

TO ALL COUNCILMEMBERS:

SUBSTITUTE ORDINANCE

for

July 10, 2018

INTRODUCTION ITEM #1

1. Ordinance adopting interim zoning regulations for siting, establishment, and operation of temporary homeless facilities (AB2018-182A) **14 - 24**

CHANGES ARE HIGHLIGHTED

DISTRIBUTED: July 10, 2018
TIME: 3:00 p.m.
Submitted by: Mark Personius

ORDINANCE NO. _____
(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)

**ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT,
AND OPERATION OF TEMPORARY HOMELESS FACILITIES**

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

WHEREAS, tent and tiny house encampments have become a temporary mechanism for providing shelter for homeless individuals and families; and

WHEREAS, under RCW 36.01.290 the Washington State Legislature has authorized religious organizations to host temporary encampments to provide shelter for homeless individuals on property that these religious organizations own or control; and

WHEREAS, on June 19, 2018, the Whatcom County Council adopted an emergency ordinance (Ordinance 2018-039) adopting regulations for the establishment and operation of temporary tent encampments that is effective for 60 days; and

WHEREAS, the Whatcom County Code does not currently have permanent provisions addressing the establishment and operation of temporary homeless facilities; and

WHEREAS, an emergency exists necessitating adoption of interim temporary homeless facilities regulations and processing requirements to preserve and protect public health and safety and prevent danger to public or private property; and

WHEREAS, the proposed interim ordinance will replace Ordinance 2018-039 by adopting interim regulations for one year; and

WHEREAS, interim zoning controls enacted under RCW 36.70A.390 and/or RCW 36.70.790 are methods by which the County may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of an interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing as long as a public hearing is held within at least sixty days of enactment; and

WHEREAS, RCW 36.70A.390 provides that, *"A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this*

section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal"; and

WHEREAS, in conformity with the responsibilities of Whatcom County to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the County's authority to regulate land use activity within its corporate limits, the County intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment and operation of temporary homeless facilities; and

WHEREAS, the County Council has determined it needs additional time to conduct appropriate research to analyze the effects of the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will provide the County with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will also allow qualifying religious organizations and registered not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate temporary homeless facilities; and

WHEREAS, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 3, 2018; and

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

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

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

Section 1. Findings of Fact. The County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 36.70.790.

Section 2. Regulations established. Regulations concerning the establishment and processing of applications for temporary homeless facilities in unincorporated Whatcom County are hereby established. Establishing such facilities contrary to the provisions of this ordinance is prohibited. Administrative Use approvals shall be required for

temporary homeless facilities in the County. Applications for administrative use approvals, land use approvals, or any other permit or approval, in any way associated with temporary homeless facilities, shall not be processed, issued, granted, or approved unless in compliance with this ordinance. If a temporary homeless facility is established in violation of this ordinance or if, after an administrative use permit is issued for the same, the director of the planning and development services department determines that the permit holder has violated this ordinance or any condition of the permit, the temporary homeless facility, its sponsor and managing agency shall be subject to code enforcement and all activities associated with the temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-encampment conditions.

Section 3. Definitions. The following definitions apply to temporary homeless facilities:

- A. "Temporary homeless facility" means a facility providing temporary housing accommodations that includes a sponsor and managing agency, the primary purpose of which is to provide temporary shelter for people experiencing homelessness in general or for specific populations of the homeless. Temporary homeless facilities include temporary tent encampments and temporary tiny house encampments.
- B. "Temporary tent encampment" means a short-term living facility for a group of homeless people that is composed of tents or other temporary structures, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.
- C. "Temporary tiny house encampment" means a temporary homeless facility for a group of people living in purpose-built tiny houses for people experiencing homelessness, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. Temporary tiny houses for the homeless are typically less than 200 square feet and easily constructed and moved to various locations. For the purposes of this ordinance, temporary tiny homes are not dwelling units and, as such, are not required to meet building codes.
- D. "Managing agency" means an organization identified as the manager of a temporary homeless facility that has the capacity to organize and manage a temporary homeless facility. Managing agencies are limited to religious organizations and non-profit agencies. A "managing agency" may be the same entity as the sponsor.
- E. "Sponsor " means an organization that :
 - 1. invites a temporary homeless facility to reside on land they own or lease; and
 - 2. is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization; or
 - 3. is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless.
- F. "Director" means the Planning and Development Services Department Director.

Section 4. Requirements. The following requirements shall apply to all temporary homeless facilities approved under this ordinance, unless modified by the director through approval of an administrative use permit.

- A. The encampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The encampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses, unless the director finds that a reduced buffer width will provide adequate separation between the encampment and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site of the encampment.
- B. No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.
- C. A temporary homeless facility shall comply with the applicable development standards of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined by WCC 20.97.217.
- D. A six-foot-tall fence is required around the perimeter of the encampment to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer, unless the director determines that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.
- E. Exterior lighting must be directed downward and glare contained within the temporary encampment.
- F. The maximum number of residents at a temporary encampment site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.
- G. On-site parking of the sponsor shall not be displaced unless sufficient required off- street parking remains available for the host's use to compensate for the loss of on- site parking or unless a shared parking agreement is executed with adjacent properties.
- H. A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the encampment, shall be submitted for review and approval.
- I. No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall immediately contact Child Protective Services and shall actively endeavor to find alternative shelter for the child.
- J. The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary encampment residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative use permit. Said code shall be incorporated into the conditions of approval. The managing agency shall post the

County approved written code of conduct on site.

- K. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. Individuals or organizations shall have either a demonstrated experience providing similar services to homeless residents; and/or certification or academic credentials in an applicable human service field; and/or applicable experience in a related program with a homeless population. Should an individual or organization not have any of the preceding qualifications, additional prescriptive measures may be required to minimize risk to both residents of the temporary homeless facility and the community in general.
- L. The sponsor and the managing agency shall ensure compliance with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.
- M. The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:
 - 1. Potable water, which shall be available at all times at the site;
 - 2. Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
 - 3. Hand-washing stations by the toilets and food preparation areas;
 - 4. Food preparation or service tents; and
 - 5. Refuse receptacles.
- N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and homeless encampment residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.
- O. The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their contact information shall be provided to the Whatcom County Sheriff's Office as described above.
- P. Facilities for dealing with trash shall be provided on-site throughout the encampment. A regular trash patrol in the immediate vicinity of the temporary encampment site shall be provided.
- Q. The sponsor and the managing agency shall take all reasonable and legal steps to obtain verifiable identification information, to include full name and date of birth, from current and prospective encampment residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the encampment. This log shall be available upon request to law enforcement agencies and prospective

encampment residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are prohibited from the encampment's location.

- R. The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the encampment when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.
- S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.
- T. The sponsor, the managing agency and temporary encampment residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.
- U. The sponsor and/or managing agency shall provide before-encampment photos of the host site with the application. Upon vacation of the temporary encampment, all temporary structures and debris shall be removed from the host site within one calendar week.
- V. Upon cessation of the temporary encampment, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

Section 5. Frequency and duration of temporary homeless facilities.

- A. No more than a maximum of 100 people may be housed in temporary homeless facilities (encampments) located in the unincorporated County at any time. Multiple encampment locations may be permitted provided that the aggregate total of people in all temporary tent and/or tiny house encampments shall not exceed 100.
- B. The director shall not grant a permit for the same site more than once in any calendar year; provided that director is not authorized to issue a permit for the same site sooner than 180 days from the date the site is vacated as provided for in Section 4 of this ordinance.
- C. Temporary tent encampments may be approved for a period not to exceed 180 days. The director may grant one 180-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. This extension shall be subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.
- D. Temporary tiny house encampments may be approved for a period of between six months and up to one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year, provided enabling legislation allows so. Extensions are subject to a Type II review process and may be

appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.

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

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

- A. A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-of-way and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed encampment and the property and off-street parking);
- B. A vicinity map, showing the location of the site in relation to nearby streets and properties;
- C. A written summary of the proposal, responding to the standards and requirements of this ordinance;
- D. The written code of conduct, operations plan and a transportation plan as required by this ordinance;
- E. Statement of actions that the applicant will take to obtain verifiable identification from all encampment residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;
- F. Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the encampment;
- G. Address and parcel number of the subject property;
- H. Photographs of the site;
- I. A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
- J. Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25;
- K. A list of any requirement under this ordinance for which the applicant is asking to modify.

Section 8. Permit Procedures.

- A. Notice. All temporary homeless facility applications shall be reviewed under a Type II process under WCC 22.05, except that the final decision must be rendered within 60 days of a determination of completeness. Additionally, the notice of application shall contain proposed duration and operation of the temporary homeless facility, number of residents for the encampment, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
- B. Decision and Notice of Decision. Final action on permit applications made under

this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 20.84.220 and the following:

1. The proposed use meets the requirements of this ordinance; and
2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts which the proposed encampment may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the encampment will be limited.

A notice of the decision shall be provided in accordance with WCC 22.05.

- C. Conditions. Because each temporary encampment has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness, traffic, physical hazards and other similar impacts that the temporary encampment may have on the area in which it is located. In cases where the application for an administrative use permit does not meet the provisions of this ordinance (except when allowed under subsection (D) of this section) or adequate mitigation may not be feasible or possible, the director shall deny the application.
- D. Modification of Requirements. The director may approve an administrative use permit for a temporary encampment that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe encampment with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of encampment residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on encampment residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.
- E. Appeal. The director's decision may be appealed to the hearing examiner as provided in WCC 22.05.020(1) and 22.05.160.
- F. Revocation. The director shall also have the authority to revoke an approved administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of this ordinance or permit.

Section 9. Purpose. The purpose of this interim ordinance is to allow and establish a review process for the location, siting, and operation of temporary homeless facilities within the unincorporated County. While the interim ordinance is in effect, the County will study the land use and other impacts associated with temporary homeless facilities, draft final zoning and regulations to address such uses, hold public hearings on such draft regulations, and adopt such regulations.

Section 10. Duration of Interim Ordinance. This interim ordinance will replace Ordinance 2018-039 and shall be in effect for one year beginning on July 24, 2018 and ending on July 24, 2019, unless another ordinance is adopted amending the Whatcom County Code and rescinding this interim ordinance before July 24, 2019.

Section 11. Work Plan. During the interim ordinance period, County staff will study the issues concerning the establishment and operation of temporary homeless facilities. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations; perform SEPA review of the draft ordinance, and conduct the public review process, including public hearings before the County's Planning Commission and County Council, as required for amendments to the County's development regulations.

Section 14. Conflict with other Whatcom County Code Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this Ordinance shall control.

Section 15. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

ADOPTED this _____ day of _____, 2018.

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chairperson

APPROVED as to form:

Approved **Denied**

Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

