ORDINANCE NO. 2018-10-019

AN ORDINANCE OF THE CITY OF BELLINGHAM ESTABLISHING REGULATIONS FOR TEMPORARY HOMELESS SHELTERS (TEMPORARY BUILDING ENCAMPMENTS, TEMPORARY TENT ENCAMPMENTS, TEMPORARY SAFE PARKING AREAS, AND TEMPORARY TINY HOUSE ENCAMPMENTS) BY CREATING A NEW BELLINGHAM MUNICIPAL CODE CHAPTER 20.15, TEMPORARY SHELTERS FOR THE HOMELESS, AND AMENDING OTHER CHAPTERS IN BELLINGHAM MUNICIPAL CODE TITLES 20 AND 21.

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

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

WHEREAS, the Bellingham Municipal Code (BMC) does not currently have specific provisions addressing the establishment and operation of temporary homeless shelters; and

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

WHEREAS, RCW 19.27.042 authorizes cities to exempt from state building code requirements buildings whose character of use or occupancy has been changed in order to provide housing for the homeless for up to five years, as long as the code deficiencies do not pose a threat to human life, health or safety; and

WHEREAS, RCW 35.21.915 authorizes religious organizations to host temporary encampments for the homeless on property owned or controlled by the religious organizations, and prohibits cities from imposing conditions other than those necessary to protect public health and safety and that do not substantially burden the religious organization in sheltering the homeless; and

WHEREAS, interim zoning controls enacted with Emergency Ordinance No. 2018-04-007 under RCW 35.21.915 allows qualifying religious organizations and registered not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate temporary tent and building encampments; and

WHEREAS, the interim zoning is in effect for one year, beginning on April 23, 2018, and ending on April 22, 2019, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the interim zoning before April 22, 2019; and

WHEREAS, the City Council has had time to conduct appropriate research to analyze the effects of the establishment and operation of temporary encampments; and

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

WHEREAS, the subject ordinance includes permanent regulations for temporary homeless shelters that cause the interim zoning to be rescinded; and

WHEREAS, as required by RCW 36.70A.106, notice of the City's intent to adopt the proposed amendments was sent to the Department of Commerce on July 19, 2018; and

WHEREAS, the responsible official reviewed the proposed amendments under the procedures of the State Environmental Policy Act, and a non-project Determination of Non-Significance was issued on July 22, 2018; and

WHEREAS, the Planning Commission held work sessions on April 26, 2018; June 7, 2018, both of which included opportunities for public testimony; and

WHEREAS, after mailed and published notice as required by BMC 21.10.150, the Planning Commission held a public hearing on the proposed amendments on August 9, 2018; and

WHEREAS, the Planning Commission determined that the proposed amendments comply with and will implement the goals and policies of the 2016 Bellingham Comprehensive Plan; and

WHEREAS, the Planning Commission considered the staff report and public comments received and thereafter made Findings of Fact, Conclusions and Recommendations for approval of the proposed amendments by a 5-0 vote; and

WHEREAS, after mailed and published notice as required by BMC 21.10.150, the City Council held a public hearing on the proposed amendments on September 24, 2018; and

WHEREAS, the Bellingham City Council held a follow-up work session on October 8, 2018; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission, the staff report, other meeting materials, and all public comments and hereby adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission; and

WHEREAS, the City Council finds that the proposed amendments are consistent with the Growth Management Act, the Bellingham Municipal Code, and the 2016 Bellingham Comprehensive Plan.

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. The following definitions in BMC 20.08.020, Specific definitions, are added as follows:

"Managing agency" means an organization identified as the manager of a temporary or long-term shelter that has the capacity to organize and manage a shelter. Managing agencies are limited to religious organizations, nonprofit agencies and governmental entities. A group of

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

homeless residents is not considered a managing agency. A managing agency may be the same entity as the sponsor.

"Sponsor" means an organization that:

a. Invites a temporary homeless shelter to reside on land they own or lease; and

b. Is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization or a governmental entity; or

c. Is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization that expresses its religious mission, in part, by organizing living accommodations for the homeless.

"Temporary building encampment" means a temporary homeless shelter in a building or other permanent structure with overnight sleeping accommodations for the homeless, 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. This definition includes low-barrier shelters and other similar uses.

"Temporary homeless shelter" or "temporary shelter" means a shelter 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 shelters include temporary building encampments, temporary safe parking areas, temporary tent encampments, and temporary tiny house encampments. For the purpose of this ordinance, temporary homeless shelters are the same as temporary encampments as defined in RCW 35.21.915.

"Temporary safe parking area" means a temporary homeless shelter for a group of people living in their vehicles, 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. This definition does not include recreational vehicles.

"Temporary tent encampment" means a temporary homeless shelter 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.

"Temporary tiny house encampment" means a temporary homeless shelter 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 between 100 - 300 square feet and easily constructed and moved to various locations. They are not dwelling units and, as such, are not required to meet building codes.

[ALL OTHER DEFINITIONS IN THIS SECTION REMAIN UNCHANGED]

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

Section 2. 20.10.040, Temporary uses, is amended as follows:

A. The director is authorized to approve the following temporary uses:

1. through 7. [NO CHANGE]

8. Temporary homeless shelters, per BMC 20.15.

Section 3. BMC Title 20, Land Development, is amended to create a new chapter, BMC 20.15, Temporary Shelters for the Homeless, as shown in **Exhibit A**.

Section 4. BMC 20.30.030, permitted uses for Residential Single Development, is amended as follows:

A. Uses Permitted Outright. No building or land shall be used within an area designated residential single, except as follows:

1. through 10. [NO CHANGE]

11. Short-term rentals, per BMC 20.10.037.

12. Certain temporary homeless shelters, per BMC 20.15.

Section 5. BMC 20.32.030, permitted uses for Residential Multi Development, is amended as follows:

A. Uses Permitted Outright. No building or land shall be used within areas designated RM except as enumerated below corresponding to the applicable use qualifier:

Use Qualifier	**Permitted Use**
Duplex	1. through 11. [NO CHANGE]
	12. Short-term rentals, BMC 20.10.037.
	13. Certain temporary homeless shelters, per BMC 20.15.
Multiple	[NO CHANGE]
Planned	[NO CHANGE]

Section 6. BMC 20.33, Commercial Development, is amended as follows:

Table 20.33.030

	Plan ned	Neig hbor	Auto	Wat erfro

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City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

P = Permitted C = Conditional N = Not Permitted				
Miscellaneous Uses				
Certain Temporary Homeless Shelters, per BMC 20.15	P	P	P	P
[NO ADDITIONAL CHANGES TO THIS TABLE]				

Section 7. BMC 20.35.065.A, permitted uses for the Old town overlay district, is amended as follows:

A. The following uses are permitted:

1. through 23. [NO CHANGE]

24. Short-term rentals, per BMC 20.10.037.

25. ~~Uses similar to the above.~~ Certain temporary homeless shelters, per BMC 20.15.

26. Uses similar to the above.

Section 8. BMC 20.36.030, permitted uses for Industrial Development, is amended as follows:

A. Uses Permitted Outright. No building or land shall be used within an area designated with an industrial general use type except as permitted below, corresponding to the use qualifier designated for such property.

The following uses shall be permitted outright; corresponding to the designated use qualifier.

Use Qualifier	**Permitted Use**
Light	1. through 16. [NO CHANGE]
	17. Temporary homeless shelters, per BMC 20.15.
Use Qualifier	**Permitted Use**
Heavy	1. through 10. [NO CHANGE]
	11. Temporary homeless shelters, per BMC 20.15.
Use Qualifier	**Permitted Use**
Marine	1. through 8. [NO CHANGE]

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City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

9. Temporary homeless shelters, per BMC 20.15.

Section 9. BMC 20.37.120, permitted uses for Samish Way urban village, is amended as follows:

Table 20.37.120 – Permitted Uses

P = Permitted # = Permitted with limitations C = Conditional Use N = Not allowed					
Land Use Classification	**Area**				
	Commercial Core	**Commercial Approach**	**Commercial Transition 1 and 2**	**Residential Transition 1**	**Residential Transition 2**
1. through 42. [NO CHANGE]					
43. Certain temporary homeless shelters, per BMC 20.15.	P	P	P	P	P

Section 10. BMC 20.37.220, permitted uses for Fountain district urban village, is amended as follows:

Table 20.37.220 – Permitted Uses

P = Permitted # = Permitted with limitations C = Conditional Use N = Not allowed				
Land Use Classification	**Area**			
	Commercial Core	**Commercial Transition**	**Residential Transition 1**	**Residential Transition 2**
1. through 46. [NO CHANGE]				

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City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

Table 20.37.220 – Permitted Uses

P = Permitted # = Permitted with limitations C = Conditional Use N = Not allowed				
Land Use Classification	**Area**			
	Commercial Core	**Commercial Transition**	**Residential Transition 1**	**Residential Transition 2**
47. Certain temporary homeless shelters, per BMC 20.15.	P	P	P	P

Section 11. BMC 20.37.320, permitted uses for Fairhaven urban village, is amended as follows:

Table 20.37.320 – Permitted Uses	P = Permitted	(#) = See Notes	C = Conditional Use				N = Not allowed	
LAND USE CLASSIFICATION	**AREA**							
	CC(2)	**RT-1 and RT-2**	**RT-3**	**RT-4**	**I-1(1)**	**I-2(1)**	**I-3(1)**	**P-1 and P-3**	**P-2**
F. Miscellaneous Uses									
1. through 10. [NO CHANGE]									
11. Certain temporary homeless shelters, per BMC 20.15.	P	P	P	P	P	P	P	P	P

Section 12. BMC 20.37.420, permitted uses for Waterfront district urban village, is amended as follows:

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City Attorney
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Table 20.37.420-A Permitted Uses **P = Permitted (#) = See Notes C = Conditional N = Not allowed**			
LAND USE CLASSIFICATION	**Area**		
	Industrial Mixed-Use	**Commercial Mixed-Use**	**Institutional Mixed-Use**
A. MISCELLANEOUS USES			
1. through 13. [NO CHANGE]			
14. Certain temporary homeless shelters, per BMC 20.15.	P	P	P

Section 13. BMC 20.37.520, permitted uses for the Downtown district urban village, is amended as follows:

Table 20.37.520 – Permitted Uses

P = Permitted C = Conditional Use N = Not allowed (#) = See Notes **When multiple symbols and notes appear in a box such as P(2) or (4), C, they are interpreted as (P) Permitted (2) when located in a main building(s) on a site existing as of September 23, 2014 OR (4) on corner lots; (C) conditional elsewhere.**				
LAND USE CLASSIFICATION	**AREA**			
	CC (1) CT (1)	**RT-1**	**RT-2**	**IT**
F. Miscellaneous Uses				
1. through 11. [NO CHANGE]				
12. Certain temporary homeless shelters, per BMC 20.15.	P	P	P	P

Section 14. BMC 20.38.050, standards for Planned Development, is amended as follows:

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City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

A. [NO CHANGE]

B. Planned Residential.

1. For all land designated residential, the following standards shall apply.

2. Range of Uses Possible. Any of the following uses may be permitted in a planned proposal within a residential general use type designation; provided, that any of such uses shall not be permitted where prohibited within the applicable neighborhood plan. Certain uses may also be excluded from a particular planned residential area if such use(s) are found by the planning director to be incompatible with the surrounding area or unsuitable to the particular site. The final decision shall set forth the uses permitted for the subject property.

a. through o. [NO CHANGE]

p. Certain temporary shelters, per BMC 20.15.

C. [NO CHANGE]

D. Planned Industrial.

1. For all land designated industrial, the following standards shall apply.

2. Range of Uses Possible. Any of the following uses may be permitted in a planned proposal within an industrial general use type designation; provided, that any of such uses shall not be permitted where prohibited within the applicable neighborhood plan. Certain uses may also be excluded from a particular planned industrial area by the planning director if such use(s) are found to be incompatible with the surrounding area or unsuitable to the particular site. The final decision shall set forth the uses permitted for the subject property.

a. through o. [NO CHANGE]

p. Certain temporary shelters, per BMC 20.15.

Section 15. BMC 21.10.040, Types of land use decisions, is amended as follows:

A. Land use decisions are classified into seven review process types based on who makes the decision, the amount of discretion exercised by the decision maker and the amount and type of public input sought.

B. Type I. A Type I review process is an administrative review and decision by the director. It is exempt from notice requirements. If a Type I decision is not categorically exempt from

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City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

SEPA and the SEPA review has not been completed with a prior permit, the Type II process shall be used. Appeals of Type I decisions are decided by the hearing examiner unless the rules for a specific permit or decision specify that no administrative appeal is available. The following are Type I decisions when the application does not require a SEPA threshold decision:

1. through 16. [NO CHANGE]

17. Temporary use, except temporary shelters, per BMC 20.15;

18. through 22. [NO CHANGE]

23. Short-term rentals, per BMC 20.10.037; ~~and~~

24. ~~All other decisions that specify use of the Type I process.~~ The extension of a temporary shelter permit, per BMC 20.15; and

25. All other decisions that specify use of the Type I process.

C. Type II. A Type II review process is an administrative review and decision by the director. Public notice is required. Appeals of Type II decisions are decided by the hearing examiner. The following are Type II decisions:

1. through 13. [NO CHANGE]

14. Short-term rentals, per BMC 20.10.037; ~~and~~

15. ~~Type I decisions that require a SEPA threshold decision and all other decisions specifying a Type II process.~~ Temporary shelters, per BMC 20.15; and

16. Type I decisions that require a SEPA threshold decision and all other decisions specifying a Type II process.

Section 16. The City Council agrees with and adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission attached as **Exhibit B** and incorporated by reference.

PASSED by the Council this 22nd day of October, 2018

Dan Hammill, Council President

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

APPROVED by me this 24th day of October, 2018

Kelli Linville, Mayor

ATTEST:
Andy Asbjornsen, Interim Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published: October 26, 2018

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

BMC Chapter 20.15 Temporary shelters for the homeless.

20.15.010 Purpose.

The purpose of this chapter is to allow and establish a review process for the location, siting, and operation of temporary shelters for the homeless within the City. These regulations are intended to protect public health and safety by requiring safe operations of the shelters for both guests of the shelters and the broader community. These shelters include temporary building encampments, temporary tent encampments, temporary safe parking areas, and temporary tiny house encampments for the homeless. This chapter does not include regulations for interim housing.

20.15.020 Requirements for all temporary shelters, except temporary building encampments.

The following requirements apply to temporary safe parking areas, temporary tent encampments and temporary tiny house encampments approved under this chapter, unless modified by the director during the temporary use permit approval process:

A. Temporary safe parking areas, temporary tent encampments and temporary tiny house encampments must be located a minimum of 20 feet from the property line of abutting properties, unless the director finds that a reduced buffer width will provide adequate separation between the shelter and adjoining uses due to changes in elevation, intervening buildings or other physical characteristics of the site.

B. Temporary safe parking areas, temporary tent encampments and temporary tiny house encampments must not be located within a critical area or its buffer as defined by BMC 16.55.

C. The maximum number of people allowed at one time in a single temporary safe parking area, temporary tent encampment or temporary tiny house encampment will be determined by the director taking into consideration site conditions, but in no case may the number be greater than 100 people. In determining the maximum number of people allowed at each individual encampment, the director shall consider factors such as the size and location of the site, the surrounding land uses, and other contextual factors. The number of people allowed at each site may be reduced based on the characteristics of the population served and necessary services to be provided.

D. No more than 300 people may be housed at one time in temporary safe parking areas, temporary tent encampments and temporary tiny house encampments Citywide. Multiple locations may be permitted, provided the aggregate of people in these three temporary shelter types does not exceed 300. Informed by the Whatcom County point-in-time census of homeless individuals and families, the director may increase the maximum number of people who may be housed in temporary shelters.

E. Fencing adequate to limit access to the site for the safety and security of residents must be installed on the perimeter of the shelter site, provided that fencing does not create a site obstruction at the street or street intersections or curbs as determined by the City engineer. A six-foot tall fence, which may include chain link or other temporary fencing materials, is presumed adequate for this purpose. The director may waive this requirement if there is sufficient vegetation, topographic variation, or other site considerations such that complete perimeter fencing would not be needed to serve this purpose.

F. If provided, exterior lighting must be directed downward and glare must be contained within the shelter site.

G. The following health and safety elements must be provided for the temporary shelter site:

1. Exterior 2A-10BC fire extinguishers within 75 feet from any point in the shelter site;

2. A designated smoking area;

3. Flame-retardant materials for tents over 300 square feet and canopies in excess of 400 square feet;

4. Prohibition of any open flames, except an outdoor heat source approved by the Fire Department;

5. A first aid kit large enough to serve the maximum population of the shelter site;

6. Obstruction-free access aisles as required by the Fire Department;

7. Appropriate power protection devices at any location where power is provided;

8. Trash receptacles in multiple locations throughout the site and regular trash patrols in the immediate vicinity of the site;

9. Regular removal of trash from individual trash receptacles and a centralized area for trash and recycling that is regularly serviced by a local provider of this service;

10. Chemical toilets set back at least 40 feet from all property lines as recommended by the portable toilet service provider, along with the recommended maintenance of these toilets, or access to toilets in an indoor location;

11. Hand-washing stations by the toilets;

12. Running water in an indoor location, or continuous running water in an outdoor location that is discharged to a location approved by the City;

13. Posting at the site and distribution to shelter guests copies of health and safety information provided by the City, county, or any other public agency;

14. Observation of and compliance with all Whatcom County Health Department requirements related to food donations; and

15. Cooking facilities, if provided, may be located in an indoor or outdoor location and must include the following:

a. A sink with running water. If located outdoors, it must include continuous running water that is discharged to a location approved by the City;

b. A nonabsorbent and easily-cleanable food preparation counter;

c. A refrigerator or cooler to keep perishable food cold; and

d. All products necessary to maintain the cooking facilities in clean condition.

H. Tiny house encampments for the homeless must include the following additional indoor safety measures for the tiny homes:

1. A working battery-powered smoke and carbon monoxide alarm;

2. Two openings to allow escape of smoke. Openings must be within 12 inches of the top of the wall and on two opposing walls. Such openings must be a minimum of 12 square inches, with the smallest dimension of one inch. Openings must be screened to keep insects out. Screen openings must be 1/8 inch to 1/4 inch;

3. No fuel gas appliances or equipment;

4. No smoking, lighted candles or other type of flames;

5. The only type of heating devices allowed are portable oil-filled heaters that must be supplied with the unit; and

6. No locks or latches that might inhibit an emergency escape from within the unit. A single cylinder deadbolt lock or lever-handled door latch is permitted, as long as it does not require the use of a tool or key to lock or unlock it from inside the unit.

I. Subject to the limitations in RCW 35.21.915 and RCW 19.27.042, the sponsor and/or managing agency shall ensure compliance with Washington State laws and regulations, the Bellingham Municipal Code, and Whatcom County Health Department regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and/or 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.

J. On-site parking of the sponsor must 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.

K. A transportation plan that includes a description of transit, pedestrian and bicycle access from the subject site to services and schools must be provided.

L. To limit outdoor waiting, the shelter must be open 24 hours per day.

M. All functions associated with the shelter, including outdoor recreation areas, parking, and outdoor waiting, must take place within a building or on the site proposed to house the shelter.

N. On-site supervision must be provided at all times.

O. A code of conduct must be provided that not only protects the health, safety and welfare of shelter guests, but also mitigates impacts to neighbors and the community consistent with RCW 35.21.915. At a minimum, the code must include a prohibition on illegal drug and alcohol use and threatening or unsafe behavior. The sponsor and/or managing agency shall ensure that items deemed as weapons are stored in a safe location.

P. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services.

Q. Sponsors and/or managing agencies shall have either a demonstrated experience providing similar services to homeless guests; and/or certifications or academic credentials in an applicable human service field; and/or applicable experience in a related program with a homeless population. Should a sponsor and/or managing agency not have any of the preceding qualifications, additional prescriptive measures may be required to minimize risk to both guests of the temporary shelter and the broader community.

R. No children under the age of 18 are allowed to stay overnight in a temporary shelter, unless accompanied by a parent or guardian, or unless the shelter is licensed to provide services to this population. If a child under the age of 18 without a parent or guardian present attempts to stay in a shelter not specifically licensed for providing shelter to youth, the sponsor and/or managing agency shall immediately contact Child Protective Services and actively endeavor to find alternative shelter for the child.

S. The sponsor and/or 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.

T. The sponsor and/or managing agency shall take all reasonable and legal steps to obtain verifiable identification information, including full name and date of birth, from current and prospective shelter guests.

U. People who are required to register as a sex offender are prohibited from the shelter. Should the sponsor and/or managing agency become aware of a current or prospective guest who is an unregistered sex offender, they shall immediately contact the Bellingham Police Department. The sponsor and/or managing agency shall provide notice to prospective guests that the sponsor and/or managing agency will report any current or prospective guest required to register as a sex offender to the Bellingham Police Department.

V. Should the sponsor and/or managing agency become aware of a current or prospective guest who has an active felony warrant, it shall follow set protocol (as approved by the Bellingham Police Department) for contacting the Bellingham Police Department and addressing these warrants. The sponsor and/or managing agency shall provide notice to prospective guests that the sponsor and/or managing agency will report any current or prospective guest known to have an active felony warrant to the Bellingham Police Department.

W. The sponsor and/or managing agency shall immediately contact the Bellingham Police Department if someone is rejected or ejected from the shelter when the reason for rejection or ejection is an active warrant or a match on an unregistered 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.

X. The sponsor and/or managing agency shall keep a log of names and dates of all people who stay overnight in the shelter, and a current log must be made available upon demand by any municipal or county law enforcement officer. Status checks of current guests may be routinely

performed by the warrant officers of the Bellingham Police Department through the current log provided by the sponsor and managing agency. The sponsor and/or managing agency shall provide notice to prospective guests that all people staying overnight in the shelter are subject to status checks by the warrant officers of the Bellingham Police Department.

Y. The sponsor, managing agency and shelter guests shall cooperate with the coordinated entry system managed by the Homeless Service Center and other providers of shelters and services for the homeless, and shall make inquiry with these providers regarding the availability of services, unless the sponsor or managing agency can provide these services.

Z. The sponsor and/or managing agency shall provide before photos of the host site.

AA. Upon vacation of the shelter site, all temporary structures and debris shall be removed from the site and the site shall be restored, as near as possible, to its original condition within one calendar week. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

BB. The sponsor and/or managing agency of a temporary shelter located on City-owned property shall obtain prior to permit issuance and maintain in full force and effect, at its own expense, liability insurance naming the City as an additional insured in an amount that the City determines is sufficient to protect it from:

1. All potential claims and risks of loss from perils in connection with any activity that may arise from or be related to the sponsor and/or managing agency's activity upon or the use or occupation of the City property allowed by the permit; and

2. All potential claims and risks in connection with activities performed by the sponsor and/or managing agency by virtue of the permission granted by the permit.

CC. The sponsor and/or managing agency of a temporary shelter located on City-owned property shall, on a form approved by the City, agree to defend, indemnify, and hold harmless the City of Bellingham, its officials, officers, employees, and agents from and against:

1. Any liability, claims, actions, suits, loss, costs, expense judgments, attorneys' fees, or damages of every kind and description resulting directly or indirectly from any act or omission of the sponsor and/or managing agency of a temporary shelter located on City-owned property, its subcontractors, anyone directly or indirectly employed by them, and anyone for whose acts or omissions they may be liable, arising out of the sponsor and/or managing agency's use or occupancy of the City property; and

2. All loss by the failure of the sponsor and/or managing agency of a temporary shelter located on City-owned property to perform all requirements or obligations under the temporary use permit, or federal, state, or City codes or rules.

20.15.030 Requirements for temporary building encampments.

The following requirements apply to temporary building encampments approved under this chapter, unless modified by the director during the temporary use permit approval process:

A. Temporary building encampments are permitted in Industrial General Use Type areas, commercial and industrial areas within Urban Village General Use Type areas, and Commercial

General Use Type areas where hotels and motels are permitted, provided no more than 300 people Citywide are housed in no more than four temporary building encampments. In determining the maximum number of people allowed at each individual encampment, the director shall consider factors such as the size and location of the site, the surrounding land uses, and other contextual factors. The number of people allowed at each site may be reduced based on the characteristics of the population served and necessary services to be provided.

B. Temporary building encampments are not permitted in Residential, Institutional or Public General Use Type areas.

C. When a General Use Type area includes a mix of General Use Type areas, the more restrictive requirements of this chapter apply.

D. Temporary building encampments hosted in existing structures that do not meet building codes at the time of application may be provisionally approved consistent with the requirements of RCW 19.27.042.

E. No more than one bed per 35 square feet of floor area is permitted.

F. Trash receptacles must be provided in multiple locations throughout the temporary building encampment. A regular trash patrol in the immediate vicinity of the site must be provided.

G. The number of toilets required for each encampment will be determined by the director on a case-by-case basis in consultation with the Whatcom County Health Department after a review of factors such as the potential number and composition of guests.

H. Public health guidelines on food donations and food handling and storage, including proper temperature control, must be followed and guests involved in food donations and storage shall be made aware of these guidelines consistent with the Whatcom Health Department requirements.

I. Subject to the limitations in RCW 19.27.042, the sponsor and/or managing agency shall ensure compliance with Washington State laws and regulations, the Bellingham Municipal Code, and the Whatcom County Health Department's regulations. The sponsor and/or 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.

J. A transportation plan that includes a description of transit, pedestrian and bicycle access from the subject site to services and schools must be provided.

K. To limit outdoor waiting, the temporary building encampment must be open 24 hours per day.

L. All functions associated with the temporary building encampment, including outdoor recreation areas, parking, and outdoor waiting, must take place within a building or on the site proposed to house the encampment.

M. On-site supervision must be provided at all times.

N. A code of conduct must be provided that not only protects the health, safety and welfare of shelter guests, but also mitigates impacts to neighbors and the community consistent with RCW

35.21.915. At a minimum, the code must include a prohibition on illegal drug and alcohol use and threatening or unsafe behavior. The sponsor and/or managing agency shall ensure that items deemed as weapons are stored in a safe location.

O. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services.

P. Sponsors and/or managing agencies shall have either a demonstrated experience providing similar services to homeless guests; and/or certifications 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 guests of the temporary building encampment and the community in general.

Q. No children under the age of 18 are allowed to stay overnight in a temporary building encampment, unless accompanied by a parent or guardian, or unless the temporary building encampment is licensed to provide services to this population. If a child under the age of 18 without a parent or guardian present attempts to stay in a temporary building encampment not specifically licensed for providing shelter to youth, the sponsor and/or managing agency shall immediately contact Child Protective Services and actively endeavor to find alternative shelter for the child.

R. The sponsor and/or 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 must be posted on site daily, and their contact information must be provided to the Bellingham Police Department as described above.

S. The sponsor and/or managing agency shall take all reasonable and legal steps to obtain verifiable identification information, including full name and date of birth, from current and prospective shelter guests.

T. People who are required to register as a sex offender are prohibited from the encampment. Should the sponsor and/or managing agency become aware of a current or prospective guest who is an unregistered sex offender, it shall immediately contact the Bellingham Police Department. The sponsor and/or managing agency shall provide notice to prospective guests that the sponsor and/or managing agency will report any current or prospective guest required to register as a sex offender to the Bellingham Police Department.

U. Should the sponsor and/or managing agency become aware of a current or prospective guest who has an active felony warrant, it shall follow set protocol (as approved by the Bellingham Police Department) for contacting the Bellingham Police Department and addressing these warrants. The sponsor and/or managing agency shall provide notice to prospective guests that it will report any current or prospective guest known to have an active felony warrant to the Bellingham Police Department.

V. The sponsor and/or managing agency shall immediately contact the Bellingham Police Department if someone is rejected or ejected from the temporary building encampment when the reason for rejection or ejection is an active warrant or a match on an unregistered 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.

W. The sponsor and/or managing agency shall keep a log of names and dates of all people who stay overnight in the encampment, and a current log must be made available upon demand by any municipal or county law enforcement officer. Status checks of current guests may be routinely performed by the warrant officers of the Bellingham Police Department through the current log provided by the sponsor and/or managing agency. The sponsor and/or managing agency shall provide notice to prospective guests that all people staying overnight in the encampment are subject to status checks by the warrant officers of the Bellingham Police Department.

X. The sponsor, managing agency and encampment guests shall cooperate with the coordinated entry system managed by the Homeless Service Center and other providers of shelters and services for the homeless, and shall make inquiry with these providers regarding the availability of services, unless the sponsor or managing agency can provide these services.

Y. The sponsor and/or managing agency of a temporary building encampment located on City-owned property shall obtain prior to permit issuance and maintain in full force and effect, at its own expense, liability insurance naming the City as an additional insured in an amount that the City determines is sufficient to protect it from:

1. All potential claims and risks of loss from perils in connection with any activity that may arise from or be related to the sponsor and/or managing agency's activity upon or the use or occupation of the City property allowed by the permit; and

2. All potential claims and risks in connection with activities performed by the sponsor and/or managing agency by virtue of the permission granted by the permit.

Z. The sponsor and/or managing agency of a temporary building encampment located on City-owned property shall, on a form approved by the City, agree to defend, indemnify, and hold harmless the City of Bellingham, its officials, officers, employees, and agents from and against:

1. Any liability, claims, actions, suits, loss, costs, expense judgments, attorneys' fees, or damages of every kind and description resulting directly or indirectly from any act or omission of the sponsor and/or managing agency of a temporary building encampment located on City-owned property, its subcontractors, anyone directly or indirectly employed by them, and anyone for whose acts or omissions they may be liable, arising out of the sponsor and/or managing agency's use or occupancy of the City property; and

2. All loss by the failure of the sponsor and/or managing agency of a temporary building encampment located on City-owned property to perform all requirements or obligations under the temporary use permit, or federal, state, or City codes or rules.

AA. Confidential Shelters as defined in the Bellingham Municipal Code are exempt from compliance with this chapter.

BB. Temporary building encampments on property owned or controlled by a religious organization are exempt from subsections 20.15.030.A, 20.15.030.B, and 20.15.030.C of this chapter.

CC. Temporary accommodations for homeless individuals and families located within a church building and accessory in nature to the primary religious use of the church building are not required to comply with this chapter.

DD. The provisions of this chapter apply in addition to the provisions of any other code provision or ordinance. Where there is a conflict, this chapter applies.

20.15.040 Frequency and duration for temporary safe parking areas, temporary tent encampments and temporary tiny house encampments.

A. The director shall not grant a permit for the same site more than once in any calendar year or sooner than 180 days from the date the site was vacated as required in subsection 20.15.020 of this chapter.

B. Temporary safe parking areas and 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. The extension is 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 must specify a date by which the use will be terminated and the site vacated and, where applicable, restored to its pre-existing condition.

C. Temporary tiny house encampments may be approved for a period of between 90 days and up to two years, provided the sponsor and managing agency comply with all permit conditions. Should the original permit be granted for a period of less than two years, the director may grant one or more extension up to a total of two years. Extensions are 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 must specify a date by which the use will be terminated and the site vacated and, where applicable, restored to its pre-existing condition.

20.15.050 Duration for temporary building encampments.
Temporary building encampments may be approved for a period of up to five years, provided the sponsor and managing agency comply with all permit conditions. Should the original permit be granted for a period of less than five years, the director may grant one or more extensions up to a total of five years. Extensions are 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, where applicable, restored to its pre-existing condition.

20.15.060 Permit required.
Establishment of a temporary shelter requires approval of a temporary use permit, as described in this chapter, and compliance with all other applicable City regulations. Permits for temporary shelters will be processed by the City without charge. The director shall have authority to grant, grant with conditions or deny an application for a temporary use permit under this chapter.

20.15.070 Application.

A. Application for a temporary use permit must be made on forms prescribed by the City and accompanied by the following information, provided that the director may waive any of these items upon request by the applicant, finding that the item is not necessary to analyze the application.

B. Prior to submittal of the application, written notice and an opportunity for comment on the proposal must be provided to any licensed child care facility and the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the proposed site. The applicant shall attempt to modify the proposal to respond to comments from administrators of the child care facilities and schools.

C. All temporary shelter applications must include the following information:

1. Names and signatures of the sponsor and managing agency ("applicant");

2. Address and parcel number of the subject property;

3. A vicinity map showing the location of the site in relation to nearby streets and properties;

4. A written summary of the proposal that includes the sponsor and/or managing agency's mission statement, a statement of intent, and how the proposal responds to the requirements of this chapter;

5. A site plan of the property, drawn to scale, showing existing natural features; existing and proposed grades; existing and proposed utilities; existing rights-of-way and improvements within the rights-of-way; existing and proposed buildings; existing and proposed tents and other temporary structures; and other improvements (e.g. landscaping and fencing at the perimeter of the proposed shelter and site and off-street parking);

6. Project statistics, including site area, building coverage, number and location of tents and other temporary structures, and expected and maximum number of guests;

7. Floor plans, drawn to scale, of buildings to be used as temporary shelters, including floor area, labels of all rooms and uses, fixed equipment, cabinets, counters, any cooking facilities, and the location and swing direction of all doors and windows;

8. An operations plan, code of conduct, and transportation plan as outlined in this chapter;

9. A statement of actions that the applicant will take to obtain verifiable identification from all shelter guests and use the identification to obtain sex offender and warrant checks from appropriate agencies;

10. Photographs of the site;

11. A list of other permits that are or may be required for development of the property (issued by the City or other government agencies), insofar as they are known to the applicant; and

12. A list of any requirement(s) in this chapter the applicant is requesting to modify.

20.15.080 Decision and appeal.

A. All temporary shelter applications will be reviewed under a Type II process under BMC 21.10.110; however, the following timelines will override those found in BMC 21.10.110. Final action on permit applications made under this chapter will be rendered within 30 days of submittal, unless extended by mutual agreement between the City and applicant. Within seven calendar

days of receiving a complete application, the director shall publish a notice of application for a temporary use permit. The notice will contain, at a minimum, the date of application, project location, proposed duration and operation of the temporary shelter, maximum number of guests, conditions that will likely be placed on the operation of the shelter, and requirements of the written code of conduct.

B. Decision and notice of decision.

1. 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:

a. 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 shelter;

b. The proposed use meets the requirements of this chapter;

c. The proposed use is in keeping with the goals and policies of the comprehensive plan;

d. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts the proposed shelter 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 and the duration of the shelter will be limited; and

e. All permit conditions are consistent with RCW 35.21.915 and RCW 19.27.042.

2. A notice of such decision stating whether the permit is granted or denied, along with information regarding the procedure for appeal of the decision, will 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 shelter will 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. Because each temporary shelter 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 shelter may have on the area in which it is located and consistent with RCW 35.21.915. In cases where the application for a 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. The director may approve a temporary use permit for a temporary shelter 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 shelter 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 shelter guests and the neighboring communities. Modifications will not be granted if their adverse impacts on guests of the shelter and/or neighboring communities will be greater than those without modification. The burden of proof is on the applicant.

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

EXHIBIT B

PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS

BELLINGHAM PLANNING COMMISSION
FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

TEMPORARY HOMELESS SHELTERS

AUGUST 9, 2018

SUMMARY
Following the public hearing and deliberation on the Bellingham Municipal Code (BMC) amendments for temporary homeless shelters, the Bellingham Planning Commission determined that the changes are consistent with and will implement the goals and policies of the Bellingham Comprehensive Plan and should be recommended for approval.

I. FINDINGS OF FACT

1. Proposal Description:

The draft ordinance defines "temporary homeless shelter" or "temporary shelter" as a shelter 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 shelters include the following:

- Temporary building encampments;
- Temporary safe parking areas;
- Temporary tent encampments; and
- Temporary tiny house encampments.

Temporary shelters would be allowed throughout the community with a temporary use permit and are subject to a set of requirements related to issues such as fencing, lighting, occupancy, parking, code of conduct, points of contact, and trash receptacles. Temporary tiny house encampments would be subject to additional safety requirements, and temporary building encampments would only be permitted in certain zoning districts.

For the purpose of this ordinance, temporary homeless shelters are the same as temporary encampments as defined in RCW 35.21.915, "Temporary encampments for the homeless - Hosting by religious organizations authorized - Prohibitions on local actions." The legislation authorizes religious organizations to host temporary encampments for the homeless (in a building or elsewhere on property owned by religious organization) and limits a local government's ability to regulate them. Cities may enact ordinances to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding shelters on their property. As such, religious organizations would be exempt from certain requirements in the ordinance. RCW 19.27.042, "Cities and counties - Emergency exemptions for housing for indigent persons," authorizes cities and counties to adopt an ordinance or resolution to exempt from state building code requirements buildings

that provide housing for indigent persons. The exemption is limited to existing buildings; the code deficiencies to be exempted must pose no threat to human life, health or safety; the building exempted must be owned or administered by a public agency or nonprofit organization; and the exemption is authorized for no more than five years (may be renewed).

The City recently took steps to establish interim regulations for temporary tent encampments and temporary building encampments based on state legislation. Ordinance 2018-01-001 declared an emergency; adopted interim zoning regulations for the siting, establishment, and operation of temporary tent encampments; and set 12 months as the effective period of the interim zoning regulations to allow the city to study the land use impacts of such uses and develop permanent regulations per RCW 35.21.915. In February, City Council amended the ordinance (Ordinance 2018-02-005) to allow not only qualifying religious organizations, but also registered not-for-profit, tax-exempt 501(c)3) organizations, the opportunity to establish and operate temporary tent encampments. That ordinance was amended (Ordinance 2018-04-007) in April to include regulations for temporary building encampments. In 2017, the City Council approved Resolution 2017-26 exempting the low-barrier shelter at 1013 W. Holly Street from compliance with state building code requirements until May 22, 2022 per RCW 19.27.042.

The subject proposal codifies regulations for temporary shelters, whereas the interim regulations provide a path forward for this use for one year from the ordinance adoption date. If the subject ordinance is adopted prior to the sunset period for the interim ordinance, it will supplant the interim ordinance.

2. Background Information:

The Planning Commission met in two work sessions prior to the public hearing to review the draft ordinance. Public comment was taken at each of these meetings. Meeting materials for each meeting can be found by searching for the meeting date at https://meetings.cob.org/onbaseagendaonline.

March 22, 2018: Planning Commission Briefing on Up-coming Work Sessions/Public Hearing for Unsheltered Zoning
On March 22, staff provided a brief presentation on the up-coming work sessions and public hearing on permanent regulations for homeless facilities and shelters.

April 26, 2018: Planning Commission Work Session to Review the Draft Regulations
On April 26, the Planning Commission reviewed draft regulations for temporary and long-term homeless shelters in permanent structures. The Planning Commission provided staff with suggested changes to the regulations, as well as questions to research prior to the next work session.

June 7, 2018: Planning Commission Work Session on the Draft Ordinance
On June 7, staff provided answer's to the Planning Commission's questions from the April work session and reviewed additional staff changes to the ordinance. Topics covered include managing agencies, code of conduct, RCW 35.21.915, definitions, operations plans, and permit expiration timeframes for tiny house encampments. It was also noted by staff that additional time for review was needed for the long-term shelters; thus, an ordinance for

temporary shelters would be coming before the Commission separately from an ordinance on long-term shelters.

3. Public Comments:

Notice of the Planning Commission public hearing was mailed to neighborhood association representatives and other parties with an interest in this topic. Notice was also published in the Bellingham Herald at least 30 days prior to the hearing.

One public comment in support of safe parking areas was submitted prior to the public hearing. All public comments are posted on the City's website and were distributed to the Planning Commission.

4. State Environmental Policy Act (SEPA) Determination:

A non-project SEPA Determination of Non-Significance (DNS) was issued on July 22, 2018. Notice was mailed to the appropriate agencies and published in the Bellingham Herald and on the City's website. No public comments were submitted on the DNS prior to publication of the meeting packet.

5. Consistency with the Bellingham Comprehensive Plan:

The Bellingham Comprehensive Plan identifies the guiding principles and goals for decisions regarding changes to the City's land use and development code. The proposed amendments are consistent with and will implement the goals and policies of the comprehensive plan, particularly those related to providing shelter for the homeless. Relevant goals and policies include the following:

Policy LU-27 Allow nonprofit homeless shelters outright in Industrial zones and conditionally in Commercial zones.

GOAL H-4 Support housing options for special needs populations.

Policy H-49 Support implementation of the Whatcom County Plan to End Homelessness.

Policy H-50 Continue to encourage and support the development of emergency, transitional and permanent supportive housing with appropriate on-site services for people with special needs and the homeless throughout the City and county. Moving people into permanent housing as quickly as possible should be a priority.

Policy H-51 Maintain an inventory and expand the city's supply of interim housing for target populations.

Policy H-52 Foster and support partnerships that have proven to be successful in reducing homelessness, preventing homelessness and assisting the chronically homeless with needed care.

II. Conclusions

Based on the staff report and information presented at the public hearing, the Planning Commission concludes:

1. The proposed amendments define "temporary shelters" for the homeless in the BMC and permit this use in certain circumstances if requirements and standards are met.

2. The proposed amendments comply with state law (RCW 35.21.915) by permitting temporary encampments on land owned or controlled by religious organizations with health and safety standards.

3. The proposed amendments comply with and will implement the goals and policies of the Bellingham Comprehensive Plan.

III. Recommendations

After careful consideration of all public comments, the staff report, other meeting materials, and the Findings and Conclusions, the Planning Commission recommends, with a 5-0 vote, that the City Council approve the proposed amendments to the BMC as shown in the draft ordinance.

ADOPTED this 9th day of August, 2018.

Planning Commission Chairperson

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

City Attorney