



**Legislative Department
Seattle City Council
Memorandum**

Date: January 28, 2015

To: Planning, Land Use, and Sustainability (PLUS) Committee

From: Eric McConaghy, Council Central Staff

Subject: **Council Bill (CB) 118310:** AN ORDINANCE relating to land use and zoning; amending Sections 23.42.054, 23.54.015, 23.76.004, 23.76.006, 23.76.032, and 23.84A.038 of the Seattle Municipal Code; and adding new Section 23.42.056; to permit transitional encampments for homeless individuals as an interim use on City-owned or private property.

Overview

On February 3, 2015 the PLUS Committee will discuss Council Bill (CB) 118310. The effect of CB 118310 would be to amend the Land Use Code, Title 23 of the Seattle Municipal Code (SMC), to provide a new interim use permit for transitional encampments and to add provisions regarding transitional encampments as accessory uses hosted by religious organizations. “Transitional encampment”, as defined in the SMC, “means a use having tents or a similar shelter that provides temporary quarters for sleeping and shelter. The use may have common food preparation, shower, or other commonly-used facilities that are separate from the sleeping shelters.” Attachment A to this memorandum provides current information about the four, legally-established encampments in Seattle.

The Seattle Municipal Code (SMC) organizes land use decisions into five categories. “Procedures for the five different categories are distinguished according to who makes the decision, the type and amount of public notice required, and whether appeal opportunities are provided.” (SMC 23.76.004.A) The table below provides a quick reference to the five types of land use decision. This memorandum refers to Type I and Type II.

Type I:	Director’s decision; no administrative appeal	notice not required*	DPD Director’s decisions, consolidated in Master Use Permits (MUPs)
Type II:	Director’s decision; appealable to hearing examiner	notice required	
Type III:	Full subdivisions ; no administrative appeal	notice required	Hearing Examiner’s decision
Type IV:	Council decision – quasi-judicial	notice required	Council decisions
Type V:	Council decision – legislative	notice required	

* Notice is required for projects in MPC zones that are subject to Master Planned Community design review.

The proposal would create a Type I Master Use Permit for transitional encampment interim use, adding to Seattle’s existing regulations that allow for transitional encampment (encampment):

1. Type I, 4-week maximum, temporary use permit;
2. Type II 6-month maximum, temporary use permit; and
3. accessory use to a religious facility.

The proposed ordinance includes provisions for the proposed new permit for transitional encampment interim use, covering:

- duration of the permit;
- length of use of sites;
- maximum number of permits;
- location and distance between encampments;
- parking and vehicles;
- operating requirements; and
- rulemaking authority for the Department of Planning and Development (DPD) Director, in consultation with the Human Services Department Director.

“A transitional encampment is allowed as an accessory use on a site in any zone, if the established principal use of the site is as a religious facility or the principal use is on property owned or controlled by a religious organization, subject to the (health and safety) provisions...” (SMC 23.42.054) The proposal would add the following provisions to this code section:

- Individuals under the age of 18 that are not accompanied by a parent or legal guardian shall not be permitted in an encampment and
- Operators or applicants must file a site plan with the Seattle Department of Planning and Development for informational purposes and not subject to City review or permitting requirements.

The full text of Council Bill 118310 is available online:

<http://clerk.seattle.gov/~scripts/nph-brs.exe?s3=118310&s4=&s5=&s1=&s2=&S6=&Sect4=AND&l=0&Sect2=THESON&Sect3=PLURON&Sect5=CORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F~public%2Fcbor1.htm&r=1&f=G>

The Department of Planning and Development (DPD) Director’s Report, filed in Clerk File 314244, describes the proposal in detail, and provides a brief history of recent encampment legislation considered and adopted by the City Council. City Council last considered legislation concerning transitional encampments in 2013. The Report is available online:

<http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=314244&s2=&s4=&Sect4=AND&l=20&Sect2=THESON&Sect3=PLURON&Sect5=CFCF1&Sect6=HITOFF&d=CFCF&p=1&u=%2F~public%2Fcfcl1.htm&r=1&f=G>

Observations

About the proposal

Under the current land use code, encampment as an accessory use to a religious facility does not require a permit. This would not change under the new proposal. However, the proposal does add an option for permitting encampments in Seattle. The table allows for a comparison of select aspects of the options (the 4-week, temporary use permit is not shown):

<i>options</i>	<i>Type</i>	<i>Notice</i>	<i>Appeal</i>	<i>Duration</i>	<i>Dispersion</i>	<i>Locational Standards</i>
Interim use (proposed)	I	14-day notice before established; TBD outreach requirements under a Director's Rule	No	year	1 mile from each other; none from accessory use encampments or from temporary use	Industrial, Downtown, SM, NC2, NC3, C1, or C2 (some exceptions)
Temporary Use	II	at time of complete application: Land Use Information Bulletin, Mailed notice, placard	Yes	6 months	None	None
Accessory to Religious Uses	No Permit Required	None	No	Unlimited	None	All zones on sites owned or controlled by religious institutions

The proposed changes to the code are not necessary in order for Seattle to allow encampment on City property or on private property. The proposed changes are not necessary in order for Seattle to contract with an encampment operator to lease City property with contract conditions such as those described in the proposed bill, nor are they necessary for the City to contract with a service provider to operate an encampment, with similar conditioning.

Seattle's current land use regulations allow the DPD Director to "grant, deny or condition applications for...temporary...uses not otherwise permitted or not meeting development standards in the zone." (SMC 23.42.040) The conditions on a temporary use permit for a transitional encampment could be similar to those specified in the proposal.

Each of the three, possible encampments that could be permitted under the new transitional encampment interim use permit would be required to be located at least one mile from each other and from any established encampment accessory to a religious facility or accessory to other principal uses on property owned or controlled by a religious organization. The proposed, new "subsection 23.42.056.A.6 shall not apply to encampments on sites owned or controlled by religious organizations, or to any legally-established transitional encampment interim use that provides shelter for fewer than ten persons."

The exemption for encampments accessory to religious facilities, or principal uses etc..., makes sense; the City of Seattle cannot constrain the location of these encampments under state law.

The exemption for any legally-established encampment for fewer than ten persons is not as easily understood. It is reasonable to ask why an encampment operator would apply for one of the new permits for fewer than ten persons. Also, would the permit become void for such an encampment if the number of persons sheltering there grew to ten or more?

Similarly, the proposal does not clearly discuss how any encampments permitted as temporary uses would be considered in determining the location of new encampments. The answers to these questions have

consequences in terms of both the location and the possible total number of legally-established encampments in Seattle simultaneously.

The proposed changes are additions to the current code for a limited amount of time. On March 31, 2020, the proposed ordinance making the changes would be automatically repealed without subsequent Council action (sunset). Seattle's regulations regarding transitional encampments would reset to the current, pre-enactment regulations, notwithstanding any separate changes to the code during the time between the adoption of the proposed changes and the sunset date.

About perspectives on encampments

The Mayor's Task Force on Unsheltered Homelessness proposed in their report to the Mayor that the City "expand and define City policy and (the City's) role in siting homeless encampments." Most of the details of recommendation of the Task Force are included in the proposed legislation. However, the Task Force recommended a maximum number of seven encampment sites with as many as 100 individuals per site and the proposed bill limits the number of sites to three, with 100 individuals per site.

A recital of the proposed ordinance states that the Mayor has directed HSD to "make recommendations to better align (the City's) efforts to end homelessness with national best practices." The United States Interagency Council on Homelessness (USICH) does not characterize encampments as a best practice to end homelessness:¹

Another recital of the proposed bill concurs regarding best practice and provides context for tent encampments in Seattle, stating that "the City's focus on solutions for people who are homeless should be a roof-over-head and services to connect individuals with a pathway toward long-term housing, however, the current capacity of our housing and homeless services continuum cannot meet the needs of all those who are homeless and, as an alternative, tent encampments can offer a sense of safety and community while seeking longer term housing options;

On December 8, 2014, the Metropolitan King County Council passed Ordinance 17950. The ordinance extends King County's existing regulations related to temporary homeless encampments through January 1, 2025. The ordinance added provisions to encampments regulations related to public notice, duration of encampments, criminal checks for encampment residents, and enforcement of health and safety violations.

In particular, the duration of a homeless encampment at any specific location in King County shall not 122 days at any one time, including setup and dismantling of the homeless encampment and a homeless encampment may be located at the same site in King County no more than once every twelve months.

<http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=1913271&GUID=5D291FF2-C6A4-462E-B6ED-76EBD36A1868&Options=ID|Text|&Search=2014-0424>

About City funding and leases for encampments

Currently, HSD does not provide direct financial support to encampment operators, instead HSD contracts directly for waste management, portable toilets, and other services for encampments. Note that the proposed permit requires that an encampment operator maintain insurance "at its own expense."

A recital of the proposed ordinance states that it is the "intent of the Mayor and the City Council that any encampment operator seeking City funding for operations or a lease agreement for use of any designated City-owned properties to site an encampment would be required to participate in the City's Homelessness Management Information System (HMIS) as managed by the Human Services Department." The

¹ USICH (http://usich.gov/about_us/) is charged with the mission "to coordinate the Federal response to homelessness and to create a national partnership at every level of government and with the private sector to reduce and end homelessness..."

proposed bill does not amend the Land Use Code, Title 23, to require encampment operators to participate in HMIS as part of a land use permit because it cannot; the permit requirements must be rationally related to land use. The Council could rely on the Executive to carry out the stated intent in any contracts for funding or lease agreements.

Or, the Council could amend the SMC, not Title 23, to require encampment operators seeking City funding or a lease agreement for use of City-owned properties to participate in HMIS, or other conditions. If Council wished to do so, then a new bill including some or all of the provisions of CB 118310 and the requirements for encampment operators receiving City funding or leasing City property could be introduced. Or, Council could introduce another bill dealing with requirements for funding or leasing City property, independent of CB 118310.

About the One Night Count for 2015

The recital providing the statistics from the One Night Count for Seattle could be updated with the recently completed count for 2015: more than 2,800 men, women and children sleeping outdoors without shelter between 2:00 and 5:00 a.m. on January 23, 2015.

(http://www.homelessinfo.org/what_we_do/one_night_count/2015_results.php)

Next Steps

PLUS may continue the discussion of CB 118310 on February 20, 2015. PLUS will hold a public hearing on the matter on February 26, 2015; 30-day notice for the hearing has been published and is available online here: <http://web1.seattle.gov/dpd/luib/Notice.aspx?BID=988&NID=18860>

PLUS will continue discussion, possibly consider amendments and take action on CB 118310 on March 3, 2015.

Attachment:

Attachment A Transitional encampments in Seattle