

5 **ORDINANCE NO. _____**
6 **(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)**

8 **ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND**
9 **OPERATION OF TEMPORARY HOMELESS FACILITIES**

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

14 **WHEREAS**, tent and tiny house encampments have become a temporary mechanism for
15 providing shelter for homeless individuals and families; and

17 **WHEREAS**, under RCW 36.01.290 the Washington State Legislature has authorized
18 religious organizations to host temporary encampments to provide shelter for homeless
19 individuals on property that these religious organizations own or control; and

21 **WHEREAS**, on July 24, 2018, the Whatcom County Council adopted Ordinance 2018-041,
22 adopting interim regulations for the establishment and operation of temporary homeless facilities
23 for one year; and

25 **WHEREAS**, on November 6, 2019, the Whatcom County Council adopted Ordinance 2019-
26 074, extending Ordinance 2018-041 for one year and incorporating minor changes to the
27 definition of "temporary homeless facility" (Section 3) and finding alternative shelter for children
28 under the age of 18 without a parent or guardian present (Section 2.1.); and

30 **WHEREAS**, Ordinance ~~2019-074 2018-041~~ is set to expire on ~~July 24, 2019~~ November 6,
31 2020; and

33 **WHEREAS** the County Council finds that extending the interim regulations imposed by
34 Ordinance ~~2018-041 2019-074~~ is necessary for the protection of public health and safety; and

36 **WHEREAS**, the Whatcom County Code does not currently have permanent provisions
37 addressing the establishment and operation of temporary homeless facilities; and

39 **WHEREAS**, interim homeless facility regulations and processing requirements are
40 necessary to preserve and protect public health and safety and prevent danger to public or
41 private property; and

43 **WHEREAS**, interim zoning controls enacted under RCW 36.70A.390 and/or RCW
44 36.70.790 are methods by which the County may preserve the status quo so that new plans and
45 regulations will not be rendered moot by intervening development; and

47 **WHEREAS**, RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of an
48 interim zoning map, interim zoning ordinance, or interim official control without holding a public
49 hearing as long as a public hearing is held within at least sixty days of enactment; and

51 **WHEREAS**, RCW 36.70A.390 provides that, *"A county or city governing body that adopts*
52 *a moratorium, interim zoning map, interim zoning ordinance, or interim official control without*
53 *holding a public hearing on the proposed moratorium, interim zoning map, interim zoning*
54 *ordinance , or interim official control, shall hold a public hearing on the adopted moratorium,*
55 *interim zoning map, interim zoning ordinance , or interim official control within at least sixty days*
56 *of its adoption , whether or not the governing body received a recommendation on the matter*
57 *from the planning commission or department If the governing body does not adopt findings of*
58 *fact justifying its action before this hearing, then the governing body shall do so immediately*
59 *after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim*

1 official control adopted under this section may be effective for not longer than six months, but
2 may be effective for up to one year if a work plan is developed for related studies providing for
3 such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim
4 official control may be renewed for one or more six-month periods if a subsequent public hearing
5 is held and findings of fact are made prior to each renewal"; and
6

7 **WHEREAS**, in conformity with the responsibilities of Whatcom County to meet public
8 health, safety and welfare requirements and provide zoning and land use regulations pursuant to
9 state law, and the County's authority to regulate land use activity within its corporate limits, the
10 County intends to develop appropriate public health, safety and welfare requirements and zoning
11 and land use regulations for the establishment and operation of temporary homeless facilities;
12 and
13

14 **WHEREAS**, the County Council has determined it needs additional time to conduct
15 appropriate research to analyze the effects of the establishment and operation of temporary
16 homeless facilities; and
17

18 **WHEREAS**, interim zoning will provide the County with additional time to review and
19 amend its public health, safety and welfare requirements and zoning and land use regulations
20 related to the establishment and operation of temporary homeless facilities; and
21

22 **WHEREAS**, interim zoning will also allow qualifying religious organizations and registered
23 not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate
24 temporary homeless facilities; and
25

26 **WHEREAS**, a determination of non-significance (DNS) was issued under the State
27 Environmental Policy Act (SEPA) on July 3, 2018; and
28

29 **WHEREAS**, the County Council concludes that the County does have the authority to
30 establish an interim zoning ordinance and that the County must adopt interim zoning concerning
31 the establishment and operation of temporary homeless facilities to act as a stop- gap measure:
32 (a) to provide the County with an opportunity to study the issues concerning the establishment
33 and operation of temporary homeless facilities and prepare appropriate revisions to the
34 County's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of
35 Whatcom County by avoiding and ameliorating negative impacts and unintended
36 consequences of establishing and operating temporary homeless facilities and (c) to avoid
37 applicants possibly establishing vested rights contrary to and inconsistent with any revisions the
38 County may make to its rules and regulations as a result of the County's study of this matter; and
39

40 **WHEREAS**, the County Council adopts the foregoing as its findings of facts justifying the
41 adoption of this Ordinance; and
42

43 **NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:**
44

45 **Section 1. Findings of Fact.** The County Council adopts the above "WHEREAS" recitals as
46 findings of fact in support of its action as required by RCW 36. 70A.390 and RCW 36.70.790.
47

48 **Section 2. Regulations established.** Regulations concerning the establishment and processing
49 of applications for temporary homeless facilities in unincorporated Whatcom County are
50 hereby established. Establishing such facilities contrary to the provisions of this ordinance is
51 prohibited. Administrative Use approvals shall be required for temporary homeless facilities in
52 the County. Applications for administrative use approvals, land use approvals, or any other
53 permit or approval, in any way associated with temporary homeless facilities, shall not be
54 processed, issued, granted, or approved unless in compliance with this ordinance. If a
55 temporary homeless facility is established in violation of this ordinance or if, after an
56 administrative use permit is issued for the same, the director of the planning and
57 development services department determines that the permit holder has violated this
58 ordinance or any condition of the permit, the temporary homeless facility, its sponsor and
59 managing agency shall be subject to code enforcement and all activities associated with the

1 temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-
2 encampment conditions.
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7 **Section 3. Definitions.** The following definitions apply to temporary homeless facilities:
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- 9 A. "Temporary homeless facility" means a facility providing temporary housing
10 accommodations that includes a sponsor and managing agency, the primary purpose of
11 which is to provide temporary shelter for people experiencing homelessness in general
12 or for specific populations of the homeless. Temporary homeless facilities include but
13 are not limited to temporary tent encampments and temporary tiny house
14 encampments.
15
16 B. "Temporary tent encampment" means a short-term living facility for a group of
17 homeless people that is composed of tents or other temporary structures, as approved
18 by the director, on a site provided or arranged for by a sponsor with services provided
19 by a sponsor and supervised by a managing agency.
20
21 C. "Temporary tiny house encampment" means a temporary homeless facility for a group
22 of people living in purpose-built tiny houses for people experiencing homelessness, as
23 approved by the director, on a site provided or arranged for by a sponsor with services
24 provided by a sponsor and supervised by a managing agency. Temporary tiny houses
25 for the homeless are typically less than 200 square feet and easily constructed and
26 moved to various locations. For the purposes of this ordinance, temporary tiny homes
27 are not dwelling units and, as such, are not required to meet building codes.
28
29 D. "Managing agency" means an organization identified as the manager of a temporary
30 homeless facility that has the capacity to organize and manage a temporary homeless
31 facility. Managing agencies are limited to religious organizations and non-profit
32 agencies. A "managing agency" may be the same entity as the sponsor.
33
34 E. "Sponsor " means an organization that :
35 1. invites a temporary homeless facility to reside on land they own or lease; and
36 2. is a State of Washington registered not-for-profit corporation and federally
37 recognized tax exempt 501(c)(3) organization; or
38 3. is recognized by the Internal Revenue Service as exempt from federal income
39 taxes as a religious organization, which expresses its religious mission, in part,
40 by organizing living accommodations for the homeless.
41
42 F. "Director" means the Planning and Development Services Department Director.
43

44 **Section 4. Requirements.** The following requirements shall apply to all temporary homeless
45 facilities approved under this ordinance, unless modified by the director through approval of
46 an administrative use permit.
47

- 48 A. The encampment shall be located a minimum of 20 feet from the property line of
49 abutting properties containing commercial, industrial, and multifamily- residential uses.
50 The encampment shall be located a minimum of 40 feet from the property line of
51 abutting properties containing single-family residential or -public -recreational uses,
52 unless the director finds that a reduced buffer width will provide adequate separation
53 between the encampment and adjoining uses, due to changes in elevation, intervening
54 buildings or other physical characteristics of the site of the encampment.
55
56 B. No temporary homeless facility shall be located within a critical area or its buffer as
57 defined by Whatcom County Code (WCC) 16.16 or 23.
58
59 C. A temporary homeless facility shall comply with the applicable development standards

1 of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities
2 shall not be considered structures for the purposes of calculating parcel's total lot
3 coverage, as defined by WCC 20.97.217.
4

- 5 D. A six-foot-tall fence is required around the perimeter of the encampment to limit
6 access to the site for safety and security reasons; provided, that the fencing does not
7 create a sight obstruction at the street or street intersections or curbs as determined
8 by the county engineer, unless the director determines that there is sufficient
9 vegetation, topographic variation, or other site conditions such that fencing would not
10 be needed.
- 11 E. Exterior lighting must be directed downward and glare contained within the temporary
12 encampment.
- 13 F. The maximum number of residents at a temporary encampment site shall be
14 determined by the director taking into consideration site conditions, but in no case
15 shall the number be greater than fifty (50) people.
- 16 G. On-site parking of the sponsor shall not be displaced unless sufficient required off-
17 street parking remains available for the host's use to compensate for the loss of on-
18 site parking or unless a shared parking agreement is executed with adjacent
19 properties.
- 20 H. A transportation plan, including provisions for transit, and pedestrian and bicycle
21 ingress and egress to the encampment, shall be submitted for review and approval.
- 22 I. No children under the age of 18 are allowed to stay overnight in the temporary
23 encampment, unless accompanied by a parent or guardian. If a child under the age of
24 18 without a parent or guardian present attempts to stay at the encampment, the
25 sponsor and the managing agency shall actively endeavor to find alternative shelter for
26 the child through community partners such as Northwest Youth Services, Opportunity
27 Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth
28 services organizations. Children under the age of 18 without a parent or guardian
29 present shall be allowed to remain in a temporary encampment while alternative
30 shelter is being sought.
- 31 J. The sponsor or managing agency shall provide and enforce a written code of conduct,
32 which not only provides for the health, safety and welfare of the temporary
33 encampment residents, but also mitigates impacts to neighbors and the community. A
34 copy of the code of conduct shall be submitted to the County at the time of application
35 for the administrative use permit. Said code shall be incorporated into the conditions of
36 approval. The managing agency shall post the County approved written code of
37 conduct on site.
- 38 K. An operations plan must be provided that addresses site management, site
39 maintenance, and provision of human and social services. Individuals or organizations
40 shall have either a demonstrated experience providing similar services to homeless
41 residents; and/or certification or academic credentials in an applicable human service
42 field; and/or applicable experience in a related program with a homeless population.
43 Should an individual or organization not have any of the preceding qualifications,
44 additional prescriptive measures may be required to minimize risk to both residents of
45 the temporary homeless facility and the community in general.
- 46 L. The sponsor and the managing agency shall ensure compliance with Washington State
47 laws and regulations and the Whatcom County Health Department's regulations
48 concerning, but not limited to, drinking water connections, solid waste disposal, and
49 human waste. The sponsor and the managing agency shall permit inspections by local
50 agencies and/or departments to ensure such compliance and shall implement all
51 directives resulting therefrom within the specified time period.
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- M. The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:
 - 1. Potable water, which shall be available at all times at the site;
 - 2. Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
 - 3. Hand-washing stations by the toilets and food preparation areas;
 - 4. Food preparation or service tents; and
 - 5. Refuse receptacles.
- N. 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 homeless encampment residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.
- O. 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.
- P. Facilities for dealing with trash shall be provided on-site throughout the encampment. A regular trash patrol in the immediate vicinity of the temporary encampment site shall be provided.
- Q. The sponsor and the managing agency shall take all reasonable and legal steps to obtain verifiable identification information, to include full name and date of birth, from current and prospective encampment residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the encampment. This log shall be available upon request to law enforcement agencies and prospective encampment residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are prohibited from the encampment's location.
- R. The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the encampment when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.
- S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.
- T. The sponsor, the managing agency and temporary encampment 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.
- U. The sponsor and/or managing agency shall provide before-encampment photos of the host site with the application. Upon vacation of the temporary encampment, all temporary structures and debris shall be removed from the host site within one calendar week.
- V. Upon cessation of the temporary encampment, 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

1 removed or destroyed.
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3 **Section 5. Frequency and duration of temporary homeless facilities.**
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- 5 A. No more than a maximum of 100 people may be housed in temporary homeless
6 facilities (encampments) located in the unincorporated County at any time. Multiple
7 encampment locations may be permitted provided that the aggregate total of people in
8 all temporary tent and/or tiny house encampments shall not exceed 100.
9
- 10 B. The director shall not grant a permit for the same site more than once in any calendar
11 year; provided that director is not authorized to issue a permit for the same site sooner
12 than 180 days from the date the site is vacated as provided for in Section 4 of this
13 ordinance.
14
- 15 C. Temporary tent encampments may be approved for a period not to exceed 180 days.
16 The director may grant one 180-day extension, provided all conditions have been
17 complied with and circumstances associated with the use have not changed. This
18 extension shall be subject to a Type II review process and may be appealed to the
19 hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by
20 which the use shall be terminated and the site vacated and restored to its pre-
21 encampment condition.
22
- 23 D. Temporary tiny house encampments may be approved for a period of between six
24 months and up to one year, provided the sponsor and managing agency comply with
25 all permit conditions. The director may grant one or more extension(s) not to exceed
26 one additional year, provided enabling legislation allows so. Extensions are subject to a
27 Type II review process and may be appealed to the hearing examiner as provided in
28 WCC 22.05.020(1). The permit shall specify a date by which the use shall be
29 terminated and the site vacated and restored to its pre-encampment condition.
30

31 **Section 6. Permit required.** Establishment of a temporary homeless facility shall require
32 approval of an administrative use permit, as described in this ordinance, and compliance with
33 all other applicable County regulations. The director shall have authority to grant, grant
34 with conditions or deny an application for an administrative use permit under this ordinance.
35

36 **Section 7. Application.** Application for an administrative use permit shall be made on forms
37 provided by the County, and shall be accompanied by the following information; provided,
38 that the director may waive any of these items, upon request by the applicant and finding that
39 the item is not necessary to analyze the application. An application to establish a temporary
40 homeless facility shall be signed by both the sponsor and the managing agency ("applicant")
41 and contain the following:
42

- 43 A. A site plan of the property, drawn to scale, showing existing natural features, existing
44 and proposed grades, existing and proposed utility improvements, existing rights-of-
45 way and improvements, and existing and proposed structures, tents and other
46 improvements (including landscaping and fencing at the perimeter of the proposed
47 encampment and the property and off-street parking);
- 48 B. A vicinity map, showing the location of the site in relation to nearby streets and
49 properties;
- 50 C. A written summary of the proposal, responding to the standards and requirements of
51 this ordinance;
- 52 D. The written code of conduct, operations plan and a transportation plan as required by
53 this ordinance;
- 54 E. Statement of actions that the applicant will take to obtain verifiable identification from
55 all encampment residents and to use the identification to obtain sex offender and
56 warrant checks from appropriate agencies;
- 57 F. Project statistics, including site area, building coverage, number and location of tents
58 and temporary structures, expected and maximum number of residents, and duration
59 of the encampment;

- G. Address and parcel number of the subject property;
- H. Photographs of the site;
- I. A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
- J. Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25;
- K. A list of any requirement under this ordinance for which the applicant is asking to modify.

Section 8. Permit Procedures.

- A. 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 encampment, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
- B. 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 20.84.220 and the following:
 - 1. The proposed use meets the requirements of this ordinance; and
 - 2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts which the proposed encampment may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the encampment will be limited.

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

- C. Conditions. Because each temporary encampment has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative 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 encampment may have on the area in which it is located. In cases where the application for an administrative use permit does not meet the provisions of this ordinance (except when allowed under subsection (D) of this section) or adequate mitigation may not be feasible or possible, the director shall deny the application.
- D. Modification of Requirements. The director may approve an administrative use permit for a temporary encampment 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 encampment with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of encampment residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on encampment residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.
- E. Appeal. The director's decision may be appealed to the hearing examiner as provided

1 in WCC 22.05.020(1) and 22.05.160.

2
3 F. Revocation. The director shall also have the authority to revoke an approved
4 administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or
5 managing agency has failed to comply with the applicable provisions of this ordinance
6 or permit.
7

8 **Section 9. Purpose.** The purpose of this interim ordinance is to allow and establish a review
9 process for the location, siting, and operation of temporary homeless facilities within the
10 unincorporated County. While the interim ordinance is in effect, the County will study the land
11 use and other impacts associated with temporary homeless facilities, draft final zoning and
12 regulations to address such uses, hold public hearings on such draft regulations, and adopt
13 such regulations.
14

15 **Section 10. Duration of Interim Ordinance.** This interim ordinance will replace Ordinance
16 ~~2018-0412019-074~~ and shall be in effect for one year beginning on ~~November 6, 2019~~October
17 27, 2020, and ending on ~~November 6, 2020~~October 27, 2021, unless another ordinance is
18 adopted amending the Whatcom County Code and rescinding this interim ordinance before
19 ~~November 6, 2020~~October 27, 2021.
20

21 **Section 11. Work Plan.** During the interim ordinance period, County staff will study the
22 issues concerning the establishment and operation of temporary homeless facilities. Staff will
23 prepare a draft ordinance with appropriate revisions to the County's land use regulations;
24 perform SEPA review of the draft ordinance, and conduct the public review process, including
25 public hearings before the County's Planning Commission and County Council, as required for
26 amendments to the County's development regulations.
27

28 **Section 14. Conflict with other Whatcom County Code Provisions.** If the provisions of this
29 Ordinance are found to be inconsistent with other provisions of the Whatcom County Code,
30 this Ordinance shall control.
31

32 **Section 15. Severability.** If any section, sentence, clause or phrase of this Ordinance should
33 be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity
34 or unconstitutionality shall not affect the validity or constitutionality of any other section,
35 sentence, clause or phrase of this Ordinance.
36

37 **ADOPTED** this _____ day of _____, ~~2019~~2020.

38
39 **WHATCOM COUNTY COUNCIL**
40 **WHATCOM COUNTY, WASHINGTON**

41 **ATTEST:**

42
43 _____
44 **Dana Brown-Davis, Council Clerk**

45 _____
46 ~~Rud Browne~~Barry Buchanan, Chairperson

47 **APPROVED as to form:**

48 () Approved () Denied

49 Karen Frakes (09/03/2020)

50 _____
51 **Civil Deputy Prosecutor**

52 _____
53 ~~Jack Louws~~Satpal Sidhu, Executive

54 **Date:** _____