



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-500

File ID:	AB2021-500	Version:	1	Status:	Adopted
File Created:	08/11/2021	Entered by:			
Department:		File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:	09/28/2021		
Agenda Date:	09/28/2021	Enactment #:	ORD 2021-055		

Primary Contact Email: maamot@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Whatcom County Zoning Code Relating to Temporary Homeless Facility Regulations

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

<u>Date:</u>	<u>Acting Body:</u>	<u>Action:</u>	<u>Sent To:</u>
09/14/2021	Council	SUBSTITUTE INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner	
		Nay: 0	
		Absent: 0	
09/28/2021	Council	ADOPTED	
		Aye: 7 Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner	
		Nay: 0	
		Absent: 0	

Attachments: Staff Memo, Draft Ordinance, Substitute Ordinance (Temp Homeless Facility Regs), Planning Commission Findings

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: 9/14/21

ORDINANCE NO. 2021-055

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY ZONING CODE RELATING TO
TEMPORARY HOMELESS FACILITY REGULATIONS**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations;

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare a draft ordinance and proposed revisions to the County's land use regulations relating to these facilities.
2. The proposal is to amend the Whatcom County Zoning Code (Title 20) as follows:
 - a. Add a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17); and
 - b. Add definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).
3. Notice of the subject amendments was submitted to the Washington State Department of Commerce on July 1, 2021.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 6, 2021.

5. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 7, 2021.
6. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on July 9, 2021.
7. Notice of the Planning Commission hearing was posted on the County website on July 9, 2021.
8. The Planning Commission held a public hearing on the subject amendments on July 22, 2021.
9. Pursuant to WCC 22.10.060(2), in order to approve an amendment to the development regulations, the planning commission and county council must find that the amendment is consistent with the comprehensive plan.
10. The Whatcom County Comprehensive Plan Housing Chapter states:

. . . Subsidized housing, homeless housing, transient, emergency, and special needs housing are all part of the affordability riddle, and in some instances a major part. Residents currently possessing safe and decent housing may not fully understand the scope of the housing problem and they may tend not to want housing for less advantaged households near them. In that regard, the location of affordable housing can be as difficult an issue as funding. Many people who do not want rural sprawl also do not want in-fill near them. . . (p. 3-10).
11. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-1 states:

Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
12. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-2 states:

Evaluate all new regulations or codes developed at the county level to ensure they accommodate housing preferences and needs existing at that time.
13. State law limits local government regulation of temporary homeless facilities hosted by religious organizations (RCW 36.01.290).
14. According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2020 Annual Report* (July 2020), at least 707 people were homeless in Whatcom County in January 2020 (p. 9). Of the 707 homeless people, 218 were unsheltered living in camps, cars, and other places not

meant for human habitation (p. 13). However, the Annual Report also “. . . acknowledged that Point in Time Counts consistently underestimate the number of those who are homeless . . .” (p. 2). According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2021 Annual Report* (July 2021), 859 people were homeless in Whatcom County in January 2021 (p. 7). Of the 859 homeless people, 218 were unsheltered (p. 8).

15. According to *A Home for Everyone Strategic Plan to End Homelessness in Whatcom* (2019), “interim housing” includes both emergency shelters and transitional housing (p. 37). These living conditions are considered as “sheltered homelessness” (p. 13). This Plan states that a number of providers participate in interim housing services “but the demand for shelters is far from being met in Whatcom County” (p. 38). Unsheltered homelessness is used to describe “the living conditions for individuals or households who sleep in places not meant for human habitation, such as tents, doorways, abandoned buildings, vehicles, or other places outside” (p. 13).
16. Homelessness continues to be a local, regional and national challenge due to many social and economic factors.
17. Tent encampments, tiny house encampments, and other homeless facilities have become temporary mechanisms to provide shelter for homeless individuals and families.
18. Temporary homeless facility regulations and permit processing requirements are necessary to preserve and protect public health and safety.
19. Temporary homeless facility regulations and permit processing requirements are necessary to prevent or mitigate adverse impacts to public or private property.
20. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a regulatory framework for addressing some of the community’s temporary housing needs in an orderly fashion.

CONCLUSION

The subject Whatcom County development regulation amendments are consistent with the approval criteria in WCC 22.10.060.

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

Section 1. Amendments to the Whatcom County Zoning Code (Title 20) relating to Temporary Homeless Facilities are hereby adopted as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 28th day of September, 2021.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:



[Signature]
Dana Brown-Davis, Council Clerk

[Signature]
Barry Buchanan, Chairperson

APPROVED as to form:

Approved () Denied

/s/ Royce Buckingham

Civil Deputy Prosecutor

[Signature]
Satpal Sidhu, Executive

Date: 10/4/21

Exhibit A

Chapter 20.17

Temporary Homeless Facilities

Sections:

- 20.17.010 Purpose.**
- 20.17.020 Permit Required.**
- 20.17.030 Location.**
- 20.17.040 Capacity of Temporary Homeless Facilities.**
- 20.17.050 Duration of Temporary Homeless Facilities.**
- 20.17.060 Requirements for Temporary Homeless Facilities.**
- 20.17.065 Additional Requirements for Temporary Building Encampments.**
- 20.17.070 Application.**
- 20.17.080 Permit Procedures.**

20.17.010 Purpose.

The purpose of this chapter is to allow and establish a review process for the location, siting, and operation of temporary shelters for people experiencing homelessness (known as temporary homeless facilities, as defined in chapter 20.97). These regulations are intended to protect public health and safety by requiring safe operations of the shelters for both the shelter guests and the broader community. Temporary homeless facilities include temporary building encampments, temporary tent encampments, temporary safe parking areas, and temporary tiny house encampments.

20.17.020 Permit Required.

Temporary homeless facilities must have a sponsor and managing agency as defined in chapter 20.97. Establishment of a temporary homeless facility shall require an administrative approval use permit and compliance with all other applicable County regulations. The director shall have authority to grant, grant with conditions or deny an application for an administrative approval use permit for a temporary homeless facility.

20.17.030 Location.

Temporary homeless facilities are only allowed in urban growth areas. This locational requirement does not apply to temporary homeless facilities on property owned or controlled by religious organizations under RCW 36.01.290.

20.17.040 Capacity of Temporary Homeless Facilities.

- (1) A maximum of 50 people may be housed in an individual temporary homeless facility located in the unincorporated County. Multiple temporary homeless facility locations may be permitted provided that the aggregate total of people in all temporary homeless facilities shall not exceed 100.

20.17.050 Duration of Temporary Homeless Facilities.

- (1) The director shall not grant a permit for the same site more than once in any calendar year nor issue a permit for the same site sooner than 180 days from the date the site is vacated.
- (2) Temporary tent encampments and temporary safe parking areas may be approved for a period not to exceed 190 days. The director may grant one 190-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its preexisting condition.
- (3) Temporary tiny house encampments may be approved for a period of between six months and one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year. . The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its preexisting condition.
- (4) 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. The permit shall specify a date by which the use shall be terminated and the site vacated and, where applicable, restored to its preexisting condition.

20.17.060 Requirements for Temporary Homeless Facilities.

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

- (1) The temporary homeless facility shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The temporary homeless facility shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses. These buffers may be reduced if the director finds that a reduced buffer width will provide adequate

Temporary Homeless Facilities
Approved by County Council on Sept 28, 2021

separation between the temporary homeless facility and adjoining uses due to changes in elevation, intervening buildings or other physical characteristics of the site.

- (2) No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.
- (3) A temporary homeless facility shall comply with the applicable regulations of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined by WCC 20.97.217.
- (4) A six-foot-tall fence is required around the perimeter of the temporary homeless facility to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer. The director may waive the fence requirement if there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.
- (5) Exterior lighting must be directed downward and glare contained within the temporary homeless facility.
- (6) The maximum number of residents at a temporary homeless facility site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.
- (7) On-site parking of the sponsor shall not be displaced unless sufficient required off-street parking remains available for the host's use to compensate for the loss of on-site parking or unless a shared parking agreement is executed with adjacent properties.
- (8) A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the temporary homeless facility site, shall be submitted for review and approval.
- (9) No children under the age of 18 are allowed to stay overnight in the temporary homeless facility, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the temporary homeless facility, the sponsor and the managing agency shall actively endeavor to find alternative shelter for the child through community partners such as Northwest Youth Services, Opportunity Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth services organizations. Children under the age of 18 without a parent or guardian present shall be allowed to remain in a temporary homeless facility while alternative shelter is being sought.
- (10) The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary homeless facility residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative approval use permit. The code of conduct shall be incorporated into the conditions of approval. The managing agency shall post the County approved written code of conduct on site.
- (11) An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. The managing agency shall demonstrate that:

Temporary Homeless Facilities
Approved by County Council on Sept 28, 2021

- A. Individuals in the agency have demonstrated experience providing similar services to homeless residents; or
 - B. Individuals in the agency have certification or academic credentials in an applicable human service field; or
 - C. Individuals in the agency have applicable experience in a related program with a homeless population; or
 - D. Additional prescriptive measures will be implemented to minimize risk to both residents of the temporary homeless facility and the community in general.
- (12) The sponsor and the managing agency shall ensure the temporary homeless facility complies with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.
- (13) The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:
- (a) Potable water, which shall be available at all times at the site;
 - (b) Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
 - (c) Hand-washing stations by the toilets and food preparation areas;
 - (d) Food preparation or service tents; and
 - (e) Refuse receptacles.
- (14) Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and temporary homeless facility residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.
- (15) The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their contact information shall be provided to the Whatcom County Sheriff's Office as described above.
- (16) Facilities for dealing with trash shall be provided on-site throughout the temporary homeless facility. A regular trash patrol in the vicinity of the site shall be provided.
- (17) The sponsor and the managing agency shall take reasonable and legal steps to obtain verifiable identification information (recognizing this may not be possible if a homeless individual's identification documents have been lost or stolen), to include full name and date of birth, from current and prospective temporary homeless facility residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the temporary homeless facility. This log shall be available upon request to law enforcement agencies and prospective residents shall be so advised by the sponsor and managing agency.

Temporary Homeless Facilities
Approved by County Council on Sept 28, 2021

Persons who have active warrants, or who are required to register as sex offenders, are not allowed in a temporary homeless facility.

- (18) The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the temporary homeless facility when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.
- (19) All permanent or temporary structures shall have fully operational smoke detectors installed and can be battery operated. Fire extinguishers shall be provided for each site. The number and type of fire extinguishers shall be determined by the director in consultation with the managing agency. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.
- (20) The sponsor, the managing agency and temporary homeless facility residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.
- (21) The sponsor and/or managing agency shall provide before-setup photos of the host site with the application. Upon vacation of the temporary homeless facility, all temporary structures and debris shall be removed from the host site within one calendar week.
- (22) Upon cessation of the temporary homeless facility, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

20.17.065 Additional Requirements for Temporary Building Encampments.

In addition to the requirements of WCC 20.17.020, the following requirements apply to temporary building encampments, unless modified by the director during the administrative approval use permit approval process:

- (1) 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.
- (2) No more than one bed (or bunkbed for a parent/guardian and a child under the age of 18) per 35 square feet of floor area is permitted.
- (3) The number of toilets required for each encampment will be determined by the Whatcom County Health Department after a review of factors such as the potential number of guests.

20.17.070 Application.

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

- (1) A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-of-way and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed facility and the property and off-street parking);
- (2) A vicinity map, showing the location of the site in relation to nearby streets and properties;
- (3) A written summary of the proposal, responding to the standards and requirements of WCC 20.17;
- (4) The written code of conduct, operations plan and a transportation plan as required by WCC 20.17.020;
- (5) Statement of actions that the applicant will take reasonable steps to obtain verifiable identification from temporary homeless facility residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;
- (6) Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the temporary homeless facility;
- (7) Address and parcel number of the subject property;
- (8) Photographs of the site;
- (9) A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
- (10) Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25 and the Unified Fee Schedule; and
- (11) A list of any requirements under WCC 20.17 that the applicant is asking to modify.

20.17.080 Permit Procedures.

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

- (2) Decision and Notice of Decision. Final action on permit applications made under this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 22.05.028 and the following:
 1. The proposed use meets the requirements of WCC 20.17; and
 2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts that the proposed temporary homeless facility may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the temporary homeless facility will be limited.

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

- (3) Conditions. Because each temporary homeless facility has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative approval use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness, traffic, physical hazards and other similar impacts that the temporary homeless facility may have on the area in which it is located. In cases where the application for an administrative approval use permit does not meet the provisions of WCC 20.17 (except when allowed under WCC 20.17.080(4)) or adequate mitigation may not be feasible or possible, the director shall deny the application.

- (4) Modification of Requirements. The director may approve an administrative approval use permit for a temporary homeless facility that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe facility 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 temporary homeless facility residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on temporary homeless facility residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.

- (5) Appeal. The director's decision, including permit extensions, may be appealed to the hearing examiner as provided in WCC 22.05.020(1) and 22.05.160.
- (6) Revocation. The director shall also have the authority to revoke an approved administrative approval use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of WCC 20.17 or the permit.

Chapter 20.97

DEFINITIONS

NOTE: Code Publishing will provide proper codification numbers for these new definitions.

“Temporary homeless facility” means a facility providing temporary housing accommodations that includes a sponsor and managing agency, the primary purpose of which is to provide temporary shelter for people experiencing homelessness in general or for specific populations of the homeless. Temporary homeless facilities are temporary building encampments, temporary safe parking areas, temporary tent encampments and temporary tiny house encampments.

“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 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.

"Temporary tent encampment" means a short-term living facility for a group of homeless people that is composed of tents or other temporary structures, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.

“Temporary tiny house encampment” means a temporary homeless facility for a group of people living in purpose-built tiny houses for people experiencing homelessness, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. Temporary tiny houses for the homeless are between 100 and 300 square feet and

Temporary Homeless Facilities
Approved by County Council on Sept 28, 2021

easily constructed and moved to various locations. Temporary tiny houses are not dwelling units and, as such, are not required to meet building codes.

"Managing agency" means an organization identified as the manager of a temporary homeless facility that has the capacity to organize and manage a temporary homeless facility on a 24 hour basis. Managing agencies are limited to religious organizations and non-profit agencies. A group of 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 facility 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
- C. Is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless; or
- D. Is a public entity.