

| <i>CLEARANCES</i>         | <i>Initial</i> | <i>Date</i> | <i>Date Received in Council Office</i> | <i>Agenda Date</i> | <i>Assigned to:</i> |
|---------------------------|----------------|-------------|--|--------------------|---------------------|
| <i>Originator:</i>        |                | 6/12/2018   |  | 6/19/2018          | Council             |
| <i>Division Head:</i>     |                |             |  |                    |                     |
| <i>Dept. Head:</i>        | <i>CBW</i>     | 6-13-18     |  |                    |                     |
| <i>Prosecutor:</i>        | <i>KAF</i>     | 6-13-18     |  |                    |                     |
| <i>Purchasing/Budget:</i> |                |             |  |                    |                     |
| <i>Executive:</i>         |                |             |  |                    |                     |

**TITLE OF DOCUMENT:**

Emergency Ord. interim regs for siting and operation of homeless encampments

**ATTACHMENTS:**

|                               |                              |                             |   |   |                             |
|-------------------------------|------------------------------|-----------------------------|---|---|-----------------------------|
| <i>SEPA review required?</i>  | <input type="checkbox"/> Yes | <input type="checkbox"/> NO | <i>Should Clerk schedule a hearing?</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> NO |
| <i>SEPA review completed?</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> NO | <i>Requested Date:</i>                  |   |                             |

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)**

An emergency ordinance of Whatcom County, Washington relating to land use and zoning; declaring an emergency; adopting interim zoning regulations for the siting, establishment, and operation of temporary tent emcampments; and setting twelve months as the effective period of the interim zoning regulations to allow the County to study the land use impacts of such uses.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

*Related County Contract #:*

*Related File Numbers:*

*Ordinance or Resolution Number:*

**Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).**

6 **ORDINANCE NO. \_\_\_\_\_**  
7 **(AN EMERGENCY ORDINANCE OF WHATCOM COUNTY, WASHINGTON)**  
8

9 **ADOPTING EMERGENCY ZONING REGULATIONS FOR THE SITING,**  
10 **ESTABLISHMENT, AND OPERATION OF TEMPORARY TENT ENCAMPMENTS**

11  
12 **WHEREAS,** homelessness continues to be a local, regional and national challenge  
13 due to many social and economic factors; and

14  
15 **WHEREAS,** tent encampments have become a temporary mechanism for providing  
16 shelter for homeless individuals and families; and

17  
18 **WHEREAS,** under RCW 36.01.290 the Washington State Legislature has authorized  
19 religious organizations to host temporary tent encampments to provide shelter for homeless  
20 individuals on property that these religious organizations own; and

21  
22 **WHEREAS,** the Whatcom County Code does not currently have specific provisions  
23 addressing the establishment and operation of temporary tent encampments; and

24  
25 **WHEREAS,** an emergency exists necessitating adoption of interim tent encampment  
26 regulations and processing requirements to preserve and protect public health and safety  
27 and prevent danger to public or private property; and

28  
29 **WHEREAS,** pursuant to WAC 197-11-880, the adoption of this ordinance is exempt  
30 from the requirements of a threshold determination under the State Environmental Policy  
31 Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with  
32 SEPA Rules; and

33  
34 **WHEREAS,** in conformity with the responsibilities of Whatcom County to meet public  
35 health, safety and welfare requirements and provide zoning and land use regulations  
36 pursuant to state law, and the County's authority to regulate land use activity within its  
37 corporate limits, the County intends to develop appropriate public health, safety and welfare  
38 requirements and zoning and land use regulations for the establishment and operation of  
39 temporary tent encampments; and

40  
41 **WHEREAS,** the County Council has determined it needs additional time to conduct  
42 appropriate research to analyze the effects of the establishment and operation of temporary  
43 tent encampments; and

44  
45 **WHEREAS,** emergency zoning will provide the County with additional time to review  
46 and amend its public health, safety and welfare requirements and zoning and land use  
47 regulations related to the establishment and operation of temporary tent encampments;  
48 and

49  
50 **WHEREAS,** emergency zoning will also allow qualifying religious organizations and  
51 registered not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish  
52 and operate temporary tent encampments; and

1           **WHEREAS**, the County Council concludes that the County does have the authority to  
2 establish an emergency zoning ordinance and that the County must adopt emergency  
3 zoning concerning the establishment and operation of temporary tent encampments to act  
4 as a stop- gap measure: (a) to provide the County with an opportunity to study the issues  
5 concerning the establishment and operation of temporary tent encampments and  
6 prepare appropriate revisions to the County's codes and regulations; (b) to protect the  
7 health, safety, and welfare of the citizens of Whatcom County by avoiding and  
8 ameliorating negative impacts and unintended consequences of establishing and  
9 operating temporary tent encampments and (c) to avoid applicants possibly establishing  
10 vested rights contrary to and inconsistent with any revisions the County may make to its  
11 rules and regulations as a result of the County's study of this matter; and  
12

13           **WHEREAS**, the County Council adopts the foregoing as its findings of facts justifying  
14 the adoption of this Ordinance; and  
15

16           **NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:**  
17

18           **Section 1. Findings of Fact.** The County Council adopts the above "WHEREAS" recitals  
19 as findings of fact in support of its action as required by County Charter 2.40.

20           **Section 2. Regulations established.** Regulations concerning the establishment and  
21 processing of applications for temporary tent encampments in unincorporated Whatcom  
22 County are hereby established. Establishing such facilities contrary to the provisions of  
23 this chapter is prohibited. Administrative Use approvals shall be required for temporary  
24 tent encampments in the County. Applications for administrative use approvals, land use  
25 approvals, or any other permit or approval, in any way associated with temporary tent  
26 encampment facilities, shall not be accepted, processed, issued, granted, or approved  
27 unless in compliance with this chapter. If a temporary tent encampment is established in  
28 violation of this chapter or if, after an administrative use permit is issued for the same,  
29 the director of the planning and development services department determines that the  
30 permit holder has violated this chapter or any condition of the permit, the temporary  
31 tent encampment, its sponsor and managing agency shall be subject to code  
32 enforcement and all activities associated with the temporary tent encampment shall  
33 cease, and the site shall be vacated and restored to its pre-encampment conditions.  
34

35           **Section 3. Definitions.** The following definitions apply to temporary tent encampments:  
36

- 37           A. "Temporary tent encampment" means a short-term residence facility for a group  
38 of people that is composed of tents or other temporary structures, as approved  
39 by the director, on a site provided or arranged for by a sponsor with services  
40 provided by a sponsor and supervised by a managing agency.  
41
- 42           B. "Managing agency" means an organization identified as the manager of a  
43 temporary tent encampment that has the capacity to organize and manage a  
44 temporary tent encampment. A "managing agency" may be the same entity as  
45 the sponsor.  
46
- 47           C. "Sponsor " means an organization that :  
48           1. invites a temporary tent encampment to reside on land they own or lease;  
49           and  
50           2. is a State of Washington registered not-for-profit corporation and  
51           federally recognized tax exempt 501(c)(3) organization; or  
52           3. is recognized by the Internal Revenue Service as exempt from federal  
53           income taxes as a religious organization, which expresses its religious  
54           mission, in part, by organizing living accommodations for the homeless.  
55           D. "Director" means the Planning and Development Services Department Director.  
56

1 **Section 4. Requirements.** The following requirements shall apply to all temporary tent  
2 encampments approved under this chapter, unless modified by the director through  
3 approval of an administrative use permit.  
4

- 5 A. The encampment shall be located a minimum of 20 feet from the property line of  
6 abutting properties containing commercial, industrial, and multifamily residential  
7 uses. The encampment shall be located a minimum of 40 feet from the property  
8 line of abutting properties containing single-family residential or public  
9 recreational uses, unless the director finds that a reduced buffer width will  
10 provide adequate separation between the encampment and adjoining uses, due  
11 to changes in elevation, intervening buildings or other physical characteristics of  
12 the site of the encampment.  
13
- 14 B. No encampment shall be located within a critical area or its buffer as defined by  
15 Whatcom County Code (WCC) 16.16.  
16
- 17 C. A six-foot-tall sight-obscuring fencing is required around the perimeter of the  
18 encampment; provided, that the fencing does not create a sight obstruction at  
19 the street or street intersections or curbs as determined by the county engineer,  
20 unless the director determines that there is sufficient vegetation, topographic  
21 variation, or other site conditions such that fencing would not be needed.  
22
- 23 D. Exterior lighting must be directed downward and glare contained within the  
24 temporary tent encampment.  
25
- 26 E. The maximum number of residents at a temporary tent encampment site shall be  
27 determined by the director taking into consideration site conditions, but in no  
28 case shall the number be greater than 100 people.  
29
- 30 F. On-site parking of the sponsor shall not be displaced unless sufficient required  
31 off- street parking remains available for the host's use to compensate for the loss  
32 of on- site parking or unless a shared parking agreement is executed with  
33 adjacent properties.  
34
- 35 G. A transportation plan, including provisions for transit, and pedestrian and bicycle  
36 ingress and egress to the encampment, shall be submitted for review and  
37 approval.  
38
- 39 H. No children under the age of 18 are allowed to stay overnight in the temporary  
40 tent encampment, unless accompanied by a parent or guardian. If a child under  
41 the age of 18 without a parent or guardian present attempts to stay at the  
42 encampment, the sponsor and the managing agency shall immediately contact  
43 Child Protective Services and shall actively endeavor to find alternative shelter for  
44 the child.  
45
- 46 I. The sponsor or managing agency shall provide and enforce a written code of  
47 conduct, which not only provides for the health, safety and welfare of the  
48 temporary tent encampment residents, but also mitigates impacts to neighbors  
49 and the community. A copy of the code of conduct shall be submitted to the  
50 County at the time of application for the administrative use permit. Said code  
51 shall be incorporated into the conditions of approval.  
52
- 53 J. The sponsor and the managing agency shall ensure compliance with Washington  
54 State laws and regulations and the Whatcom County Health Department's

1 regulations concerning, but not limited to, drinking water connections, solid  
2 waste disposal, and human waste. The sponsor and the managing agency shall  
3 permit inspections by local agencies and/or departments to ensure such  
4 compliance and shall implement all directives resulting therefrom within the  
5 specified time period.  
6

7 K. The sponsor and managing agency shall assure all applicable public health  
8 regulations, including but not limited to the following, will be met for:  
9

- 10 1. Potable water, which shall be available at all times at the site;
- 11 2. Sanitary portable toilets, which shall be set back at least 40 feet from all  
12 property lines;
- 13 3. Hand-washing stations by the toilets and food preparation areas;
- 14 4. Food preparation or service tents; and
- 15 5. Refuse receptacles.

16  
17 L. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and  
18 food handling and storage, including proper temperature control, shall be  
19 followed and homeless encampment residents involved in food donations and  
20 storages shall be made aware of these Whatcom County Health Department  
21 requirements.  
22

23 M. The sponsor and the managing agency shall designate points of contact and  
24 provide contact information (24-hour accessible phone contact) to the Patrol  
25 Operations Commander for the Whatcom County Sheriff's Department. At least  
26 one designated point of contact shall be on duty at all times. The names of the  
27 on-duty points of contact shall be posted on-site daily, and their contact  
28 information shall be provided to the Whatcom County Sheriff's Department as  
29 described above.  
30

31 N. Facilities for dealing with trash shall be provided on-site throughout the  
32 encampment. A regular trash patrol in the immediate vicinity of the temporary  
33 tent encampment site shall be provided.  
34

35 O. The sponsor and the managing agency shall take all reasonable and legal steps to  
36 obtain verifiable identification information, to include full name and date of  
37 birth, from current and prospective encampment residents and use the  
38 identification to obtain sex offender and warrant checks from appropriate  
39 agencies. The sponsor and the managing agency shall keep a log of names and  
40 dates of all people who stay overnight in the temporary tent encampment and  
41 this current log shall be made available upon demand by any municipal or County  
42 Law Enforcement Officer. Persons who have active warrants, or who are required  
43 to register as a sex offender, are prohibited from the encampment's location.  
44 Status checks of current encampment residents shall be routinely performed by  
45 the Warrant Officers of the Whatcom County Sheriff's Department through the  
46 current log provided by the sponsor and managing agency.  
47

48 P. The sponsor and the managing agency shall immediately contact the Whatcom  
49 County Sheriff's Department if someone is rejected or ejected from the  
50 encampment when the reason for rejection or ejection is an active warrant or a  
51 match on a sex offender check, or if, in the opinion of the on-duty point of

1 contact or on-duty security staff, the rejected/ejected person is a potential threat  
2 to the community.

- 3
- 4 Q. Tents over 300 square feet in size and canopies in excess of 400 square feet shall  
5 utilize flame retardant materials.
- 6
- 7 R. The sponsor, the managing agency and temporary tent encampment residents  
8 shall cooperate with other providers of shelters and services for homeless  
9 persons within the County and shall make inquiry with these providers regarding  
10 the availability of existing resources.
- 11
- 12 S. The sponsor and/or managing agency shall provide before-encampment photos of  
13 the host site with the application. Upon vacation of the temporary tent  
14 encampment, all temporary structures and debris shall be removed from the host  
15 site within one calendar week.
- 16
- 17 T. Upon cessation of the temporary tent encampment, the site shall be restored, as  
18 near as possible, to its original condition. Where deemed necessary by the  
19 director, the sponsor and/or managing agency shall re-plant areas in which  
20 vegetation had been removed or destroyed.

21

22 **Section 5. Frequency and duration of temporary use.** No more than a maximum of 100  
23 people may be housed in temporary tent encampments located in the unincorporated  
24 County at any time. Multiple locations may be permitted provided that the aggregate  
25 total of people in all temporary tent encampments shall not exceed 100. The director  
26 shall not grant a permit for the same site more than once in any calendar year; provided  
27 that director is not authorized to issue a permit for the same site sooner than 180 days  
28 from the date the site is vacated as provided for in Section 4 of this ordinance.  
29 Temporary tent encampments may be approved for a period not to exceed 90 days. The  
30 director may grant one 90-day extension, provided all conditions have been complied  
31 with and circumstances associated with the use have not changed. This extension shall  
32 be subject to a Type II review process and may be appealed to the hearing examiner as  
33 provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be  
34 terminated and the site vacated and restored to its pre-encampment condition.

35

36 **Section 6. Permit required.** Establishment of a temporary tent encampment shall  
37 require approval of an administrative use permit, as described in this ordinance, and  
38 compliance with all other applicable County regulations. The director shall have  
39 authority to grant, grant with conditions or deny an application for an administrative use  
40 permit under this ordinance.

41

42

43 **Section 7. Application.** Application for an administrative use permit shall be made on  
44 forms prescribed by the County, and shall be accompanied by the following information;  
45 provided, that the director may waive any of these items, upon request by the applicant  
46 and finding that the item is not necessary to analyze the application. An application to  
47 establish a temporary tent encampment shall be signed by both the sponsor and the  
48 managing agency ("applicant") and contain the following:

- 49
- 50 A. A site plan of the property, drawn to scale, showing existing natural features,  
51 existing and proposed grades, existing and proposed utility improvements,  
52 existing rights-of-way and improvements, and existing and proposed structures,

- 1 tents and other improvements (including landscaping and fencing at the  
2 perimeter of the proposed encampment and the property and off-street parking);  
3 B. A vicinity map, showing the location of the site in relation to nearby streets and  
4 properties;  
5 C. A written summary of the proposal, responding to the standards and  
6 requirements of this ordinance;  
7 D. The written code of conduct and a transportation plan as required by this  
8 ordinance;  
9 E. Statement of actions that the applicant will take to obtain verifiable identification  
10 from all encampment residents and to use the identification to obtain sex  
11 offender and warrant checks from appropriate agencies;  
12 F. Project statistics, including site area, building coverage, number and location of  
13 tents and temporary structures, expected and maximum number of residents,  
14 and duration of the encampment;  
15 G. Address and parcel number of the subject property;  
16 H. Photographs of the site;  
17 I. A list of other permits that are or may be required for development of the  
18 property (issued by the County or by other government agencies), insofar as  
19 they are known to the applicant;  
20 J. Permits for temporary tent encampments shall be processed by the County  
21 without charge;  
22 K. A list of any requirement under this ordinance for which the applicant is asking to  
23 modify.  
24

25 **Section 8. Decision and appeal.**  
26

- 27 A. Notice. All temporary tent encampment applications shall be reviewed under a  
28 Type II process under WCC 22.05.020(1), however, the following timelines shall  
29 override those found in WCC Title 22. Within fourteen calendar days of receiving  
30 a completed application, the department shall issue a determination of  
31 completeness or incompleteness. Within fourteen days of a determination of  
32 completeness the department shall publish a notice of application for an  
33 administrative use permit. The notice shall contain, at a minimum, the date of  
34 application, project location, proposed duration and operation of the temporary  
35 tent encampment, number of residents for the encampment, conditions that will  
36 likely be placed on the operation of the encampment, and requirements of the  
37 written code of conduct. Final action on permit applications made under this  
38 section shall be rendered within 60 days of determination of completeness.  
39  
40 B. Decision and Notice of Decision. After conclusion of a 14-calendar-day  
41 notice/comment period, the director shall decide whether to grant, grant with  
42 conditions or deny a temporary administrative use permit. Before any such  
43 permit may be granted, the applicant shall show and the director shall find that:  
44  
45 1. The proposed use will not be materially detrimental to the public welfare  
46 or injurious to the property or improvements in the vicinity of the  
47 proposed encampment;  
48 2. The proposed use meets the requirements of this ordinance;  
49 3. The proposed use shall be in keeping with the goals and policies of the  
50 comprehensive plan;  
51 4. Measures, including the requirements herein and as identified by the  
52 director, have been taken to minimize the possible adverse impacts which

1 the proposed encampment may have on the area in which it is located. It  
2 is acknowledged that not all impacts can be eliminated, however the risk  
3 of significant impacts can be reduced to a temporary and an acceptable  
4 level and the duration of the encampment will be limited.  
5

6 A notice of such decision stating whether the permit is granted or denied,  
7 along with information regarding the procedure for appeal of the decision,  
8 shall be mailed as required for the notice of application within three business  
9 days after the date of the decision. If issued, the administrative use permit  
10 for the temporary tent encampment shall be issued jointly to the sponsor and  
11 managing agency and each shall be responsible for compliance with the terms  
12 and conditions of the permit and applicable county codes.  
13

14 C. Conditions. Because each temporary tent encampment has unique  
15 characteristics, including, but not limited to, size, duration, uses, number of  
16 occupants and composition, the director shall have the authority to impose  
17 conditions on the approval of an administrative use permit to ensure that the  
18 proposal meets the criteria for approval listed above. Conditions, if imposed,  
19 must be intended to minimize nuisance-generating features such as noise,  
20 waste, air quality, unsightliness, traffic, physical hazards and other similar  
21 impacts that the temporary tent encampment may have on the area in which it is  
22 located. In cases where the application for an administrative use permit does not  
23 meet the provisions of this chapter (except when allowed under subsection (D) of  
24 this section) or adequate mitigation may not be feasible or possible, the director  
25 shall deny the application.  
26

27 D. Modification of Requirements. The director may approve an administrative use  
28 permit for a temporary tent encampment that relaxes one or more of the  
29 standards in this chapter only when, in addition to satisfying the decision criteria  
30 stated above, the applicant submits a description of the standard to be modified  
31 and demonstrates how the modification would result in a safe encampment with  
32 minimal negative impacts to the host community under the specific  
33 circumstances of the application. In considering whether the modification should  
34 be granted, the director shall first consider the effects on the health and safety of  
35 encampment residents and the neighboring communities. Modifications shall not  
36 be granted if their adverse impacts on encampment residents and/or neighboring  
37 communities will be greater than those without modification. The burden of proof  
38 shall be on the applicant.  
39

40 E. Appeal. The director's decision may be appealed to the hearing examiner as  
41 provided in WCC 22.05.020(1).  
42

43 **Section 9. Purpose.** The purpose of this emergency zoning ordinance is to allow and  
44 establish a review process for the location, siting, and operation of temporary tent  
45 encampments within the unincorporated County. While the emergency zoning ordinance  
46 is in effect, the County will study the land use and other impacts associated with  
47 temporary tent encampments, draft final zoning and regulations to address such uses,  
48 hold public hearings on such draft regulations, and adopt such regulations.  
49

50 **Section 10. Declaration of Emergency.** The County Council hereby declares that an  
51 emergency exists necessitating that this emergency ordinance take effect immediately  
52 upon passage by a two-thirds vote of the County Council as required by County Charter



1 Section 2.40. Without an immediate emergency zoning ordinance establishing standards  
2 for the review of applications for the siting and operation of temporary tent  
3 encampments , such facilities could be submitted and become vested , leading to the  
4 development or use of property that is incompatible with the laws adopted by Whatcom  
5 County. Therefore, this emergency zoning ordinance must be imposed as an emergency  
6 measure to protect the public health, safety and welfare, and to prevent the submission  
7 of applications to the County in an attempt to vest rights for an indefinite period of time.  
8

9 **Section 11. Effective Date.** This ordinance shall take effect immediately upon passage  
10 and shall be in effect for sixty (60) days, as set forth herein, as long as it is approved by  
11 a two-thirds vote of the County Council, as required by County Charter Section 2.40.  
12

13 **Section 12. Conflict with other Whatcom County Code Provisions.** If the provisions of  
14 this ordinance are found to be inconsistent with other provisions of the Whatcom County  
15 Code, this ordinance shall control.  
16

17 **Section 13. Severability.** If any section, sentence, clause or phrase of this Ordinance  
18 should be held to be unconstitutional or unlawful by a court of competent jurisdiction,  
19 such invalidity or unconstitutionality shall not affect the validity or constitutionality of  
20 any other section, sentence, clause or phrase of this ordinance.  
21

22 **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.  
23  
24

25 **WHATCOM COUNTY COUNCIL**  
26 **WHATCOM COUNTY, WASHINGTON**  
27

28 **ATTEST:**  
29  
30

31 \_\_\_\_\_  
32 **Dana Brown-Davis, Council Clerk**  
33

31 \_\_\_\_\_  
32 **Rud Browne, Chairperson**  
33

34 **APPROVED as to form:**  
35

34  **Approved**  **Denied**  
35

36 \_\_\_\_\_  
37   
38 \_\_\_\_\_  
39 **Civil Deputy Prosecutor**  
40

36 \_\_\_\_\_  
37 \_\_\_\_\_  
38 \_\_\_\_\_  
39 **Jack Louws, Executive**  
40

41 **Date:** \_\_\_\_\_