration of Stay.

a. SHARE/WHEEL shall remain at a site no longer than its original commitment to the host and/or the host neighborhood at the initial community meeting. If the host and/or host neighborhood requests that SHARE/WHEEL extend its stay beyond the commitment period, SHARE/WHEEL will notify DCLU immediately and provide notice, as described above, of an additional community meeting to be held prior to the expiration of the initial period. DCLU will endeavor to attend the meeting. SHARE/WHEEL will not extend its stay at the site if it and DCLU agree that significant host neighborhood concern or objection exists to prolonging the stay. If the parties cannot agree, the dispute will be subject to the Dispute Resolution and Sanctions provision of this agreement set forth in paragraph M below.

b. Invitations for longer stays notwithstanding, the maximum duration of a SHARE/WHEEL tent encampment at a site is three (3) consecutive months and an interval of three (3) months must occur before the encampment can return to that site. Over a two (2) year period, the aggregate duration of multiple encampments at a single site cannot exceed six (6) months.

K. Working Group. The Seattle City Human Services Department will invite one representative of SHARE/WHEEL to participate in the planned “Committee to End Homelessness” or similar county-wide policy planning entity for homeless persons.

L. Termination of this Consent Decree. This decree will automatically be superceded by and terminate 180 days after the effective date of an ordinance adopted by the City of Seattle to address specifically tent encampments for homeless persons but in the absence of such an ordinance, this consent decree will terminate within ten (10) years from the date of its entry.

M. Dispute Resolution and Sanctions.

a. The parties agree to submit any dispute between them about compliance with this decree as ordered to dispute resolution before initiating further judicial proceedings or enforcement. Upon reasonable belief that the agreement has been breached, the party aggrieved will notify all other parties in writing (with email or facsimile acceptable if receipt is confirmed) of the breach. Within two (2) business days of receipt of notice, the recipient shall cure the breach or request a dispute resolution meeting which shall be held within the next five (5) working days, or at a time mutually agreeable to all parties. If the dispute is not resolved at that meeting, the parties shall present their disagreement to a trained mediator. The parties will jointly agree to a mediator. If mediation fails to bring resolution, one or more of the parties may initiate action in Superior Court to enforce this decree as ordered.

b. Notwithstanding the foregoing, if the alleged breach presents an imminent threat to the public health or safety, DCLU, after oral or written notice to SHARE/WHEEL, may seek immediate judicial intervention.

N. Appointment of contact persons. SHARE/WHEEL shall designate contact persons for service of all notices provided for in this decree. DCLU shall designate contact persons for the service of all notices provided for in this decree. Both parties are under a continuing obligation to update the designation of their respective contact persons as necessary.

O. Construction. This decree has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, and not for or against either party.

P. Press Release. The initial press release regarding this decree, if any, shall not be released without the approval of all parties to the agreement.

Q. Scope of this Decree. This decree applies only to SHARE/WHEEL and El Centro and confers no rights or privileges upon any other person or entity.

R. Integration. This decree is a full and complete integration of the parties' agreement, and there are no promises, covenants, or representations concerning the subject of this agreement not contained herein.

S. Waiver. The failure to enforce any provision of this agreement shall not be considered or construed to be a waiver of any rights or responsibilities under this agreement.

**CITY OF SEATTLE**

By \_\_\_\_\_  
Thomas A. Carr  
Seattle City Attorney

Dated \_\_\_\_\_

**SHARE/WHEEL**

By \_\_\_\_\_  
Michele Marchand

Dated \_\_\_\_\_

By \_\_\_\_\_  
Jeff Penny

Dated \_\_\_\_\_

By \_\_\_\_\_  
Ken Schuckert

Dated \_\_\_\_\_

**EL CENTRO de la RAZA**

By \_\_\_\_\_  
Roberto Maestas  
Executive Director

Dated \_\_\_\_\_