



**City of Seattle**

**MEMORANDUM**

**Date:** August 31, 2016

**To:** Seattle City Councilmembers

**From:** Fred Podesta, Director, Finance and Administrative Services Department  
Kathleen O’Toole, Chief, Seattle Police Department  
Catherine Lester, Director, Human Services Department  
Jesús Aguirre, Director, Seattle Department of Parks and Recreation  
Scott Kubly, Director, Seattle Department of Transportation  
Ben Noble, Director, City Budget Office

**Subject:** Proposed Ordinance on Unauthorized Camping and Illegal Vehicles

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We understand that [proposed legislation](#) will be introduced before Council on Tuesday, September 6 that would dramatically restrict the City’s ability to address unauthorized camping on public property. We are deeply concerned about the potential impacts of the proposed legislation.

The Mayor agrees that the City must improve the way it addresses public property where people are living unsheltered, which is why the Mayor and Councilmember Bagshaw have organized a task force composed of a wide cross section of interests – including homeless advocates, neighborhood representatives, service providers, business interests, and representatives of both the Executive and Council – to fully examine the issue and make public recommendations that balance our City’s compassion for the homeless with the City’s responsibility to protect health and safety and be a steward of public property for a variety of uses.

The proposed legislation does not strike the right balance and would authorize camping throughout the City of Seattle. The practical impact of the legislation would be dramatic, as outlined below.

## **1. The proposed legislation would open City parks and green space to unauthorized camping**

Approximately 80 of the 430 developed City parks and all of the major green spaces managed by Seattle Parks and Recreation have chronic homeless residents. The bill allows for removal of tents and structures from “unsuitable locations” – after significant steps, including finding another camping location – but it defines “unsuitable locations” very narrowly: the City must show substantial impediment of a specific public use **and** that ***“the public lacks alternative means to accomplish the specific public use.”*** Therefore, in most circumstances, Parks would not be able to remove unauthorized camping structures except after 30-days notice and then only if the City could provide “adequate and accessible housing” as defined in the ordinance. Even in highly unsuitable locations like unauthorized encampments near playgrounds, the Parks Department would be required to implement new, expensive, and time-consuming protocols before removal.

According to the Superintendent of Seattle Parks and Recreation, Jesús Aguirre, the practical effect of this proposed ordinance would be to fully open Parks land to camping. In order to manage and mitigate these impacts, Superintendent Aguirre says that the Parks Department would need to establish dedicated camping zones in a significant portion of City parks and green spaces. The estimated cost of setting up, managing, and mitigating the impacts of those designated camping zones is discussed in section 5, below. Additionally, designating Parks land as camping zones would likely trigger procedures identified in Initiative 42 which would require public hearings and additional steps to authorize the change in use, all subject to appeal to the Superior Court.

## **2. The proposed legislation would inhibit the City’s ability to address tents that block sidewalks or are in unsafe locations**

Every week, the City removes unauthorized tents and structures that block City sidewalks or are located in dangerous proximity to roadways. In many instances, tents and other living structures completely prevent members of the public or people with disabilities from safely using a sidewalk. (See pictures in Appendix A). The proposed ordinance makes no allowance for the City to effectively address these safety issues. Instead, the bill would require that the Seattle Department of Transportation follow a new and expensive multi-step protocol – including finding an alternate location to camp and moving the individuals to that alternate location –prior to addressing an unauthorized encampment that blocks a sidewalk, other area of the public right-of-way, or is in a dangerous location.

According to Seattle Department of Transportation Director Scott Kubly, implementation of this bill would put pedestrians at risk and require that SDOT divert significant resources to ensure

compliance with federal laws, including the Americans with Disabilities Act. In particular, Seattle sidewalks in the public right-of-way must comply with applicable policies and rules mandated by the Federal Highway Administration, U.S. Department of Transportation, the U.S. Access Board, and the Department of Justice. These rules require that pedestrian pathways have a continuous access route at least four feet wide that connects all pedestrian elements of the right-of-way. If there is any encroachment to this pedestrian pathway, SDOT is required to create an ADA-accessible pedestrian detour utilizing the curb lane or other adjacent public right-of-way. This typically involves closing off a portion of City streets with barricades to allow for continuous pedestrian access, similar to the configuration used to provide pedestrian access through construction zones.

SDOT is particularly concerned about tents and living structures that create blockages within a travel lane, parking lane, or load zone; that restrict a sidewalk to less than 4 feet in width; that restrict or prevent access to traffic control equipment (signal cabinets, etc); and, that prohibit entrance to or from a building (including emergency exits). SDOT is also concerned about the blockage of any sidewalk that is proximate to schools, parks, community centers, transit stops and other destinations that people of all ages and abilities must be able to access.

Additionally, SDOT has already heard from newspaper publishers that any blockage of existing newspaper boxes would constitute a first amendment violation. The logistics and costs of implementing these requirements because the City was unable to immediately address unauthorized camping encroachments on City sidewalks would be significant.

### **3. The proposed legislation would prevent the City from removing tents from school property and other public entities' properties**

Section V of the proposed bill prohibits the City from cooperating with “any other entity to engage in any removal or impoundment action except in accordance with this ordinance.” That means that Seattle Police would not be able to assist Seattle Public Schools in removing unauthorized camping from school property and playfields; police would not be able to remove unauthorized camping from Seattle Housing Authority property; and the City would not be able to support the Washington State Department of Transportation to address unauthorized camping at dangerous locations along freeways such as I-5, I-90, and SR-99.

These are not remote hypotheticals. Just last week the City was called to assist with the removal of an encampment with a large accumulation of hypodermic needles on an elementary school property in Capitol Hill. Last year, the Yesler Terrace low-income housing community sought and received City assistance to address unauthorized, “crime-ridden” campsites at and adjacent to their property. And the City regularly cooperates with WSDOT to address tents at dangerous locations near freeways.

#### **4. The proposed legislation would limit the City's ability to address unauthorized tents or derelict vehicles associated with criminal activity**

According to the Seattle Police Department, some unauthorized campsites and derelict vehicles are associated with high rates of criminal and nuisance activity.

As an example, for much of this year the Chinatown/International District complained of a large unauthorized encampment on the sidewalks under I-5 at Jackson and King Streets. At that encampment, Seattle police responded to a shooting, stabbing, several robberies, significant drug distribution, prostitution, assaults threats, persons in crisis, and narcotics overdoses. The public safety impacts were particularly felt by members of the elderly immigrant population that often use those streets for access to a food bank and by the students of a nearby high school and Kung Fu program. Several nearby businesses shut down as a result and the Wing Luke Museum stated that it was on the verge of permanently closing because of criminal activity associated with these unauthorized encampments. (See Appendix A).

Under this proposed legislation, if the police identified tents on public property with significant suspected criminal activity including theft, forced prostitution, and drug distribution, the City would only be able to remove those tents after going through an onerous process to include finding "nearby" public property for the residents to camp and providing moving services to that new location.

Similarly, in circumstances where there are derelict or junk vehicles driving illegally on city streets, the proposed legislation would take away the Police Department's ability to impound those vehicles in almost all circumstances if the owner claims that he or she lives in the vehicle.

According to Chief Kathleen O'Toole, the proposed legislation's restrictions on the City's ability to effectively address unauthorized tents and derelict vehicles associated with serious chronic criminal activity would have significant public safety impacts throughout the City of Seattle.

#### **5. The proposed legislation would cost tens of millions of dollars annually to implement**

Implementation of the direct requirements of the bill and mitigation of the effects it would create would cost the City tens of millions of dollars. Below is a non-exclusive and conservative estimate of some of the costs that could be incurred by this proposed ordinance. The costs are likely to be far greater than detailed below:

<b>Proposed Ordinance Section(s)</b>	<b>Requirement and/or Implementation</b>	<b>Cost Estimate Assumptions</b>	<b>Estimated Cost</b>
<b>III.B</b>	Provide “adequate and accessible housing” with accommodations for substance abuse disorders, mental illness, pets, family circumstances, other needs, and moving services	1,000 persons accessing this type of shelter (out of 3,000 unsheltered)	\$15M annual \$5M start-up
<b>II.C</b>	Provide garbage and sanitation services (portable toilets) upon request to any unauthorized encampment with more than 5 persons	100 sites for listed services	\$2.7M
<b>IV.C.1</b>	Provide short-term garbage and sanitation services at hazardous locations to provide “cure” opportunity	100 sites at 7-days/per site	\$200K
<b>III and IV</b>	Set up designated camping locations in City parks with appropriate sanitation, garbage, maintenance, supervision, and mitigation efforts	Assuming 80 sites (80 of 430 parks currently have chronic homeless camping activity)	\$4M
<b>III and IV</b>	Mitigate public safety impacts of chronic criminal unauthorized encampments and derelict vehicles	24 dedicated police officers and 4 sergeant supervisors	\$3.2M
<b>III, IV, V, VI</b>	Increase reserves for anticipated legal liability	See Sec. 7	Significant

**6. The proposed legislation would divert resources from the programs that experts say work best to reduce homelessness**

Addressing the needs of people who are living unsheltered has been the cornerstone of the Executive’s strategy to address homelessness. As such, Mayor Murray declared a civil state of emergency on homelessness on November 2, 2015. The state of emergency resulted in \$7.3 million in one-time funding to support services designed to address the immediate needs of unsheltered individuals in our community, including increasing the City’s shelter capacity by 486 beds. These investments are part of the nearly \$50 million the City spends annually to address homelessness. While transitioning our overnight shelters to 24 hour, comprehensive shelter is a best practice that the City is pursuing, diverting resources from diversion and housing interventions would perpetuate homelessness rather than reduce it.

The short-term measures implemented under the state of emergency, while providing immediate relief for many unsheltered individuals, will not lead to a reduction in homelessness.

To achieve that goal, the City has engaged with national experts to determine the most effective homeless strategies investments. According to one of those national experts, we should invest only in programs that can be measurably demonstrated to move homeless people into housing.

*Every dollar spent on supporting outdoor living is a dollar not spent moving someone into housing.*

## **7. The proposed legislation would expose the City to significant legal liability**

The proposal creates significant legal risks for the City, the most notable of which are summarized here.

The proposed legislation would require that the City repeal several of its laws that prohibit camping on public property. Such laws include: the sit-lie ordinance, the ban on camping in public places, the general park use requirements that people get permits to place objects in parks, as well as rules that prevent RVs from parking on City streets, or prevent cars from parking on a street for more than 72 hours. A repeal of those laws, as would likely be required if the proposed legislation were passed, would effectively serve as an invitation to camp on City property and parks.

If the City were to extend such an invitation by passing the proposed legislation, the City would potentially be liable to third parties who may be injured or impacted by campers on City property. For example, an individual who is injured while going into the street because a sidewalk was blocked by a tent would potentially have a tort claim against the City. Currently, the City prohibits such camping and is not held responsible for the actions of campers in most instances. But by authorizing the camping, the City becomes responsible for the natural consequences of the camping activity. This would be a significant and potentially costly legal risk for the City.

The proposal also increases the City's risk exposure with respect to "personal property," and is likely to result in increased claims, related expenses and litigation by creating a new argument that the City negligently destroyed property by failing to follow its own standards. Under the law the City may deliberately increase its own risk exposure, as the proposal appears to intend.

In addition, enactment and implementation of the ordinance would expose the City to significant liability for failure to comply with multiple federal and state laws, including the Americans with Disabilities Act, various requirements for maintenance of the public right-of-way, environmental and health rules.