

4  
5 **ORDINANCE NO. \_\_\_\_\_**  
6 **(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)**

7  
8 **ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND**  
9 **OPERATION OF TEMPORARY HOMELESS FACILITIES**

10  
11 **WHEREAS**, homelessness continues to be a local, regional and national challenge due to  
12 many social and economic factors; and

13  
14 **WHEREAS**, tent and tiny house encampments have become a temporary mechanism for  
15 providing shelter for homeless individuals and families; and

16  
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

20  
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

24  
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

29  
30 **WHEREAS**, Ordinance 2019-074 is set to expire on November 6, 2020; and

31  
32 **WHEREAS** the County Council finds that extending the interim regulations imposed by  
33 Ordinance 2019-074 is necessary for the protection of public health and safety; and

34  
35 **WHEREAS**, the Whatcom County Code does not currently have permanent provisions  
36 addressing the establishment and operation of temporary homeless facilities; and

37  
38 **WHEREAS**, interim homeless facility regulations and processing requirements are  
39 necessary to preserve and protect public health and safety and prevent danger to public or  
40 private property; and

41  
42 **WHEREAS**, interim zoning controls enacted under RCW 36.70A.390 and/or RCW  
43 36.70.790 are methods by which the County may preserve the status quo so that new plans and  
44 regulations will not be rendered moot by intervening development; and

45  
46 **WHEREAS**, RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of an  
47 interim zoning map, interim zoning ordinance, or interim official control without holding a public  
48 hearing as long as a public hearing is held within at least sixty days of enactment; and

49  
50 **WHEREAS**, RCW 36.70A.390 provides that, *"A county or city governing body that adopts*  
51 *a moratorium, interim zoning map, interim zoning ordinance, or interim official control without*  
52 *holding a public hearing on the proposed moratorium, interim zoning map, interim zoning*  
53 *ordinance , or interim official control, shall hold a public hearing on the adopted moratorium,*  
54 *interim zoning map, interim zoning ordinance , or interim official control within at least sixty days*  
55 *of its adoption , whether or not the governing body received a recommendation on the matter*  
56 *from the planning commission or department If the governing body does not adopt findings of*  
57 *fact justifying its action before this hearing, then the governing body shall do so immediately*  
58 *after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim*  
59 *official control adopted under this section may be effective for not longer than six months, but*

1 *may be effective for up to one year if a work plan is developed for related studies providing for*  
2 *such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim*  
3 *official control may be renewed for one or more six-month periods if a subsequent public hearing*  
4 *is held and findings of fact are made prior to each renewal"; and*  
5

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

12  
13 **WHEREAS**, the County Council has determined it needs additional time to conduct  
14 appropriate research to analyze the effects of the establishment and operation of temporary  
15 homeless facilities; and

16  
17 **WHEREAS**, interim zoning will provide the County with additional time to review and  
18 amend its public health, safety and welfare requirements and zoning and land use regulations  
19 related to the establishment and operation of temporary homeless facilities; and

20  
21 **WHEREAS**, interim zoning will also allow qualifying religious organizations and registered  
22 not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate  
23 temporary homeless facilities; and

24  
25 **WHEREAS**, a determination of non-significance (DNS) was issued under the State  
26 Environmental Policy Act (SEPA) on July 3, 2018; and

27  
28 **WHEREAS**, the County Council concludes that the County does have the authority to  
29 establish an interim zoning ordinance and that the County must adopt interim zoning concerning  
30 the establishment and operation of temporary homeless facilities to act as a stop- gap measure:  
31 (a) to provide the County with an opportunity to study the issues concerning the establishment  
32 and operation of temporary homeless facilities and prepare appropriate revisions to the  
33 County's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of  
34 Whatcom County by avoiding and ameliorating negative impacts and unintended  
35 consequences of establishing and operating temporary homeless facilities and (c) to avoid  
36 applicants possibly establishing vested rights contrary to and inconsistent with any revisions the  
37 County may make to its rules and regulations as a result of the County's study of this matter; and

38  
39 **WHEREAS**, the County Council adopts the foregoing as its findings of facts justifying the  
40 adoption of this Ordinance; and

41  
42 **NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:**

43  
44 **Section 1. Findings of Fact.** The County Council adopts the above "WHEREAS" recitals as  
45 findings of fact in support of its action as required by RCW 36. 70A.390 and RCW 36.70.790.

46  
47 **Section 2. Regulations established.** Regulations concerning the establishment and processing  
48 of applications for temporary homeless facilities in unincorporated Whatcom County are  
49 hereby established. Establishing such facilities contrary to the provisions of this ordinance is  
50 prohibited. Administrative Use approvals shall be required for temporary homeless facilities in  
51 the County. Applications for administrative use approvals, land use approvals, or any other  
52 permit or approval, in any way associated with temporary homeless facilities, shall not be  
53 processed, issued, granted, or approved unless in compliance with this ordinance. If a  
54 temporary homeless facility is established in violation of this ordinance or if, after an  
55 administrative use permit is issued for the same, the director of the planning and  
56 development services department determines that the permit holder has violated this  
57 ordinance or any condition of the permit, the temporary homeless facility, its sponsor and  
58 managing agency shall be subject to code enforcement and all activities associated with the  
59 temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-

1 encampment conditions.  
2  
3  
4  
5

6 **Section 3. Definitions.** The following definitions apply to temporary homeless facilities:  
7

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

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

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

1 shall not be considered structures for the purposes of calculating parcel's total lot  
2 coverage, as defined by WCC 20.97.217.  
3

- 4 D. A six-foot-tall fence is required around the perimeter of the encampment to limit  
5 access to the site for safety and security reasons; provided, that the fencing does not  
6 create a sight obstruction at the street or street intersections or curbs as determined  
7 by the county engineer, unless the director determines that there is sufficient  
8 vegetation, topographic variation, or other site conditions such that fencing would not  
9 be needed.
- 10 E. Exterior lighting must be directed downward and glare contained within the temporary  
11 encampment.  
12
- 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
- 17 G. On-site parking of the sponsor shall not be displaced unless sufficient required off-  
18 street parking remains available for the host's use to compensate for the loss of on-  
19 site parking or unless a shared parking agreement is executed with adjacent  
20 properties.  
21
- 22 H. A transportation plan, including provisions for transit, and pedestrian and bicycle  
23 ingress and egress to the encampment, shall be submitted for review and approval.  
24
- 25 I. No children under the age of 18 are allowed to stay overnight in the temporary  
26 encampment, unless accompanied by a parent or guardian. If a child under the age of  
27 18 without a parent or guardian present attempts to stay at the encampment, the  
28 sponsor and the managing agency shall actively endeavor to find alternative shelter for  
29 the child through community partners such as Northwest Youth Services, Opportunity  
30 Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth  
31 services organizations. Children under the age of 18 without a parent or guardian  
32 present shall be allowed to remain in a temporary encampment while alternative  
33 shelter is being sought.  
34
- 35 J. The sponsor or managing agency shall provide and enforce a written code of conduct,  
36 which not only provides for the health, safety and welfare of the temporary  
37 encampment residents, but also mitigates impacts to neighbors and the community. A  
38 copy of the code of conduct shall be submitted to the County at the time of application  
39 for the administrative use permit. Said code shall be incorporated into the conditions of  
40 approval. The managing agency shall post the County approved written code of  
41 conduct on site.  
42
- 43 K. An operations plan must be provided that addresses site management, site  
44 maintenance, and provision of human and social services. Individuals or organizations  
45 shall have either a demonstrated experience providing similar services to homeless  
46 residents; and/or certification or academic credentials in an applicable human service  
47 field; and/or applicable experience in a related program with a homeless population.  
48 Should an individual or organization not have any of the preceding qualifications,  
49 additional prescriptive measures may be required to minimize risk to both residents of  
50 the temporary homeless facility and the community in general.  
51
- 52 L. The sponsor and the managing agency shall ensure compliance with Washington State  
53 laws and regulations and the Whatcom County Health Department's regulations  
54 concerning, but not limited to, drinking water connections, solid waste disposal, and  
55 human waste. The sponsor and the managing agency shall permit inspections by local  
56 agencies and/or departments to ensure such compliance and shall implement all  
57 directives resulting therefrom within the specified time period.  
58  
59

- 1 M. The sponsor and managing agency shall assure all applicable public health regulations,  
2 including but not limited to the following, will be met for:  
3
- 4 1. Potable water, which shall be available at all times at the site;
  - 5 2. Sanitary portable toilets, which shall be set back from all property lines as  
6 determined by the director;
  - 7 3. Hand-washing stations by the toilets and food preparation areas;
  - 8 4. Food preparation or service tents; and
  - 9 5. Refuse receptacles.
- 10 N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food  
11 handling and storage, including proper temperature control, shall be followed and  
12 homeless encampment residents involved in food donations and storages shall be  
13 made aware of these Whatcom County Health Department requirements.  
14
- 15 O. The sponsor and the managing agency shall designate points of contact and provide  
16 contact information (24 hour accessible phone contact) to the chief criminal deputy of  
17 the Whatcom County Sheriff or his/her designee. At least one designated point of  
18 contact shall be on duty at all times. The names of the on-duty points of contact shall  
19 be posted on-site daily and their contact information shall be provided to the Whatcom  
20 County Sheriff's Office as described above.  
21
- 22 P. Facilities for dealing with trash shall be provided on-site throughout the encampment.  
23 A regular trash patrol in the immediate vicinity of the temporary encampment site shall  
24 be provided.  
25
- 26 Q. The sponsor and the managing agency shall take all reasonable and legal steps to  
27 obtain verifiable identification information, to include full name and date of birth,  
28 from current and prospective encampment residents and use the identification to  
29 obtain sex offender and warrant checks from appropriate agencies. The sponsor and  
30 the managing agency shall keep a current log of names and dates of all people who  
31 stay overnight in the encampment. This log shall be available upon request to law  
32 enforcement agencies and prospective encampment residents shall be so advised by  
33 the sponsor and managing agency. Persons who have active warrants, or who are  
34 required to register as sex offenders, are prohibited from the encampment's location.  
35
- 36 R. The sponsor and the managing agency shall immediately contact the Whatcom County  
37 Sheriff's Office if someone is rejected or ejected from the encampment when the  
38 reason for rejection or ejection is an active warrant or a match on a sex offender  
39 check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the  
40 rejected/ejected person is a potential threat to the community.  
41
- 42 S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall  
43 utilize flame retardant materials.  
44
- 45 T. The sponsor, the managing agency and temporary encampment residents shall  
46 cooperate with other providers of shelters and services for homeless persons within the  
47 County and shall make inquiry with these providers regarding the availability of  
48 existing resources.  
49
- 50 U. The sponsor and/or managing agency shall provide before-encampment photos of the  
51 host site with the application. Upon vacation of the temporary encampment, all  
52 temporary structures and debris shall be removed from the host site within one  
53 calendar week.  
54
- 55 V. Upon cessation of the temporary encampment, the site shall be restored, as near as  
56 possible, to its original condition. Where deemed necessary by the director, the  
57 sponsor and/or managing agency shall re-plant areas in which vegetation had been  
58 removed or destroyed.  
59

1  
2 **Section 5. Frequency and duration of temporary homeless facilities.**  
3

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

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

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

- 42 A. A site plan of the property, drawn to scale, showing existing natural features, existing  
43 and proposed grades, existing and proposed utility improvements, existing rights-of-  
44 way and improvements, and existing and proposed structures, tents and other  
45 improvements (including landscaping and fencing at the perimeter of the proposed  
46 encampment and the property and off-street parking);  
47 B. A vicinity map, showing the location of the site in relation to nearby streets and  
48 properties;  
49 C. A written summary of the proposal, responding to the standards and requirements of  
50 this ordinance;  
51 D. The written code of conduct, operations plan and a transportation plan as required by  
52 this ordinance;  
53 E. Statement of actions that the applicant will take to obtain verifiable identification from  
54 all encampment residents and to use the identification to obtain sex offender and  
55 warrant checks from appropriate agencies;  
56 F. Project statistics, including site area, building coverage, number and location of tents  
57 and temporary structures, expected and maximum number of residents, and duration  
58 of the encampment;  
59 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 in WCC 22.05.020(1) and 22.05.160.

1  
2 F. Revocation. The director shall also have the authority to revoke an approved  
3 administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or  
4 managing agency has failed to comply with the applicable provisions of this ordinance  
5 or permit.  
6

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

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

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

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

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

35 **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.  
36

37 **WHATCOM COUNTY COUNCIL**  
38 **WHATCOM COUNTY, WASHINGTON**

39 **ATTEST:**

40  
41 \_\_\_\_\_  
42 **Dana Brown-Davis, Council Clerk**

41 \_\_\_\_\_  
42 **Barry Buchanan, Chairperson**

43  
44 **APPROVED as to form:**

45  **Approved**  **Denied**

46  
47 Karen Frakes (09/03/2020)  
48 \_\_\_\_\_

49 **Civil Deputy Prosecutor**

49 \_\_\_\_\_  
50 **Satpal Sidhu, Executive**

51 **Date:** \_\_\_\_\_  
52