

**ORDINANCE NO. 2020-02-003**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, MODIFYING BELLINGHAM MUNICIPAL CODE CHAPTER 20.15, TEMPORARY SHELTERS, TO ALLOW TEMPORARY BUILDING ENCAMPMENTS IN PUBLIC ZONING DISTRICTS, REQUIRE TEMPORARY SHELTERS THAT ARE ACCESSORY TO THE PRIMARY RELIGIOUS USE OF A BUILDING TO DEMONSTRATE COMPLIANCE WITH CITY BUILDING AND FIRE CODES, EXEMPT VERY SHORT-TERM ADVERSE WEATHER SHELTERS FROM PERMIT REQUIREMENTS, ALLOW THE CLOSURE OF TEMPORARY SHELTERS THAT VIOLATE THEIR PERMITS, AND MAKE ADDITIONAL CHANGES TO ENSURE CONSISTENCY WITH THE CITY'S INTERIM HOUSING ORDINANCE.**

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

**WHEREAS**, this crisis necessitates adoption of amendments to the temporary shelter regulations to address emerging issues since adoption of the original temporary shelter regulations in October 2018 (Ordinance NO. 2018-10-019); and

**WHEREAS**, temporary shelters include temporary tent encampments, temporary tiny home encampments, temporary building encampments, and temporary safe parking areas for people experiencing homelessness; and

**WHEREAS**, the original temporary shelter regulations allow temporary tent encampments, temporary safe parking areas and temporary tiny house encampments in all zones; however, temporary building encampments are only allowed in Industrial zones, commercial and industrial areas in Urban Village zones, and Commercial zones where hotels and motels are allowed; and

**WHEREAS**, the original temporary shelter regulations prohibit temporary building encampments from Public zones, as City staff had concerns regarding the lack of suitable buildings for this use and potential conflicts with City programs; and

**WHEREAS**, upon further review, concerns regarding City-owned properties hosting temporary building encampments have been resolved; and

**WHEREAS**, many City-owned properties, including parks, are located in Public zones and could offer possible locations for temporary building encampments; and

**WHEREAS**, allowing temporary building encampments in Public zones will allow the City and other entities with this zoning to provide temporary shelter for people experiencing homelessness; and

**WHEREAS**, unless exempted, a temporary shelter requires a Type II permit, which is approved administratively by the Planning and Community Development Director; 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 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 people experiencing homelessness; and

**WHEREAS**, requiring managing agencies of temporary shelters that are accessory to the primary religious use of a church building to demonstrate compliance with building and fire codes or request an exemption per RCW 19.27.042 protects public health and safety and complies with RCW 35.21.915; and

**WHEREAS**, providing the City with the ability to close a temporary shelter until compliance is achieved seeks to protect public health and safety; and

**WHEREAS**, Ordinance NO. 2018-10-019 includes a reduced timeframe for approval of a temporary shelter permit; however, that period does not allow the City to quickly react to short duration adverse weather emergencies; and

**WHEREAS**, exempting adverse weather shelters that are of very short duration (less than 14 successive days) from the temporary shelter permit will allow the establishment of encampments to occur immediately when needed; and

**WHEREAS**, Emergency Ordinance NO. 2019-08-026 established interim zoning controls that were enacted under RCW 36.70A.390 and/or RCW 35.62.200 to allow the establishment and operation of temporary building encampments in Public zones and to exempt very short term (14 days or less) adverse weather shelters from the review process under Bellingham Municipal Code 20.15.070; and

**WHEREAS**, the interim zoning is in effect for one year, beginning on August 26, 2019, and ending on August 26, 2020, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the interim zoning before August 26, 2020; and

**WHEREAS**, the City Council has had time to conduct appropriate research to analyze the effects of the proposed changes; and

**WHEREAS**, the subject ordinance includes permanent regulations that cause the interim zoning (Emergency Ordinance NO. 2019-08-026) 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 October 17, 2019; 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 October 18, 2019; 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 November 7, 2019; and

**WHEREAS**, the subject ordinance includes changes recommended by staff that were not considered by the Planning Commission on November 7, 2019, but are necessary for consistency purposes with the draft interim housing ordinance also recommended by the Planning Commission on November 7, 2019; 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 and thereafter made Findings of Fact, Conclusions and Recommendations for approval of the proposed amendments with a 6-0 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 January 27, 2020; 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 title for BMC 20.15, "Temporary Shelters for the Homeless," is hereby amended to "Temporary Shelters for People Experiencing Homelessness."

**Section 2.** BMC 20.15.010, Purpose, is hereby amended as follows:

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 people experiencing homelessness within the city~~. These regulations are intended to protect public health and safety by requiring safe operations of the shelters for both ~~the shelter guests of the shelters~~ and the broader community. ~~These Temporary~~ 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.

**Section 3.** BMC 20.15.020, Requirements for all temporary shelters, except temporary building encampments, is hereby amended as follows:

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: These three temporary shelter types are permitted in all general use type areas.

[NO CHANGES TO A – G OF THIS SECTION]

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

[NO CHANGES TO 1 – 6 OF THIS REQUIREMENT]

[NO CHANGES TO I – J OF THIS SECTION]

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.

[NO CHANGES TO L OF THIS SECTION]

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

[NO CHANGES TO N OF THIS SECTION]

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 the on-site use or sale of alcohol and illegal drugs ~~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.

[NO CHANGES TO P OF THIS SECTION]

Q. Sponsors and/or managing agencies shall have either a demonstrated experience providing similar services to ~~homeless guests~~ people experiencing homelessness; and/or certifications or academic credentials in an applicable human service field; and/or applicable experience in a related program with ~~a homeless population~~ people experiencing homelessness. Should ~~an individual or organization 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 ~~in general~~.

[NO CHANGES TO R – S OF THIS SECTION]

T. For health and safety reasons, 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 and shall keep a log containing this information.

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-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 who is an unregistered ~~required to register as a~~ sex offender to the Bellingham police department. Managing agencies are not permitted to request a waiver from this requirement per section 20.15.080.D of this chapter, unless they can demonstrate through the required operations plan that they have the experience and capacity needed to manage this population.

[NO CHANGES TO V OF THIS SECTION]

~~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. W. 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. Managing agencies and the Bellingham police department shall establish requirements for appropriate access and coordination for the subject shelter and its residents.~~

~~Y. X. The sponsor, or managing agency and shelter guests shall cooperate coordinate with the coordinated entry system managed by the Homeless Service Center for referrals to their program and with other providers of shelters and services for the homeless people experiencing homelessness to encourage access to all appropriate services for their guests and shall make inquiry with these providers regarding the availability of services, unless the sponsor or managing agency can provide these services.~~

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

AA. Z. 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 replant areas in which vegetation had been removed or destroyed.

~~BB. The sponsor and/or managing agency of a 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 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 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 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.~~

[NO OTHER CHANGES TO THIS SECTION]

**Section 4.** BMC 20.15.030, Requirements for temporary building encampments, is hereby amended as follows:

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, ~~and public general use type areas~~, 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, ~~or~~ institutional ~~or public~~ general use type areas.

[NO CHANGES TO C - I OF THIS SECTION]

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.

[NO CHANGES TO K OF THIS SECTION]

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

[NO CHANGES TO M OF THIS SECTION]

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 the on-site use or sale of alcohol and illegal drugs ~~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.

[NO CHANGES TO O OF THIS SECTION]

P. Sponsors and/or managing agencies shall have either a demonstrated experience providing similar services to ~~homeless guests~~ people experiencing homelessness; and/or certifications or academic credentials in an applicable human service field; and/or applicable experience in a related program with ~~a homeless population~~ people experiencing homelessness. Should ~~an individual or organization~~ 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 building encampment and the broader community ~~in general~~.

[NO CHANGES TO Q - R OF THIS SECTION]

S. For health and safety reasons, ~~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 and shall keep a log containing this information.

T. 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~~ 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 who is an unregistered required to register as a sex offender to the Bellingham police department. Managing agencies are not permitted to request a waiver from this requirement per section 20.15.080.D of this chapter, unless they can demonstrate through the required operations plan that they have the experience and capacity needed to manage this population.

[NO CHANGES TO U OF THIS SECTION]

~~V. 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.~~

~~W. V. 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. Managing agencies and the Bellingham police department shall establish requirements for appropriate access and coordination for the subject shelter and its residents.~~

~~X. W. The sponsor, or managing agency and shelter guests shall cooperate coordinate with the coordinated entry system managed by the Homeless Service Center for referrals to their program and with other providers of shelters and services for the homeless people experiencing homelessness to encourage access to all appropriate services for their guests 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 (A), (B), and (C) of this section.~~

~~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.~~

[NO OTHER CHANGES TO THIS SECTION]

**Section 5.** The section number for BMC 20.15.060, Permit required, is hereby amended to BMC 20.15.040, which is hereby amended as follows:

~~A.~~ 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 the application for a temporary use permit under this chapter.

~~B.~~ During adverse weather conditions when other shelters for people experiencing homelessness are at, or anticipate being at, full capacity, emergency temporary building encampments of a very limited duration (less than 14 consecutive calendar days of continuous operation) that are necessary to provide additional capacity are exempt from the requirements of this chapter; provided, that the building official, fire marshal and county health department find that the proposed emergency temporary location poses no threat to human life, health or safety. An "emergency" is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time frame too short to allow strict compliance with the requirements of this chapter.

[NO OTHER CHANGES TO THIS SECTION]

**Section 6.** The section number for BMC 20.15.040, Frequency and duration for temporary safe parking areas, temporary tent encampments and temporary tiny house encampments, is hereby amended to BMC 20.15.050.

[NO OTHER CHANGES TO THIS SECTION]

**Section 7.** The section number for BMC 20.15.050, Duration for temporary building encampments, is hereby amended to BMC 20.15.060.

[NO OTHER CHANGES TO THIS SECTION]

**Section 8.** BMC 20.15.070, Application, is hereby amended as follows:

[NO CHANGES TO A – B IN THIS SECTION]

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

[NO CHANGES TO 1 - 8 IN THIS SECTION]

~~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. 9.~~ Photographs of the site;

~~11. 10.~~ A list of other permits that are ~~or may be~~ required for ~~development of the property~~ the project (issued by the city or other government agencies), insofar as they are known to the applicant; and

~~12. 11.~~ A list of any requirement(s) in this chapter the applicant is requesting to modify. If requesting a waiver from one or more of the standards in this chapter, a list of the standards requested for waiver(s), along with a brief description of how the waiver(s) would result in a safe shelter with minimal negative impacts to the host community under the specific circumstances of the application.

[NO OTHER CHANGES TO THIS SECTION]

**Section 9.** The title for BMC 20.15.080, “Decision and appeal,” is hereby amended to “Waivers, decision and appeal.”

[NO OTHER CHANGES TO THIS SECTION]

**Section 10.** BMC 20.15 is hereby amended to add a new section, BMC 20.15.090, Permit compliance, which is hereby amended as follows:

If a sponsor and/or managing agency fails to comply with the regulations of this chapter and conditions of approval, the director shall work with the applicant to achieve voluntary compliance. If voluntary compliance cannot be achieved, the director may close the shelter until the sponsor and/or managing agency come into compliance with this chapter and the conditions of approval. Any such decision may be appealed to the Hearing Examiner in accordance with BMC 21.10.250.

**Section 11.** BMC 20.15 is hereby amended to add a new section, BMC 20.15.100, Exemptions, which is hereby amended as follows:

A. The following uses are exempt from compliance with this chapter:

1. Confidential shelters as defined in the Bellingham Municipal Code;
2. Temporary accommodations for people experiencing homelessness that are within a church building and accessory in nature to the primary religious use of the church building, provided the managing agency demonstrates to the City that the portion of the church building used to accommodate people experiencing homelessness meets City building and fire codes, or obtains an exemption from state building codes per RCW 19.27.042.
3. During adverse weather conditions when other shelters for people experiencing homelessness are at, or anticipate being at, full capacity, emergency temporary building encampments of a very limited duration (less than 14 consecutive calendar days of continuous operation) that are necessary to provide additional capacity, provided that the building official, fire marshal and county health department find that the proposed temporary location poses no threat to human life, health or safety. An "emergency" is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a timeframe too short to allow strict compliance with the requirements of this chapter.

B. 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.

**Section 12.** BMC 20.15 is hereby amended to add a new section, 20.15.110, Other code provisions, which is hereby amended as follows:

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.

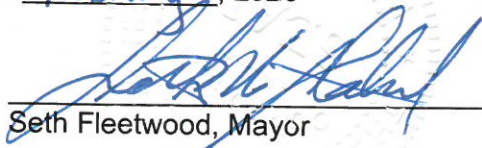
**Section 13.** The City Council agrees with and adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission attached as **Exhibit A** and incorporated by reference.

**PASSED** by the Council this 10<sup>th</sup> day of February, 2020

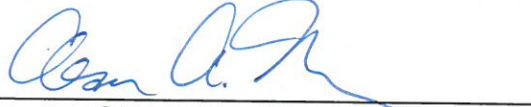


Gene Knutson, Council President

APPROVED by me this 12<sup>th</sup> day of February, 2020

  
\_\_\_\_\_  
Seth Fleetwood, Mayor

ATTEST:   
\_\_\_\_\_  
Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Office of the City Attorney

Published: February 14, 2020

## BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

### AMENDMENTS TO TEMPORARY SHELTER REGULATIONS

NOVEMBER 7, 2019

#### SUMMARY

Following the public hearing and deliberation on amendments to BMC Chapter 20.15, 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:

Temporary safe parking areas and tent and tiny house encampments are allowed in all zones; however, temporary building encampments are only allowed in Industrial zones, commercial and industrial areas in Urban Villages, and Commercial zones where hotels and motels are allowed. When the temporary shelter regulations were adopted last fall, these areas were identified as the most suitable zoning districts for temporary building encampments, as this use could be approved for up to five years and is most similar in nature to other uses that allow temporary guests, such as hotels and motels. Temporary building encampments are not allowed in Residential, Institutional or Public zones. Staff did not recommend that temporary building encampments be allowed in Public zones due to concerns regarding potential impacts on the availability of City parks and other properties for scheduled programs and the lack of suitable public buildings for this use. Upon further review, staff has since identified suitable public buildings that could be used on a temporary basis during the cold winter months. Many City-owned properties, including parks, are located in Public zones and could offer possible locations for temporary building encampments, especially in adverse weather conditions. Excluding temporary building encampments from City buildings in Public zones limits the City's ability to be nimble in providing temporary shelter to people experiencing homelessness.

As such, the draft ordinance amends BMC 20.15.020.A and B to allow temporary building encampments to be established in Public zoning districts through a Type II review process. Type II permits include public notice and are approved by the Planning Director. Temporary building encampments in Public zones would be required to comply with same requirements as other temporary shelters, including those related to occupancy, trash receptacles, toilets, food handling and storage, on-site supervision, a code of conduct with a prohibition on alcohol and illegal drug use, an operations plan, points of contact, and a prohibition on sex offenders and people with active felony warrants.

Temporary accommodations for people experiencing homelessness that are within a church building and accessory to the primary religious use of a church building are exempt from BMC 20.15; however, for public health and safety reasons, the City's legal staff recommends

amending BMC 20.15.030.CC to require managing agencies to demonstrate to the City that these accessory temporary shelters meet City building and fire codes, or obtain an exemption from state building codes per RCW 19.27.042. This state law 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.

Currently, the City can respond to an emergency by following the requirements of BMC Chapter 2.57; however, the intent and purpose of that process is to address community-wide impacts associated with a natural disaster. Experience has shown that, while effective, this process is cumbersome as it relates to the more limited needs of adverse weather shelters. As proposed, the new section, BMC 20.15.060.B, would exempt from review adverse weather shelters that are of very short duration (less than 14 successive days). This will allow the establishment of such facilities to occur immediately when needed.

For public health and safety reasons, the City's legal staff recommends adding a section that provides the City with the ability to close a shelter to achieve compliance with BMC 20.15 and permit conditions if compliance isn't able to be achieved voluntarily. The new permit compliance section, BMC 20.15.090, mirrors a similar section in the interim housing ordinance, which will also be discussed at the November 7, 2019, Planning Commission meeting.

## **2. Background Information:**

The Planning Commission met in several work sessions and held a public hearing when reviewing the temporary shelter regulations last year. Public comment was taken at each of these meetings. Meeting materials for each meeting can be found on this webpage: <https://www.cob.org/services/housing/homeless/Pages/temporary-longterm-shelters.aspx>. This webpage also includes information on the Planning Commission's review of an ordinance for interim housing, also known as facilities of longer operational duration than temporary shelters.

The City recently established Emergency Ordinance NO. 2019-08-026 to modify BMC 20.15 to allow temporary building encampments to be established in Public zones and to exempt very short-term adverse weather shelters from the permitting process. This ordinance declared an emergency, adopted interim modifications to BMC 20.15 and set 12 months as the effective period of the interim regulations to allow time to study the land use impacts of such uses and develop permanent regulations per RCW 36.70A.390 and RCW 35.63.200. If the subject draft ordinance is adopted prior to the sunset period for the interim ordinance, it will supplant the interim ordinance.

## **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.

Prior to publication of the meeting packet for the November 7, 2019, public hearing, the City received one public comment expressing support for temporary building encampments with

responsible staffing. Public comments are posted on the City's website and were distributed to the Planning Commission.

#### **4. State Environmental Policy Act (SEPA) Determination:**

An addendum (SEP2019-0050) to the non-project SEPA Determination of Non-Significance (DNS) that was issued for the amendments establishing temporary shelter regulations (SEP2018-0030) was issued for the subject proposal on October 18, 2019. Notice of the addendum was mailed to the appropriate agencies.

#### **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. Excluding temporary public encampments from Public zones is not in the public's interest, as it does not allow the City to be nimble in situations when temporary shelter is unavailable or difficult to establish elsewhere. As such, the proposed amendments allow temporary building encampments to be established in Public zoning districts through a Type II review process if certain requirements and standards are met (BMC 20.15.030.A and B).

2. Requiring managing agencies of temporary shelters that are accessory to the primary religious use of a church building to demonstrate compliance with building and fire codes or request an exemption per RCW 19.27.042 seeks to protect public health and safety and complies with RCW 35.21.915. As such, the proposed amendments clarify this requirement in BMC 20.15.030.CC.
3. Requiring very short-term adverse weather shelters to obtain a temporary shelter permit is not in the public's interest, as it does not allow the City or other managing agencies to respond quickly to short duration adverse weather emergencies such as very cold temperatures or snow. As such, the proposed amendments exempt very short-term adverse weather shelters from the temporary shelter permitting process to allow the establishment of these encampments to occur immediately when needed (BMC 20.15.060.B).
4. Providing the City with the ability to close a temporary shelter until compliance is achieved seeks to protect public hearing and safety. As such, the proposed amendments include a permit compliance section in BMC 20.15.090.
5. The proposed amendments comply with and will implement the goals and policies of the Bellingham Comprehensive Plan.

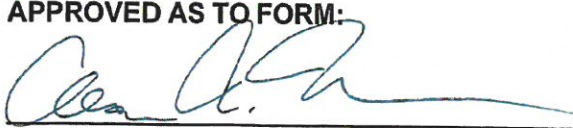
### III. RECOMMENDATIONS

After careful consideration of all public comments, the staff report, other meeting materials, and the Findings and Conclusions, the Planning Commission recommends, with a 6-0 vote, that the City Council approve the proposed amendments to the BMC as shown in the draft ordinance.

ADOPTED this 7<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
Planning Commission Chairperson

ATTEST: Heather Aven  
Recording Secretary

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney