

M E M O R A N D U M –REVISED 9/21 @ 3:00 PM

To: Human Services and Public Health Committee
From: Eric McConaghy, and Ketil Freeman, Central Staff
Date: September 21, 2016
Subject: Council Bill 118794 – City Responses to Homeless Individuals Living on Public Property

On September 22, the Human Services and Public Health Committee (Committee) will take up discussion of Council Bill (CB) 118794. This memorandum (1) describes the requirements of the CB 118794, (2) sets out background information related to existing regulations governing the location of unsanctioned encampments on City-owned property and recent policy development around homelessness, and (3) sets out primary decision-points and preliminary options for the Committee.

Direction will be incorporated into amendatory language for the Committee to consider and act on at its September 28 meeting.

What would CB 118794 do?

CB 118794 was drafted by the American Civil Liberties Union of Washington and Columbia Legal Services working with community organizations and legal advocates. The goal of the legislation is “protecting the public health, public safety, and civil rights of all people, including those experiencing homelessness.”¹

The legislation seeks to do this by: (1) establishing requirements and conditions for outreach, notice, and availability of alternative shelter that must be satisfied prior to removing unsanctioned encampments or vehicles from public property; (2) setting minimum standards for storing and safeguarding personal property, including vehicles, that are removed from unsanctioned encampments or impounded; (3) establishing affirmative obligations for the City when sanitation and harm reduction services are requested; and (4) establishing an advisory committee to advise the City on encampment removals.

Violations of requirements in the bill would result in a penalty of \$250 per violation. The Office for Civil Rights would be responsible for enforcement.

Requirements Prior to Removal of Unsanctioned Encampments or Vehicles

The bill would establish requirements that must be satisfied prior to removal of unsanctioned encampments or vehicles from public property, whether owned by the City or another public entity. In practice, the requirements in the bill would not legally constrain the actions of other public entities, but they would limit the City’s ability to participate in removal activities on other public property that do not conform to the requirements of the bill.

Requirements in the bill, such as length and type of notice, related to removal of encampments or vehicles differ based on two primary characteristics: (1) availability of suitable housing or, barring housing availability, an alternative suitable encampment location and (2) locational characteristics or site conditions of an unauthorized encampment.

With respect to the first characteristic, the bill would require that “adequate and accessible housing” is available and offered to homeless individuals before they are removed from a suitable encampment location on City-owned property. Adequate and accessible housing is defined by the bill as a living space where a person has (1) a “right to reside and keep belongings on an ongoing basis at any time of day or

¹ CB 118794 at page 12, line 21.

night;” (2) that meets commonly accepted standards for habitation, including the ability “to maintain current household composition,” including pets, and accommodations for mental and physical limitations; and (3) that is “actually accessible” to the person regardless of criminal background, treatment status, or other individual circumstance that could serve as a barrier to accessing the housing.²

With respect to the second characteristic, the Department of Neighborhoods (DON) would prescribe, by director’s rule, locations on City-owned property that would be suitable for unsanctioned encampments or vehicle parking. Locational criteria and site conditions for unsuitable and unsafe areas and for hazardous areas are generally defined in the bill as:

- Unsuitable location “means a location that has a specific public use that is substantially impeded as a result of an outdoor living space or vehicle used as a residence in that location and where the public lacks alternative means to accomplish the specific use.”³ An example of an unsuitable location could include a Seattle Parks Department playfield.
- Unsafe location “means a location that poses an imminent danger of harm to individuals residing in that location or to the general public.”⁴ An example of an unsafe location could be a sidewalk adjacent to a busy arterial.
- Hazardous condition “means a condition that creates an imminent and likely public health or safety harm.”⁵ An example of a hazardous condition could include the presence of hypodermic needles that have not been disposed of safely.

Table 1 summarizes requirements for availability of shelter, or alternative encampment location, and length of notice based on location and site condition. The bill would require the City to allow unauthorized encampments with hazardous conditions an opportunity to cure the condition and support in doing so, prior to undertaking removal.

Table 1.

	Suitable Location	Unsuitable or Unsafe Location	Suitable Location with Hazardous Conditions
Alternative Shelter or Location	Adequate and Accessible Housing	Alternative Suitable Location on City Property	Alternative Suitable Location on City Property
Notice Duration	30-days	48-hours	5-days (72-hours to cure the hazardous condition)

Finally, the proposed bill establishes minimum requirements related to type and contents of notice that must be provided to residents of unauthorized encampments or vehicles prior to removal or impoundment. Notice is required to be in writing and provided in languages likely to be spoken by

² Ibid at page 3, line 1.

³ Id. at page 4, line 20.

⁴ Id. at page 4, line 16.

⁵ Id. at page 3, line 13.

encampment residents. Additionally, notice is required to specify when removal will take place, how removal will occur, and where personal property can be retrieved.

Storage and Safeguarding Materials Removed from Encampments

The bill establishes minimum standards for storing and safeguarding personal property, which is defined as “any item which an individual owns and which might have value or use to that individual, regardless of whether the item is left unattended for temporary periods of time or whether it has monetary value.”⁶ Personal property includes vehicles, but does not include weapons, contraband, or other items that pose a public health or safety risk.

The City would be required to retain removed or impounded personal property for at least 90 days. The bill would require that:

- Personal property be photographed and catalogued, with that information stored in a searchable database;
- Personal property be stored in a location accessible by transit and open beyond normal business hours;
- Identification not be required for retrieval by the owner; and
- The City post written notice with information about retrieval at the removal location and return to that location within 24 hours to facilitate retrieval.

Sanitation and Harm Reduction Services on Request

The bill would establish an affirmative obligation to investigate clean-up requests when adequate information is provided indicating that there is a legitimate concern about public health and safety. Additionally, the bill would establish an affirmative obligation to provide “outreach, basic garbage, sanitation, and harm reduction services” when requested for a site where five or more unsheltered persons reside.

The City Customer Service Bureau would serve as the coordinating entity for clean-up requests and requests for services.

Advisory Committee

The bill would establish an 11 member Implementation and Advisory Committee to (1) advise the Council and the Mayor on issues related to removal and impoundment and (2) to review implementation plans or other guidance related to removal and impoundment.

Each Councilmember and the Mayor would appoint a member to the Committee and the Council as a whole would appoint a member. The Committee would be staffed by the Human Services Department and the Finance and Administrative Services Department with representation from other departments as requested.

Background – Existing Regulations and Policy Development

Council’s decision on CB 118794 and any amendments should be considered in the context of existing regulations, the civil emergency, and ongoing policy development around homeless investments.

Existing regulations

Multi-Departmental Administrative Rules 08-01 ([MDAR 08-01](#)), which was promulgated in 2008, establishes a uniform approach to the enforcement of existing regulations dealing with unauthorized camping and the erection of unauthorized structures on City property. The procedures in MDAR 08-01 interpret and relate to enforcement of trespass and exclusion regulations contained in the Seattle

⁶ Id at page 4, line 1.

Municipal Code (SMC) that apply to City property. They also set out notice, and other requirements related to removal and storage of personal property from unauthorized encampments.

In addition, the SMC regulates other activity associated with encampments and vehicular residence. Title 15, Street and Sidewalk Use, prohibits sitting or lying on a public sidewalk during daytime hours in Downtown and Neighborhood Commercial zones⁷. Title 11, Vehicles and Traffic, prohibits overnight parking of vehicles over 80 inches wide citywide, except in Industrial zones,⁸ and prohibits parking of vehicles for more than 72 hours on the same block.⁹

Civil Emergency

On November 2, 2015, the Mayor issued a Proclamation of Civil Emergency and three emergency orders related to homelessness. The emergency orders: (1) requested state assistance, (2) requested federal assistance, and (3) ordered additional shelter capacity for school children experiencing homelessness. On November 3, 2015, the City Council adopted Resolution 31630, ratifying the civil emergency and the three orders. On January 19, 2016, the Mayor issued an additional order addressing encampments and vehicles used as residences.

To date, the only actions taken pursuant to the emergency authority that address encampments and vehicles has been allowing vehicles used as residences to park in designated, City-owned rights-of-way; designating “safe lots” for vehicles used as residences; and expediting a sanctioned encampment for people experiencing homelessness.

Under a civil emergency, the Mayor may issue “orders as are imminently necessary for the protection of life and property”, including orders that may temporarily limit the exercise of certain civil rights.¹⁰ If the Council passes CB 118794, the Mayor could ignore limitations on City action and the additional protections provided by the bill if acting pursuant to his emergency powers.

Policy development

In recent months, the Mayor and Council have taken other actions and received additional information related to homelessness, outreach to unsheltered persons, and removal of encampments from public property.

On August 31, the Mayor and Councilmember Bagshaw jointly convened a task force on unsanctioned encampment clean-up protocols. The task force is expected to make recommendations by the end of September.

On September 8, the Council was briefed on [Recommendations for the City of Seattle’s Homeless investment Policy](#), by Barbara Poppe and Associates, and the Mayor’s proposed [Pathway Home Initiative](#). In summary, the Mayor’s initiative calls for changes in Seattle’s homelessness services by increasing funding of diversion, rapid rehousing, and permanent supportive housing; prioritizing shelter and housing for unsheltered people and people with the longest histories of homelessness; and focusing on moving people from homelessness to permanent housing. The Mayor’s budget will likely include proposed funding shifts or additional funding to begin implementation of the recommendations.

⁷ [SMC 15.48.040](#).

⁸ [Ibid. 11.72.070](#).

⁹ [Id. 11.72.440](#)

¹⁰ [Id. 10.02.025](#).

Primary Decision Points and Options

Decisions Point	Non-exhaustive Options Most of Which are Not Mutually Exclusive	Discussion
1. How should “adequate and accessible housing” be defined?	<p>Option A – Legislation as proposed.</p> <p>Option B – Housing with a right to return and storage, but not a right reside on an ongoing basis and with some barriers, such as behavioral standards.</p> <p>Option C – Some other standard, such as a low barrier space were a person may stably reside.</p> <p>Option D – A lower standard, such as emergency shelter.</p>	<p>The bill prescribes a high standard for housing that must be met prior to removal of an encampment. As a practical matter, there is little to no housing in the current shelter system that would meet that standard. However, the standard could possibly be met through transitional encampments depending on how they are operated.</p> <p>The Council could consider an alternative standard, such as a low barrier shelter standard informed by what is achievable given budgetary and time constraints.</p>
2. How should unsuitable locations for unauthorized encampments be defined?	<p>Option A – Legislation as proposed.</p> <p>Option B – Further limitations to exclude property owned by specified public entities, such as the Seattle School District, the University of Washington, public facilities districts, or public development authorities.</p> <p>Option C – Further limitations based on characteristics of the City property, such as parks, public rights-of-way adjacent to schools or residential uses, or library property.</p>	<p>The bill authorizes the DON Director to promulgate by rule unsuitable and unsafe locations with guidance related to “specific public use,” such as a park or school, as a criterion to consider in determining whether a location is unsuitable for unauthorized encampments. The bill would require that designation of unsuitable locations must allow for alternative areas.</p> <p>Council could prescribe unsuitable locations or provide further guidance to the DON Director. Those locations could include Seattle School District property and land owned by other public entities, such as public development authorities and public facility districts. Similarly, Council could determine specific rights-of-way or characteristics of rights-of-way that are unsuitable for encampments or living in vehicles, such as rights-of-way adjacent to residentially zoned areas or rights-of-way adjacent to schools.</p>
3. How should unsafe locations for unauthorized encampments be defined?	<p>Option A – Legislation as proposed</p> <p>Option B – Some different standard with greater specificity about locations or criteria for delegation should the areas be defined by director’s rule.</p>	<p>The bill defines an unsafe location as “a location that poses an imminent danger of harm to individuals residing in that location or to the general public.” An example of an unsafe location could be a sidewalk adjacent to a busy arterial.</p> <p>The Council could further define unsafe locations to include specified rights-of-way; such as undeveloped areas of rights-of-way that are not separated by barriers from roadways with high speed limits; landslide prone areas; or other areas where characteristics of the property present known risks.</p>
4. How should hazardous conditions be defined?	<p>Option A – Legislation as proposed</p> <p>Option B – Some different standard with greater specificity about which public health conditions constitute a hazard or criteria for delegation should the definitions be made by director’s rule or in consultations with Public Health of Seattle and King County.</p>	<p>The bill defines hazardous condition as “a condition that creates an imminent and likely public health or safety harm.” An example of a hazardous condition could include the presence of hypodermic needles that have not been disposed of safely.</p> <p>The Council could further define what constitutes a hazardous condition or provide criteria whereby an entity, such as Public Health of Seattle and King County could advise on or promulgate a standard.</p>
5. What level of outreach should be required prior to removal or impoundment actions on suitable public property?	<p>Option A – Legislation as proposed.</p> <p>Option B – a standard based on the US Interagency Task Forces standard.</p> <p>Option C – Some different standard based on the principle of a “person centered” and informed by local providers.</p>	<p>As proposed “sufficient outreach” is required prior to removing an encampment from suitable, unsuitable, and unsafe locations. As defined by the bill sufficient outreach for unauthorized encampments at suitable locations includes: (1) an individualized assessment considering specific factors, such as household composition, substance use, and ongoing support needs; (2) an offer of adequate and accessible housing based on that assessment; and (3) administrative and logistical assistance in moving a homeless individual.</p> <p>Council could specify a different outreach standard. The current state of the practice for some is to provide a “person centered” approach. The United State Interagency Council on Homelessness has published a checklist for implementations plans related to unsheltered encampments. That checklist includes items related to outreach and engagement. Those could form the basis for an alternative standard. Additionally, local providers have developed their own outreach standards. REACH and YouthCare currently provide outreach services to the City at some locations.</p>
6. What length of notice should be provided prior to removal or impoundment of encampments located in suitable locations, unsafe or unsuitable locations, and in locations with hazardous conditions?	<p>Option A – Legislation as proposed.</p> <p>Option B – Some longer or shorter length of time.</p>	<p>The proposed bill establishes notice periods of 30-days, 48-hours, and 5-days prior to removal of unsanctioned encampment or vehicles from suitable areas, unsuitable areas, and areas with hazardous conditions, respectively.</p>

Decisions Point	Non-exhaustive Options Most of Which are Not Mutually Exclusive	Discussion
		Depending on how the Council defines suitable areas and the standard for housing availability, Council may want to consider a lower standard.
7. What type of notice should be provided prior to impoundment or removal?	<p>Option A – Legislation as proposed.</p> <p>Option B – A different notice standard that clarifies what constitutes sufficient notice and the point at which the notice period starts.</p>	<p>The proposed bill establishes minimum notice requirements related to the type and contents of notice. Notice is required to be in writing and provided in languages likely to be spoken by encampment residents. Additionally, notice is required to specify when removal will take place, how removal will occur, and where personal property can be retrieved.</p> <p>Notice requirements differ somewhat depending on whether the unauthorized encampments is in a suitable or unsuitable location. In suitable locations notice must include information about accessing adequate and accessible housing. Additionally, when an individual is not present at a suitable location at the time of removal, the City must demonstrate that that the individual had <i>actual</i> notice of the removal, which means that the City would need to demonstrate that the absent person personally received the notice. In unsuitable locations notice must include directions to nearby suitable locations, and actual notice is not required.</p> <p>In the bill as written, it is unclear whether the notice requirements of the bill would be triggered again if an encampment gained additional residents after the initial notice.</p>
8. What level of care should the City exercise in safeguarding property which has been removed or impounded from encampment locations? And, how should personal property be defined?	<p>Option A - Legislation as proposed.</p> <p>Option B - Some greater or lesser requirements related to the definition of personal property, operational hours, retrieval location, duration for retention, and requirements for retrieval.</p>	<p>The proposed bill would require that the City safeguard personal property that has been removed from an encampment for at least 90 days and that the property be available for retrieval subject to standards intended to facilitate the return of personal property to an owner.</p> <p>Personal property is broadly defined as “any item which an individual owns and which might have value or use” regardless of how long it is left unattended and regardless of whether it has monetary value. By contrast, MDAR 08-01 establishes a minimum value of \$25 as guidance for determining whether property should be retained, and specifies that construction materials, like those that might be used to construct an outdoor shelter, are not personal property.</p>
9. What requirements should apply to vehicles used as residences?	<p>Option A – Legislation as proposed with applicability to homeless persons living outdoors and in vehicles.</p> <p>Option B – Applicability only to homeless persons living outdoors.</p> <p>Option C – Applicability to homeless persons living in vehicles but distinguishing outreach, notice, location, and other requirements.</p>	<p>The protections in the proposed bill would apply equally to people living outdoors in unsanctioned encampments and to people living in vehicles.</p> <p>A person living in a vehicle may not face the same level of hardship as those living outdoors. Depending on the vehicle, a person’s possessions may be more secure, and he or she may have a higher degree of mobility.</p>
10. What should the threshold be for the City to have an obligation to provide outreach, basic garbage, sanitation, and harm reduction services to outdoor living spaces?	<p>Option A – Legislation as proposed.</p> <p>Option B – Providing discretion about whether to provide services and establishing some other size threshold based on number of individual, size of outdoor area, etc... and clarifying who can request services.</p>	<p>The proposed bill would require services upon request for encampments with five or more people. The bill is unclear about whether the request could only be triggered by encampment residents or by a third party. Additionally, the bill does not provide guidance on how a service area would be defined for the purposes of determining whether it includes five or more individuals. MDAR 08-01 defines an encampment as three or more unauthorized structures in an identifiable area which appear to be used for unauthorized camping.</p>
11. Should the City establish an advisory committee?	<p>Option A – Legislation as proposed.</p> <p>Option B – No advisory committee</p> <p>Option C - An alternative committee with a limited duration, refined scope of work, or different membership and appointment structure.</p>	<p>The proposed bill would establish an advisory committee to inform the Mayor, Council and departments on removal and impoundment, and to comment on implementation plans and guidelines. The bill does not establish a duration for the Committee. The Committee would be staffed by the Human Services Department and the Department of Finance and Administrative Services.</p> <p>The Mayor and Councilmember Bagshaw have established a task force to advise on clean-up protocols for unsanctioned encampments.</p>

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12. Should Council clarify how penalties are assessed or cap penalties available under the bill (\$250/violation)?	<p>Option A – Legislation as proposed.</p> <p>Option B – An alternative penalty structure with greater specificity about how penalties are assessed and for which violations, such as limiting penalties to circumstances where personal property is improperly destroyed.</p>	<p>The proposed bill would charge the Office for Civil Rights with enforcement. The penalty paid by the City to each affected individual is \$250 per violation.</p> <p>Unclear in the bill are: (1) what constitutes a unique violation; (2) how to report a violation; and (3) whether the City may remedy a violation instead of paying the penalty.</p> <p>Some aspects of compliance with requirements of the bill may also deserve consideration. For example, the bill does not specify the time limit for compliance with the requirement to provide services upon request to an unsanctioned encampment.</p>
13. Should the legislation include a sunset clause and reporting requirement?	<p>Option A – Legislation as proposed.</p> <p>Option B – A sunset date and/or a reporting requirement tied to milestones for reducing the number persons who are homeless and unstably housed.</p>	<p>The proposed bill would establish additional protections that would exist until changed by future Council action. Other policy endeavors, such as the Pathway Home Initiative sets out a timeframe by which the number of homeless and unstably housed people living in Seattle will be reduced. The Council could consider</p>

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