

**OLYMPIA PLANNING COMMISSION MEETING**  
Olympia, Washington  
July 9, 2012

**County Permanent Homeless Encampment Amendments to Comprehensive Plan**

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**DIRECTOR'S  
RECOMMENDATION:**

Consider the public testimony and provide direction to staff on any further amendments, then move to recommend to the City Council the proposed amendments, finding that the amendments are consistent with the Growth Management Act and the Comprehensive Plan, and also finding that the City currently has regulations that appropriately implement these proposed amendments.

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**STAFF CONTACT:**

Steve Friddle, Community Services Manager, (360) 753-8591

**ORIGINATED BY:**

Olympia City Council

**PRESENTERS AND  
OTHERS NOTIFIED:**

Steve Friddle

**ATTACHMENTS:**

1. Proposed Comprehensive Plan Amendments
2. County Homeless Encampment Zoning Code Amendments Ordinance 6771
3. August 15, 2011 staff report
4. May 4 Growth Hearings Board Decision Case NO. 11-2-0011
5. June 21 Growth Hearings Board Clarification
6. April 30 Examiner's Conditional Use Permit Decision Approving Quixote Village
7. May 11 Request for Reconsideration
8. May 29 Examiner's Decision to Deny the Request for Reconsideration
9. June 15 Land Use Appeal Petition filed in Lewis County
10. May 21, 2012 Commission Briefing Staff Report
11. June 4, 2012 Commission Public Hearing staff report
12. Written Public Hearing Testimony:
  - a. Adair email dated June 3
  - b. Burgess Correspondence dated June 1
  - c. Burgess Correspondence dated June 4
  - d. Burgess Email dated June 8
  - e. City of Tumwater Correspondence dated June 4 (with 10/31/11 letter attached)
  - f. Hoverter Correspondence dated June 4
  - g. Kalikow Correspondence dated June 5
  - h. Thurston County Correspondence dated June 4

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**BACKGROUND:**

Zoning Code Amendments; There has been an extensive Commission and Council review culminating in a September 2011 zoning code

amendment (see Attachment 2 - Ordinance 6771) to allow permanent homeless encampments, subject to conditions in Industrial Zoned areas (see Attachment 3 August 15, 2011 staff report). That ordinance was appealed to the Washington State Growth Management Hearings Board (GMHB). The GMHB rendered a decision (Case NO. 11-2-0011 - see Attachment 4) stating among other things, "The City of Olympia is ordered to bring its development regulations into compliance with the Growth Management Act pursuant to this decision within 120-days (August 28, 2012)." Pursuant to a subsequent "Request for Guidance and Supplementation of the Record" the GMHB issued a "Clarification" that the City could amend the Comprehensive Plan (and not just the zoning regulations) by the August deadline (See Attachment 5, GMHB June 21, 2012 Clarification).

Conditional Use Permit: Following two nights of public hearing, on April 30, 2012, the Olympia Hearings Examiner issued a Decision approving the Thurston County Conditional Use Permit for Quixote Village (See Attachment 6). A request for reconsideration was filed on May 11 (See Attachment 7) and Denied by the Hearings Examiner on May 29 (see Attachment 8). On June 15, a Land Use Appeal Petition was filed in Lewis County (see Attachment 9).

Comprehensive Plan Amendments. The GMHB Decision and Order (Attachment 4) identified Comprehensive Plan policies LU 18.4 and LU 18.5 as the areas of inconsistency with the zoning amendment. Staff drafted proposed Comprehensive Plan amendments that address the two areas of inconsistency identified in the GMHB Decision and Order. On May 21 the Commission received a briefing and on June 4 the Planning Commission conducted a public hearing on proposed County Permanent Homeless Encampment Amendments to Comprehensive Plan (See Attachments 10 and 11 - Staff Reports). The public record was left open until June 8, 2012.

#### **Neighborhood/Community Interests (if known):**

The public record contains a wide array of opposition and support as expressed by members of the neighborhood and community during the zoning code amendments, the Conditional Use Permitting process and now the Comprehensive Plan amendment process. Generally, the opponents concerns address compatibility that range from support of the camp by finding an alternative location more conducive to residential uses; to harmful impacts on camp residents; and impacts on current and future industrial uses. Supporters generally believe that the proposed Quixote Village, as proposed by the County and Panza, will be compatible (see Attachment 12 - Written Comments). Specific Concerns from Heather Burgess (see Attachment 11, Burgess June 4 Correspondence) are as follows:

- 1. Comprehensive Plan amendments may only be considered once a year during the annual plan amendment cycle.***

Response: The GMHB's "Clarification" to the "Request for Guidance and Supplementation of the Record" provide that the City could amend the Comprehensive Plan by the August deadline.

**2. *The hearing notice was too short to provide for adequate public participation.***

Response: The City continues to follow our public process regulations. The time is limited by the GMHB August deadline. The public record was left open to June 8. The Planning Commission recommendation will be forwarded to the City Council for future consideration. The City Council will schedule this item for a future agenda.

**3. *The City cannot rely on the prior zoning code and conditional use permit process to satisfy the public participation requirements for Comprehensive Plan Amendments.***

Response: The City is following its public participation process within the GMHB August deadline. Most of the substantive issues concerning compatibility (noise; air; screening; transportation; vehicular/pedestrian/bicycle safety; Comprehensive Plan; Zoning; with existing and future industrial uses) have been the subject of exhaustive written and oral testimony throughout the legislative processes and the Examiner's Conditional Use Permit. These issues, concerns, questions, facts and arguments are well articulated and thoroughly examined and re-entered into these proceedings.

**4. *The proposed Comprehensive amendments are internally inconsistent with the Comprehensive Plan.***

Response: The draft proposal fits within the existing Comprehensive Plan writing format guidelines/style, and articulates unambiguous intent to allow consideration of a County homeless encampment "through a process designed to impose reasonable compatibility measures." The adopted implementing zoning regulations are consistent by making an encampment a conditional use, subject to a Hearings Examiner Conditional Use Permit review process and establish review criteria and allow imposition of conditions.

The Hearings Board previously found consistency of the permanent homeless encampment ordinance with Comprehensive Plan policies LU 18.1, 18.3 and 18.6. Given that the ordinance is already consistent with those policies and also given the proposed amendments will be consistent with the ordinance (i.e. the regulations implement the plan), then it is staff position that the policies are consistent with each other. They are consistent with each other, because they allow the permanent homeless encampment ordinance.

Contrary the Burgess letter, the new language creating an exception in LU 8.4 means that the supportive prong of that policy does not need apply. Nonetheless, it is staff's professional opinion based on their experience with the temporary encampment is that the County operated homeless encampment could provide a uniquely supportive employment source for an industrial area. The encampment residents are located close to the employment source. Due to higher unemployment rates but greater flexibility, they would be willing in conditions that regular workers may not accept. This includes inclement weather, nighttime work, short-term work, and odd hours.

Staff also reviewed the comments raised by Burgess and others of potential noise, dust and truck traffic. It is staff's professional opinion based on their extensive experience with the temporary encampment ordinance and familiarity with the specific conditions of the Mottman industrial park is that the industrial park generates very little dust. The roads are paved and most of the lots are paved too. Sources of dust (and not just theoretical sources) are far away from the currently proposed site of the encampment. In addition, staff have monitored the day and nighttime conditions of the Mottman industrial park, especially at the proposed site, and find that traffic is low and that the industrial park is usually not noisy. The industrial park is relatively quiet at night most of the time. This is stark contrast to the some of the very loud locations that homeless are currently living, such as under bridges or next to the freeway. These locations are much louder, especially at night. In addition, the City of Olympia and Tumwater do not allow the use of compression breaks in the city boundaries. This is contrast to the freeway where compression breaks are allowed, creating a much louder traffic noise on the freeway, when they are used.

It is also important to note that County-owned land in the industrial area was not counted in the County's Buildable Lands Report. In other words, the land is not industrial for purposes of ensuring that there is sufficient industrial land. The recent Hearing Examiner decision has shown the City staff that all potential impacts raised by neighbors were addressed by the Hearing Examiner. The Hearing Examiner's decision demonstrated that the Hearing Examiner had the authority to condition the development to consider dust, noise, and traffic impacts if the record warranted it. It is staff's professional judgment that the Hearing Examiner adequately had the authority to mitigate and buffer impacts as presented in the record. In the words, the process worked well to address concerns. Most of the testimony focused, not on how the residents would impact the industrial park, but how the industrial park users could potentially impact the residents. However, industrial park workers are not generally wearing ear plugs and dust masks for a reason. The industrial park is not particularly noisy, not particularly dusty and not comparatively busy with traffic. Homeless residents are accustomed to much worse conditions.

5. ***The City did not coordinate with Tumwater to ensure consistency with Tumwater's Comprehensive Plan for the Mottman Industrial Park.***

Response: The City followed standard notification processes to Tumwater and received timely written responses from the City. This demonstrates that coordination occurred.

6. ***Proposed amendments allowing a residential use in an industrial zone without specified noise mitigation measures will limit industrial operations and create nuisance liability for industrial properties.***

Response: This issue was raised and addressed during the Zoning Code amendment process and more thoroughly during the

Conditional Use permit request. Expert reports and testimony have been submitted and during the Conditional Use permit review processes. In summary, the encampment residents could be affected by the industrial uses (noise, hours of operation, etc.) and, except for screened visual impacts, the industrial uses will likely not be affected by persons residing in the encampment. The proposed code amendment does not alter any existing prohibitions or protections on current or future industrial uses or alter enforcement of existing rules and regulations. In other words, having the encampment does not change the rules or regulations for current or future industrial owners. It only expands upon the list of existing conditional uses. Provisions for and enforcement of noise, odor, light, glare and other emissions or hours of operations are not altered. Under the implementing regulations, the Hearing Examiner has the authority to mitigate noise, dust and other impacts based on the record before Hearing Examiner.

**7. *Proposed amendments fail to consider or mitigate for pedestrian and bicycle safety in an industrial zone.***

Response: This issue was initially raised and addressed during the Zoning Code amendment process and fully addressed in the Conditional Use permit review process. There are expert reports and testimony addressing the issue in the public records. Under the implementing regulations, the Hearing Examiner has the authority to mitigate noise, dust and other impacts based on the record before Hearing Examiner.

**8. *By their nature, Homeless Encampments serve a regional need and should be treated as an Essential Public Facility. The City should amend codes accordingly.***

Response: Olympia's zoning codes currently provide for "public facilities as a permitted use" and separate provisions for "essential public facilities" as a conditional use. Each has review criteria that do not address homeless encampments. The primary difference between "essential" and other public facilities is the degree of impact the project has on surrounding uses and the requirement that the applicant follow additional public process prior to submitting a land use application to the City.

Olympia's Comprehensive Plan has provisions for Essential Public Facilities. LU7.2(1) contains a provision which states: "In order to enable the City or County, as applicable, to determine the project's classification, the applicant shall identify the approximate area within which the proposed project could potentially have adverse impacts, such as increased traffic, public safety risks, noise, glare, or emissions." The County selected a County-owned location that followed a previous "Essential Public Facilities Process" for siting a jail and approached the City of Olympia.

Based upon city staff experience with the temporary homeless encampments in a variety of locations throughout town, it was evident that the surrounding uses often have more of an impact on the encampment than the encampment has on the surrounding uses. Therefore, instead of a staff interpretation that that would

result in a permitted “public facility use” or “conditional use - essential public facility” absent applicable review criteria, the most direct and transparent process was to call it a “Permanent County Homeless Encampment,” craft review criteria and employ the same conditional use permit process.

9. ***The proposal is not consistent with County-wide Planning policies.***

**Response:** Staff does not believe the proposed Comprehensive Plan amendment (zoning regulations or the County Permanent Homeless Encampment) is inconsistent with the Countywide planning policy. The 1992 Thurston Countywide Planning Policy was one of the guiding local policies that led to adoption of statewide regulations in 1996/7 now described as Essential Public Facilities. As stated, the intent was: “To provide a rational and fair process for siting public facilities that every community needs, but which have impacts that make them difficult to site. . .” Because this state has no known history of permanent homeless encampments, there is a lack of clarity in the state law about whether such a use could be deemed “essential” when it has never really been conducted before. It may be difficult to prove that such a facility without any prior history of being used here or elsewhere in the state is essential. The lack of clarity around this issue means that the making such a declaration could embroil the encampment ordinance in an even greater litigation.

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**ANALYSIS AND OPTIONS:**

The Planning Commission’s responsibility is to timely formulate and forward to the City Council recommendations on proposed Comprehensive Plan amendments that:

- Clarify that a permanent homeless encampment can be allowed within the Light Industrial Zoning District;
- Are consistent with the Growth Management Act and the rest of the Comprehensive Plan; and
- The current zoning regulations implement this comprehensive plan amendment.

City staff believes that the proposed amendments (Attachment 1) address a GMHB Decision and encourage the Planning Commission to concur and forward your recommendation to the City Council for further consideration.