EMERGENCY ORDINANCE NO. 2018-01-001

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LAND USE AND ZONING; DECLARING AN EMERGENCY; ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF TEMPORARY TENT ENCAMPMENTS; AND SETTING TWELVE MONTHS AS THE EFFECTIVE PERIOD OF THE INTERIM ZONING REGULATIONS TO ALLOW THE CITY TO STUDY THE LAND USE IMPACTS OF SUCH USES.

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

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

WHEREAS, under RCW 35.21.915 the Washington State Legislature has authorized religious organizations to host temporary tent encampments to provide shelter for homeless individuals on property that these religious organizations own; and

WHEREAS, the Bellingham Municipal Code does not currently have specific provisions addressing the establishment and operation of temporary tent encampments; and

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

WHEREAS, interim zoning controls enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments 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 35.63.200 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 its 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

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

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

WHEREAS, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the establishment and operation of temporary tent encampments; and

WHEREAS, interim zoning will provide the City 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 tent encampments; and

WHEREAS, interim zoning will also allow qualifying religious organizations the opportunity to establish and operate temporary tent encampments; and

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

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

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35.63.200.

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Section 2. Regulations established.
Regulations concerning the establishment and processing of applications for temporary tent encampments in the City are hereby established. Establishing such facilities contrary to the provisions of this chapter is prohibited. Temporary use permits shall be required for temporary tent encampments in the City. With the exception of temporary use permits for tent encampment facilities that are in full compliance with this chapter, applications for temporary use permits, land use approvals, or any other permit or approval, in any way associated with temporary tent encampment facilities, shall not be accepted, processed, issued, granted, or approved. If a temporary tent encampment is established in violation of this chapter or if, after a temporary use permit is issued for the same, the director of community development determines that the permit holder has violated this chapter or any condition of the permit, the temporary tent encampment, its sponsor and managing agency shall be subject to code enforcement and all activities associated with the temporary tent encampment shall cease, and the site shall be vacated and restored to its pre-encampment conditions.

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

A. "Temporary tent encampment" means a short-term residence facility for a group of 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.

B. "Managing agency" means an organization identified as the manager of a temporary tent encampment that has the capacity to organize and manage a temporary tent encampment. A "managing agency" may be the same entity as the sponsor.

C. "Sponsor" means an organization that (1) invites a temporary tent encampment to reside on land they own or lease, and (2) that is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, and (3) that expresses its religious mission, in part, by organizing living accommodations for the homeless.

D. "Director" means the Planning and Community Development Director.

Section 4. Requirements.
The following requirements shall apply to all temporary tent encampments approved under this chapter, unless modified by the director through approval of a temporary 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

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elevation, intervening buildings or other physical characteristics of the site of the encampment.

B. No encampment shall be located within a critical area or its buffer as defined by Bellingham Municipal Code (BMC) 16.55.

C. A six-foot-tall sight-obscuring fencing is required around the perimeter of the encampment; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the city engineer, unless the director determines that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.

D. Exterior lighting must be directed downward and glare contained within the temporary tent encampment.

E. The maximum number of residents at a temporary tent encampment site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than 100 people.

F. 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.

G. A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the encampment, shall be submitted for review and approval.

H. No children under the age of 18 are allowed to stay overnight in the temporary tent 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.

I. 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 tent encampment residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the City at the time of application for the temporary use permit. Said code shall be incorporated into the conditions of approval.

J. The sponsor and the managing agency shall ensure compliance with Washington State laws and regulations, the Bellingham Municipal Code, and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste and electrical systems. The sponsor and the managing agency shall permit inspections by state and/or local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.

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

1. Sanitary portable toilets, which shall be set back at least 40 feet from all property lines;
2. Hand-washing stations by the toilets and food preparation areas;
3. Food preparation or service tents; and
4. Refuse receptacles.

L. Public health guidelines 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 guidelines consistent with the Whatcom health department requirements.

M. The sponsor and the managing agency shall designate points of contact and provide contact information (24-hour accessible phone contact) to the Patrol Operations Commander for the Bellingham Police Department. 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 Bellingham Police Department as described above.

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

O. 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 log of names and dates of all people who stay overnight in the temporary tent encampment and this current log shall be made available upon demand by any municipal or County Law Enforcement Officer. Persons who have active warrants, or who are required to register as a sex offender, are prohibited from the encampment's location. Status checks of current encampment residents shall be routinely performed by the Warrant Officers of the Bellingham Police Department through the current log provided by the sponsor and managing agency.

P. The sponsor and the managing agency shall immediately contact the Bellingham police department 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.

Q. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.

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R. The sponsor, the managing agency and temporary tent encampment residents shall cooperate with other providers of shelters and services for homeless persons within the City and shall make inquiry with these providers regarding the availability of existing resources.

S. The sponsor and/or managing agency shall provide before-encampment photos of the host site with the application. Upon vacation of the temporary tent encampment, all temporary structures and debris shall be removed from the host site within one calendar week.

Section 5. Frequency and duration of temporary use.
No more than a maximum of 100 people may be housed in temporary tent encampments located in the City at any time. Multiple locations may be permitted provided that the aggregate total of people in all temporary tent encampments shall not exceed 100. 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. Temporary tent encampments may be approved for a period not to exceed 90 days. The director may grant one 90-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 I review process under BMC 21.10.100 and may be appealed to the hearing examiner as provided in BMC 21.10.250. 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 tent encampment shall require approval of a temporary use permit, as described in this ordinance, and compliance with all other applicable City regulations. The director shall have authority to grant, grant with conditions or deny an application for a temporary use permit under this ordinance.

Section 7. Application.
Application for a temporary use permit shall be made on forms prescribed by the City, 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 tent encampment 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;

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C. A written summary of the proposal, responding to the standards and requirements of this ordinance;

D. The written code of conduct 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. A legal description of the subject property, including parcel number;

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 City or by other government agencies), insofar as they are known to the applicant;

J. Permits for temporary tent encampments shall be processed by the City without charge;

K. A list of any requirement under this ordinance for which the applicant is asking to modify.

Section 8. Decision and appeal.

A. Notice. All temporary tent encampment applications shall be reviewed under a Type II process under BMC 21.10.110. However, the following timelines shall override those found in BMC 21.10.110. Final action on permit applications made under this section shall be rendered within 30 days of submittal. Within seven calendar days of receiving a completed application, the director shall publish a notice of application for a temporary use permit. The notice shall contain, at a minimum, the date of application, project location, proposed duration and operation of the temporary tent encampment, number of residents for the encampment, conditions that will likely be placed on the operation of the encampment, and requirements of the written code of conduct.

B. Decision and Notice of Decision. After conclusion of a 14-calendar-day notice/comment period, the director shall decide whether to grant, grant with conditions or deny a temporary use permit. Before any temporary use permit may be granted, the applicant shall show and the director shall find that:

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1. The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed encampment;

2. The proposed use meets the requirements of this ordinance;

3. The proposed use shall be in keeping with the goals and policies of the comprehensive plan;

4. 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 an acceptable level and the duration of the encampment will be limited.

A notice of such decision stating whether the permit is granted or denied, along with information regarding the procedure for appeal of the decision, shall be mailed as required for the notice of application/hearing within three business days after the date of the decision. If issued, the permit for the temporary tent encampment shall be issued jointly to the sponsor and managing agency, and each shall be responsible for compliance with the terms and conditions of the permit and applicable city codes.

C. Conditions. Because each temporary tent 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 a temporary use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to minimize nuisance-generating features such as noise, waste, air quality, unsightliness, traffic, physical hazards and other similar impacts that the temporary tent encampment may have on the area in which it is located. In cases where the application for temporary use permit does not meet the provisions of this chapter (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 a temporary use permit for a tent encampment that relaxes one or more of the standards in this chapter 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.

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E. Appeal. The director's decision may be appealed to the hearing examiner as provided in BMC 21.10.250.

Section 9. Purpose. The purpose of this interim zoning ordinance is to allow and establish a review process for the location, siting, and operation of temporary tent encampments within the City. While the interim zoning ordinance is in effect, the City will study the land use and other impacts associated with temporary tent encampments, 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 Zoning. This interim zoning shall be in effect for one (1) year, beginning on January 22, 2018 and ending on January 21, 2019, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the interim zoning before January 21, 2019.

Section 11. Public Hearing Required. As required by RCW 36.70A.390, within sixty (60) days of passage of this Ordinance, the City Council will hold a public hearing on this interim zoning ordinance.

Section 12. Work Plan. During the interim zoning period, City staff will study the issues concerning the establishment and operation of temporary tent encampments. Staff will prepare a draft ordinance with appropriate revisions to the City's land use regulations, perform SEPA review of the draft ordinance, and conduct the public review process, including public hearings before the City's Planning Commission and City Council, as required for amendments to the City's development regulations.

Section 13. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.12.130 and City Charter Section 3.05. Without an immediate interim zoning ordinance establishing standards for the review of applications for the siting and operation of temporary tent encampments, such facilities could be submitted and become vested, leading to the development or use of property that is incompatible with the laws adopted by the City of Bellingham. Therefore, this interim zoning ordinance must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time.

Section 14. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130 and City Charter Section 3.05.

Section 15. Conflict with other BMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this Ordinance shall control.

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Section 16. 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.

PASSED by the Council this 22nd day of January, 2018.

Roxanne Murphy, Council President

APPROVED by me this 31st day of January, 2018.

Kelli Linville, Mayor

ATTEST:
Brian Henshaw, Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

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