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**From:** [Nancy Pfeil](#)

**Sent:** Monday, October 12, 2020 3:46:18 PM

**To:** [City Council](#)

**Subject:** [EXTERNAL] Letter for public comment for item 8A for 10/12/2020

**Sensitivity:** Normal

**Attachments:**

[attorney letter.pdf](#); [2020-10-12\\_151833.jpg](#); [2020-10-12\\_151821.jpg](#); [2020-10-12\\_151830.jpg](#); [2020-10-12\\_151824.jpg](#); [2020-10-12\\_151827.jpg](#);

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Heidi, this letter is for public comment for agenda item 8A for the meeting tonight, October 12, 2020. Please be sure that this gets to city council and put in the public comments section. I could not send it through the public comment form because it is an attachment.

The PDF is included but if you have problems viewing the PDF, then here are the five pages in JPEG format.

Nancy



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

## PUBLIC COMMENT

TO: Shoreline City Council

FROM: Bricklin and Newman LLP on behalf of Shoreline Neighbors Advocating for Proper Placement of Shelters (SNAPPS)

DATE: October 12, 2020

RE: Enhanced Shelter Interim Regulations

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This comment is submitted on behalf of our client, the Shoreline Neighbors Advocating for Proper Placement of Shelters (SNAPPS), regarding the proposed adoption of “Enhanced Shelter Interim Regulations.”

If the City were to adopt the proposed ordinance, it would violate the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA).

An interim zoning regulation is subject to review for consistency with the GMA and SEPA when the interim zoning regulation amends an existing, permanent zoning regulation. *See Phoenix Development LLC v. City of Woodinville*, CPSGMHB No. 07-3-0029c, Final Decision and Order (Oct. 12, 2007), 9 (“[U]nlike the previous ordinances, Ordinance No. 431 did not ‘freeze development’ or maintain the *status quo*; instead, it amended a specific provision of the City’s zoning code...”)

Here, the proposed interim regulations would violate the GMA and SEPA in the following ways:

- 1. Allowing a New Type of Homeless Shelter in a Residential Zone Creates Inconsistent Development Regulations.**

The GMA mandates that new development regulations must be consistent with existing development regulations. *See* RCW 36.70A.040(3); WAC 365-196-500(3).

A “homeless shelter” is defined in your code as a “facility operated within a building to provide short-term, temporary or transitional housing for individuals or families who are otherwise homeless and have no immediate living options available to them. Such facilities may provide support services, food, and other services as an accessory use.” SMC 20.20.024.

The new “enhanced shelter” land use proposed in the interim regulations meets the definition of homeless shelter, because an “enhanced shelter” will provide temporary housing to individuals

who lack housing. The agenda for the City Council meeting of October 12, 2020 confirms that the “enhanced shelter” contemplated by the interim regulations is an “additional type of homeless service.”

Under the existing code, homeless shelters are allowed only in the mixed business, community business and town center 1, 2, and 3 zones. *See* SMC 20.45.405.1. They are not allowed in any residential zone. Yet, the proposed interim regulations would allow one type of homeless shelter (an enhanced shelter) in the R-48 residential zone. *See* SMC 20.40.030.

An ordinance that allows one kind of homeless shelter in a residential zone, when another code section prohibits all homeless shelters from residential zones would create internally inconsistent development regulations in violation of the GMA.

## **2. Allowing a Service Use in a Residential Zone Is Inconsistent with the Comprehensive Plan.**

The GMA mandates that all amendments to development regulations must be consistent with the Comprehensive Plan and must implement the Comprehensive Plan. *See* RCW 36.70A.130(1)(d).

As noted above, the R-48 zone is defined as a residential zone, SMC 20.40.030 and, more specifically, as a high-density residential zone. *See* SMC 20.40.030.C.

Allowable uses in the high-density residential zones are laid out in the Comprehensive Plan, Land Use Policy LU3:

The High Density Residential designation is intended for areas near employment and/or commercial areas, where high levels of transit service are present or likely. This designation creates a transition between commercial uses and lower intensity residential uses. Some commercial uses may also be permitted. The permitted base density for this designation may not exceed 48 dwelling units per acre.

Under LU3, the only allowed uses in high-density residential zones are housing and “some commercial uses.” Social services are not listed as one of the allowed uses in high-density residential zones.

By contrast, “services” are listed as an allowed use in the mixed-use and commercial land use areas, including specifically MU1, MU2, and Town Center. *See* LU9, LU10, LU14.

The Comprehensive Plan’s land use designations MU1, MU2, and Town Center correspond to the code’s zoning districts of Mixed Business (MB), Community Business (CB), and Neighborhood Business (NB), and Town Center 1–3 (TC-1 through TC-3). *See* SMC 20.40.030.C (residential zones); SMC 20.40.040 (nonresidential zones).

Under the current code, “homeless shelter” is an allowed only in zoning districts that implement the Comp Plan’s MU1, MU2 and Town Center designations, specifically, CB, NB, and TC-1 through TC-3. This is consistent with various Comprehensive Plan policies (*e.g.*, LU9, LU10,



and LU14), because the Plan contemplates services being offered in those mixed-use and commercial zones.

However, the proposed interim regulation would allow an “enhanced shelter” (a type of homeless shelter) in the R-48 high-density residential zone. This is not consistent with the Comprehensive Plan, LU3, because the Plan does not contemplate services being offered in a high-density residential zone.

While a homeless shelter may seem, at first glance, to be a type of residential use, the definition of homeless shelter cited above (SMC 20.20.024) allows such shelters to provide services as an accessory use. Similarly, the proposed definition of the new “enhanced shelter” land use is:

A low-barrier, 24 hour a day facility intended to provide adults experiencing homelessness with access to **resources including, but not limited to, housing, basic needs, hygiene, case management and social programs** as they transition to permanent housing.

Thus, both homeless shelters and “enhanced shelters” are a service use, not merely a residential use, and thus, neither can be allowed in the R-48 under the Comprehensive Plan.

In a memo dated July 23, 2020, the City Manager noted that The Oaks at Forest Bay is designated MU1 in the Comprehensive Plan. This observation does not cure the GMA violation, because the Comprehensive Plan prohibits services such as homeless shelters anywhere in the high-density R-48 zone, regardless of the underlying Comprehensive Plan land use designation.

### **3. The City’s Determination of Non-Significance Unlawfully Defers Consideration of the Interim Regulation’s Environmental Impacts to the Project Phase.**

Under SEPA, a government action such as the adoption of a new land use regulation requires a threshold determination of the action’s probable environmental impacts as soon as those impacts can reasonably be identified. *See* RCW 43.21C.110; WAC 197-11-055(2).

As part of the threshold determination process, a SEPA checklist must be prepared. *See* RCW 43.21C.460.

Here, the City issued its threshold determination on October 1, 2020. However, the City’s SEPA checklist (upon which its threshold determination was based), fails to identify the probable environmental impacts of the interim regulations. Instead, in answer after answer, the checklist repeats that this is a non-project action whose impacts will have to be considered on a site-by-site basis whenever specific projects are proposed.

The checklist makes no attempt to analyze the impacts that will result if any or all eligible parcels in the R-48 zone are developed with “enhanced shelters.” The checklist does not contemplate whether future changes to the transit lines (a limiting factor on the development of new shelters) may result in additional R-48 parcels becoming available for shelter development in the future. The checklist does not even attempt to analyze the environmental impacts of

redeveloping a shelter at The Oaks at Forest Bay Nursing Home, even though redevelopment of The Oaks is identified in the October 12, 2020 City Council agenda items as the primary purpose of the interim regulations.

The Growth Management Hearings Board has recently and repeatedly invalidated zoning regulations when local jurisdictions have deferred environmental analysis to the project phase instead of conducting environmental analysis at the ordinance adoption phase. *See, e.g., Tarboo Ridge Coalition v. Jefferson County*, GMHB No. 19-2-0003c, Final Decision and Order (September 16, 2019); *Olympians for Smart Development and Livable Neighborhoods v. City of Olympia*, GMHB No. 19-2-0002c, Order on Motions (March 29, 2019) (finding non-compliance for deferring analysis), Final Decision and Order (July 10, 2019) (imposing order of invalidity). Your proposed interim regulation will suffer the same fate if you adopt it without the required environmental review.

#### **4. Consequences of Non-Compliance with GMA and SEPA**

It is likely that one or more parties will appeal the October 1 SEPA threshold determination to the City Hearing Examiner. The filing of such an appeal will stay the effectiveness of the City's threshold determination during the pendency of the appeal. *See* SMC 20.30.230.B. Thus, at a minimum, the City will be precluded from adopting the interim regulations during the pendency of the appeal, which will likely take several months.

In addition, regardless of the outcome of the Hearing Examiner appeal, the Growth Management Hearings Board likely will conclude that the interim regulations violate the GMA and SEPA for the reasons described above. If the Board invalidates the interim regulations, the City will lose eligibility for various state grants until the invalidation can be cured through amendment or repeal of the interim regulations.

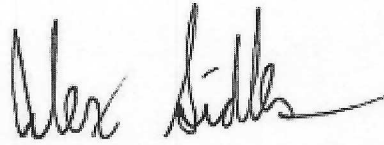
#### **5. Conclusion**

Because of the likelihood of Hearing Examiner and Growth Management Hearings Board appeals, the City risks protracted litigation and possible loss of funding sources if it proceeds with the interim regulations as currently drafted. Instead, the City should slow down, follow the normal process for land use code amendments, including ample opportunity for public participation, correct the GMA deficiencies identified above, and conduct a proper environmental review.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By:



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