



**Legislative Department
Seattle City Council
Memorandum**

Date: February 12, 2015

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

From: Eric McConaghy, Council Central Staff

Subject: **Issues for discussion about a proposed interim use permit for transitional encampment - Council Bill (CB) 118310**

Overview

On February 3, 2015, Executive staff briefed the PLUS Committee on 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. PLUS discussed the proposal following the briefing. On February 20, 2015, PLUS will continue the discussion of issues regarding the bill.

This memorandum begins with two possible amendments to the recitals of the Council Bill. Questions arising from the proposal to be answered during the PLUS meeting on February 20, 2015 follow. A decision agenda that steps through issues, with Council's options for addressing them, rounds out the memo.

Amendments to the recitals

Councilmember Licata has offered an amendment to the recitals of CB 118310 that would include a reference to the policy that Council added to the Human Development Element of the Comprehensive Plan in 2012 (Ordinance Number 123854): *HD11.1 Guide the operation of safe and healthy transitional encampments to allow temporary shelter for those who are homeless.* Central Staff finds this amendment consistent with the context provided by other recitals.

Central Staff suggest for the Council's consideration an amendment to the recital providing the statistics from the One Night Count for Seattle to show the 2015 count rather than the 2014 count: 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)

Permit Process

Councilmembers have asked questions about how the City would administer the proposed interim use permit for encampments. Questions relevant to this topic are gathered together below:

- Permit.1 Will DPD administer the interim use permits for encampment with or without consultation with HSD?
- Permit.2 Also, how will DPD handle competition for permits among multiple applicants that meet the minimum requirements?
- Permit.3 The proposal requires that an encampment operator prepare an "Encampment Operations Plan that shall address...provision of Human/Social Services..." Does this mean that an

encampment operator would be required to provide these services or could another party provide them?

- Permit.4 If required, then how would a self-managed encampment, like Nickelsville meet the human/social services requirement?
- Permit.5 The required operations plan would also have address “referrals to service providers that are able to provide services to individuals under the age of 18 who arrive at an encampment unaccompanied by a parent or legal guardian.” How do referrals for youth work in practice presently at authorized encampments in Seattle?
- Permit.6 How would the process to permit an interim use encampment work in practice, as provided for in the proposed legislation?
- Permit.7 What would be the cost of the permit fee? How would the cost of the fee compare to other permits?
- Permit.8 Could DPD waive the permit or the permit fee?
- Permit.9 If the Council adopts and the Mayor approves the proposed legislation, when would the City issue the first interim use permit for encampment?
- Permit.10 At present, how does the city respond to unauthorized encampments? What would the process be if Council adopts the proposed legislation?

Use of City Property and City Funding

Below are Council’s questions that relate to use of City property for encampments or funding for encampments. They derive from language in the recitals of the bill and from proposed changes to the Land Use Code proposed in the bill.

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.”

- HMIS.1 How will the requirement to participate in HMIS work in practice, given that encampment operators may not have access to computers or have staff to fulfill the requirement?
- HMIS.2 Will residents have the choice to opt-out of providing sensitive personal information?
- HMIS.3 Is the Human Services Department confident that service providers participating in HMIS are only collecting the data that is necessary for compliance with Federal reporting requirements?
- HMIS.4 Are the authorized encampments currently operating in Seattle participating in HMIS? Do they receive funding for operations?
- HMIS.5 How will the City ensure that participating in HMIS is a requirement for an encampment?

The recital quoted above specifies a *lease agreement* for an encampment operator to use City property. Under the land use code changes for the proposed interim use permit, an encampment operator wishing to *locate an encampment on City property* would have to obtain and maintain insurance at its own expense and “agree to defend, indemnify, and hold harmless the City of Seattle, its officials, officers, employees, and agents...”

- Lease.1 Could an encampment *locate* on City property *without a lease* as long as the encampment operator met the insurance and the “defend, indemnify, and hold harmless” requirements?
- Lease.2 How would Seattle negotiate a lease agreement with an encampment operator to use City property for an encampment? Without a lease agreement, how would Seattle ensure that the encampment operator participate in HMIS (see above)?
- Lease.3 What would be the criteria for selecting City land for encampment?

Decision Agenda

The following is a decision agenda of five issues identified for discussion, with potential options for amendments to CB 118310.

1. Should the proposed interim use permits for transitional encampments be limited to non-residential zones?

Key questions:

- What is the policy rationale for not allowing the proposed interim use permit in residential zones?
- What is the practical rationale for the same?
- Can DPD provide a map of the allowed zones, showing access to transit and to human/social services?

Committee options for addressing this issue include:

Option A: Keep the zoning requirement as proposed: only in Industrial, Downtown, SM, NC2, NC3, C1, or C2; except if the property is in a residential zone as defined in Section 23.84A.048 or is in a special review district established by Chapter 23.66 of the Municipal Code

Option B: Change the zoning requirement to include residential zones and change the associated requirements in the proposal.

Option C: Remove the zoning requirement and associated requirements in the proposal.

Committee direction:

2. Should the proposed interim use permits for transitional encampments be limited to property owned by the City of Seattle or a private party?

Key questions:

- Similar to the questions about allowed zones, what are the practical and policy rationales for the limitation?

The existing Land Use Code provides for temporary use permits for uses that are “not otherwise permitted or not meeting development standards in the zone” (SMC 23.42.040), including transitional encampment use, without restriction based on the ownership of the property.

Committee options for addressing this issue include:

Option A: Keep the requirement as proposed: the new interim use permit for transitional encampment would only be available for City of Seattle property or private property.

Option B: Remove the restriction to City of Seattle or private property.

Committee direction:

3. Should encampments of fewer than ten people be considered in the location requirement?

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. This rule would 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.

As proposed, the location of an encampment operating with a temporary use permit would not affect where an encampment under the proposed, interim permit could locate, nor would an encampment permitted as temporary use be constrained in its location in relation to other encampments.

Key questions:

- What is the intent of the language about encampments of fewer than 10 persons (see the proposed new Section 23.42.056.A.6): “(location requirement)...shall not apply...to any legally-established transitional encampment interim use that provides shelter for fewer than ten persons.”?
- Does the current version of the bill accomplish the intent?
- Why would an encampment operator apply for an interim use permit for fewer than ten persons?
- Also, would the interim use permit become void for such an encampment if the number of persons sheltering there grew to ten or more?

Committee options for addressing this issue include:

Option A: Remove the language exempting encampment of fewer than 10 persons.

Option B: Clarify the language regarding encampments of fewer than 10 persons.

Committee direction:

4. Should the duration requirement be different than as proposed in the bill?

A permit for a transitional encampment interim use would be authorized for up to one year from the date of permit issuance and would not be renewable. The encampment operator could apply for a new permit, for a different site (see the discussion of timing below).

Key questions:

- What are the practical and policy rationales for the requirement?

Committee options for addressing this issue include:

Option A: Keep the maximum duration of the permit, as proposed.

Option B: Change the maximum duration of the permit.

Option C: Provide for an extension to the duration of the permit, under specified conditions.

Option D: Remove the duration requirement.

Committee direction:

5. Should the timing requirement be different than as proposed in the bill?

The propose bill requires that “12 months shall elapse before an encampment use may be located on any portion of a property where a transitional encampment interim use was previously located.”

Key questions:

- What are the practical and policy rationales for the requirement?

Committee options for addressing this issue include:

Option A: Keep the length of the timing requirement, as proposed.

Option B: Change the length of the timing requirement.

Option C: Provide for a shorter elapsed time requirement, under specified conditions.

Option D: Remove the timing requirement.

Committee direction:

Next Steps

PLUS will hold a public hearing on the matter on February 26, 2013. PLUS will continue discussion, consider amendments and take action on CB 118310 on March 3, 2015.