



City of Seattle
Mayor Jenny A. Durkan

May 19, 2020

Honorable Members of the Seattle City Council
Seattle City Hall
600 4th Avenue, 2nd Floor
Seattle, WA 98124

Dear Councilmembers,

I am writing regarding CB 119796, legislation from Councilmembers Morales, Mosqueda, and Sawant that would dramatically restrict the City's ability to address unauthorized encampments on both public and private property. After consultation with multiple City departments, this letter summarizes the views of the Mayor's Office and departments regarding this extremely problematic legislation, which would significantly limit the Navigation Team's ongoing efforts to assist unsheltered individuals with referrals to housing and services and address the homelessness crisis during the COVID-19 pandemic.

We share the same goal of minimizing unsheltered individuals' exposure to the coronavirus. That's why the City has been employing several strategies to address the homelessness crisis during COVID-19, including creating new temporary living spaces, partnering with the County to provide isolation and quarantine spaces for individuals with exposure to COVID-19 and expediting the creation of these facilities and shelters in Seattle, working with shelter providers to create de-intensifying locations, increasing hygiene access across the city, and coordinating proactive testing. While the Stay Home orders have most Seattleites at home, our Navigation Team has continued to work and has been on the frontlines reaching out to our unsheltered neighbors throughout this pandemic.

Since the beginning of March, the Navigation Team has primarily focused on conducting outreach to unauthorized encampments, such as handing out public health flyers and distributing hygiene kits, in addition to offers of shelter and services. Encampment removals have been limited to those circumstances that present a true public safety or public health risk. Since early March, the Navigation Team has spent hundreds of hours on these services, while the City has removed only two encampments that both presented public safety and public health risks. In each of those cases, the city did significant outreach and offered shelter to encampment occupants. The larger of these, in Ballard, involved a month of outreach and actions to attempt to manage and mitigate the risks, including adding hygiene facilities, recalling library staff to reopen library facilities, providing services and offering places to come inside. All of this was done against the backdrop of a Hepatitis A outbreak, the rise of COVID-19, and potential impacts on essential businesses and senior facilities operating in close proximity to the encampment.

CB 119796 would prohibit the City from removing or relocating any encampments on public or private property unless an extremely narrow set of exceptions is met, much narrower than the City's current policy during COVID-19. The standard established by this legislation does not recognize the true dangers to either individuals in encampments or to individuals in the adjoining communities from communicable public health disease and public safety hazards caused by illegal activity. Instead, this proposed legislation actually precludes the City from considering the impacts of communicable diseases on the residents of the

encampment or the community. It provides no resources for support, hygiene, or garbage and waste removal. Rather, it sanctions individuals to live in unsafe and unhealthy conditions and restricts the City's ability to address these problems. Codifying these restrictions into law for the remainder of 2020¹ during an unprecedented pandemic of a highly communicable disease is a mistake, as it makes inflexible restrictions on removals without accounting for extenuating circumstances that some encampments can pose. The legislation also does not account for the fact that the city will remain vulnerable to the virus until a vaccine is developed and distributed even as businesses begin to cautiously re-open, public parks and libraries resume operations, and children return to schools.

The City has made helping unsheltered individuals one of its top priorities throughout the COVID-19 emergency. In addition to the approximately \$100 million budgeted for homeless services, the City is spending millions in additional resources to make this a reality. Instituting a law that states unsheltered individuals should remain outdoors in an encampment, even if it is unsafe, unsanitary, or presents hazardous conditions during a pandemic is wrong. It is wrong for our communities and wrong for the people living outdoors and exposes them to further risk of disease for an already vulnerable population. The City also has an obligation to balance the needs of people living unsheltered with the public health and safety of the surrounding community. This legislation does not strike the right balance.

The practical impact of the legislation would be dramatic, as outlined below:

1. The proposed legislation would prohibit getting people into safer conditions due to communicable diseases such as COVID-19 or Hepatitis A.

People living unsheltered and in close or dense proximity increases risk for both COVID-19 and Hepatitis A exposure and spread. Yet under this legislation, relocating anyone out of an encampment for these public health reasons would be prohibited, even if offers of safer spaces are made to all occupants.

At Ballard Commons, despite the Navigation Team's and Public Health's efforts to provide hygiene and medical services to prevent further outbreaks of Hepatitis A, potential exposure to the disease continued as the encampment grew. Residents ignored social distancing guidelines and CDC recommendations to limit gatherings and spaces between tents. After 29 site visits by the Navigation Team over the course of a month, the City was able to get dozens of individuals inside and into managed, safe spaces to help prevent the spread of these diseases. Ultimately, the City has a responsibility to protect the public health and safety for all residents of Seattle, and removing the encampment to decrease further risk of exposure to encampment occupants and the surrounding community was necessary. Under this legislation, no action could have been taken. To the contrary, it would have required the City to ignore the public health reality of two communicable diseases: Hepatitis A and COVID-19.

2. The proposed legislation would not allow the City to address unauthorized encampments associated with criminal activity.

The legislation's prohibition on removals provides no exceptions for public safety concerns, either to the surrounding community or for the occupants themselves. By no means are all unauthorized encampments associated with criminal activity. However, according to the Seattle Police Department, some unauthorized encampments have been associated with negative behavior and criminal activity. In many cases, individuals prey on those in the surrounding areas and residents living within

¹ The legislation could expire earlier if the COVID-19 Civil Emergency is terminated prior to the end of 2020, but we have no reason to believe that will be the case, given the threat of a second wave of cases this fall.

encampments. These conditions include bartering stolen goods, sex trafficking, narcotics use/sales, shootings, and violent crimes, including domestic violence. People living outside are at high risk of being victims to these activities.

Interacting with these encampments gives the City increased opportunities to identify and disrupt criminal enterprises, reach out to the victims, and change the environment using a harm-reduction model. All facets of city life are affected by the criminal activity associated with many sites, but those living there are in the most direct need of the City's intervention.

Though not an exhaustive list, the recent incidents at existing encampments listed below provide context to the very real public safety impacts experienced by those living unsheltered, and those who live and work in the surrounding communities. The city has a duty to act:

- At a current encampment at South Weller Street, in the area surrounding the encampment, there have been three reports of shots fired since April. SPD data shows reports of rape, aggravated assault, robbery, and burglaries on this block all in the past 28 days. Most recently, there was a stabbing in the area. Additionally, SPD officers investigated a shooting in the encampment on May 10 and found a woman with a gun shot wound to the chest there. Furthermore, year to date there has been a 65% increase in "on-view" incidents in the area, where officers come across an event on their own without being dispatched, with the primary uptick in April.
- At a current encampment at South King Street, SPD has reported a doubling of "on-view" incidents, also with a primary uptick in April. Additionally, there was a firearm homicide involving encampment residents on April 10.
- The Seattle Fire Department has reported 23 fires in the area of these two encampments, since March 1.
- At a current encampment at the 2nd Avenue Extension, SPD reports a 250% increase in burglaries from this same time in 2019, plus an increase in shots fired calls in the area compared to 2019.

Attached are two examples of the dozens of community letters requesting these encampments be addressed due to public safety concerns.

3. The proposed legislation ignores the impacts on necessary businesses, and their workers and customers.

The frontline workers at our grocery stores and small businesses have continued to work through this pandemic, often at risk to themselves. They have provided communities with vital access to food, medication and cleaning supplies. People throughout Seattle have relied on them to get through the past hard months. In many areas, few businesses have been able to remain open, making it harder for those in the community.

Perhaps nowhere is this more true than Chinatown-International District. Its restaurants and businesses were the first to feel the impacts of COVID-19, even before we knew we had any cases, because of the stigmatization and misinformation about the disease. It is already one of our most vulnerable communities, with high numbers of seniors and people for whom English is not a first language. It has borne the brunt of generational discrimination from the Chinese exclusion Act to the Japanese Internment. It also bears the burden of a myriad of transportation projects and a lack of services. But it is also one of the most revered and culturally diverse areas of the city. During the pandemic, its residents have had to rely on the businesses and markets that have managed to stay open, including

very few culturally appropriate markets. Those markets and businesses have fought to stay open for their workers and to serve the community. Yet, under the proposed legislation, the impacts encampments like those on Weller or King streets have on those businesses, their workers and the community that rely on them, could not be considered.

4. The proposed legislation disregards fire or safety hazards to first responders.

The Seattle Fire Department is responding to dozens of calls each week to fires at encampments. Under the legislation, a number of these encampments could be subject to removal if they present a “fire or safety hazard to infrastructure,” but fires that do not threaten infrastructure still pose threats to individuals of encampments and first responders. The legislation fails to take into account both lives of resident of encampments and our first responders who are already facing unprecedented conditions.

5. The proposed legislation would prohibit Seattle Police Department officers from removing encampments that are trespassing on private property.

When encampments appear on private property and the owners wish to have them trespassed, SPD officers are called to remove the encampment occupants. This legislation prohibits any of SPD’s patrol operations budget from being spent on encampment removals, meaning SPD would be prohibited from taking such action on private property unless the narrow exceptions are met for an “active health threat,” “immediate hazards,” “fire or safety hazards to infrastructure,” or if the encampment is obstructing access to a building. This prohibition on removing encampment trespassers includes encampments at residential, commercial, and industrial properties.

6. The proposed legislation would effectively authorize camping across the city.

By passing into law the very narrow set of circumstances where encampments can legally be removed, this legislation effectively authorizes outdoor camping in all other situations and locations across the city, for the remainder of the year. The legislation allows all current and future encampments to remain in place as long as they do not pose an “active health threat,” a “fire or safety hazard to infrastructure,” an “immediate hazard,²” block an entrance or exit to a building, fully obstruct a sidewalk or bike lane, or are located in a children’s play area. Locations that would now be open to camping include:

- **The City’s 6,400 acres of parkland and green spaces**

While camping in Parks’ approximately 122 children’s playgrounds would be prohibited, the legislation would allow for camping in open areas in the City’s 485 parks and natural areas, including 185 athletic fields, 4 golf courses, off-leash dog areas, beaches, skate parks, hiking trails, and picnic sites. Additionally, camping in environmentally critical areas, except for land-slide prone areas,³ would be authorized. Furthermore, once permits for events are issued again, camping in park locations where permits are typically issued for events, such as athletic fields, some wedding venues, and picnic sites would be authorized.

As a public park agency, the Department of Parks and Recreation is committed to creating access to a safe system of parks and recreation spaces for youth, adults, seniors, people with disabilities and

² According to Clerk File 320204, “immediate hazard” includes a limited set of examples where camping outdoors creates a risk of serious injury or death, such as encampments at highway shoulders and off-ramps, areas exposed to moving vehicles, areas that can only be accessed by crossing driving lanes outside of a legal crosswalk, and landslide-prone areas.

³ A landslide-prone area would be considered an “immediate hazard,” but no other types of environmentally critical areas appear to fall into this category.

people from all backgrounds and walks of life. As Parks operations return to normal in upcoming phases of re-opening, access to these park spaces would be disrupted.

- **School and childcare center property that is not a play area**

Encampments set up in front of schools and childcare centers (as long as they are not blocking the entrance), on sidewalks near schools and childcare centers (as long as 4 feet of access is provided), and in surrounding open areas that are not play areas could not be removed. While schools are currently closed, we anticipate the City to remain in a state of emergency even after schools eventually re-open, meaning the prohibition on removing encampments will remain even while children return to school.

- **P-Patches and other community gardens**

None of the narrow exceptions to encampment removals in this legislation would likely apply to P-patches and community gardens, thereby opening them up to camping. As you may know, several community gardens across the City have seen an increase in unsanctioned encampments over the last several months.

- **Senior centers, nursing homes, and medical facilities**

Encampments set up in front of senior centers, nursing homes, and medical facilities (as long as they are not blocking the entrance), on sidewalks near these buildings (as long as 4 feet of access is provided), in open areas on and around these facilities' properties, and more could not be removed.

- **Seattle Public Library locations**

Similarly, encampments set up in front of libraries (as long as they are not blocking the entrance), on sidewalks near the libraries (as long as 4 feet of access is provided), in open areas on and around library properties, and more could not be removed. While libraries are currently closed, we anticipate the City to remain in a state of emergency even after libraries eventually resume operations, meaning the prohibition on removing encampments will remain even when patrons return.

- **Public right-of-way**

Encampments in the public right-of-way that do not meet the narrow definitions in the legislation could, nonetheless, inhibit access by the Seattle Department of Transportation, Washington State Department of Transportation, or other asset owners for necessary inspections and maintenance activities on bridges, retaining walls, and other public infrastructure in the right-of-way.

7. The proposed legislation would prohibit derelict RVs from being removed from City streets.

The legislation prohibits FAS's Regulatory Compliance and Consumer Protection Division from spending funds on encampment removals, which would include the removal of derelict RVs from City streets that are associated with encampments. RVs that are part of encampments is a recurring issue in different parts of the city, including the SODO and Ballard neighborhoods.

8. The proposed legislation would drastically impact the City's ability to address tents that impede sidewalks and public right of way.

While the legislation allows tents to be removed if less than four feet of passage on sidewalks exists, the legislation prohibits the removal of tents that are still partially obstructing passage. This includes all

167+ miles of sidewalks in all parts of the city – in residential neighborhoods and commercial districts, and adjoining houses, schools, parks, and transit stops as well. Tents that are partially obstructing sidewalks could still be problematic for busy sidewalks in commercial districts or for parents with strollers, yet no action could be taken under this legislation.

9. The proposed legislation creates risk by impacting the City’s ability to enforce existing laws and defend against potential causes of action.

The proposed legislation would suspend the City’s ability to enforce Park rules including the prohibition on camping; SDOT’s ability to regulate activity on public rights of way; SDCI’s ability to protect environmentally critical areas and shorelines; and SPD’s ability to enforce laws and regulations intended to protect public safety and public health such as trespass and the sit-lie ordinance. The legislation may also impact the City’s ability to comply with SEPA regulations as authorized encampments must first be vetted to determine whether SEPA is triggered.

Additionally, the City has been engaged in litigation over encampment removals for nearly five years at a cost to City of Seattle taxpayers of over \$1 million. The City has defended its policies precisely because they meet constitutional standards and attempt to balance the interests of residents of the City while providing services and support to people experiencing homelessness. Interjecting new, untested standards for encampment removals can only complicate our litigation efforts.

For all of the reasons listed above, we urge you to reject this legislation. In my 20 years in City Hall, I have reviewed and drafted my share of legislation (both on the Executive side and on Council Central Staff). This bill is as poorly drafted and analyzed as I’ve ever seen and fails to recognize basic and legitimate operational, legal and policy considerations, without any consultation with the impacted city departments. The City’s COVID-19 emergency requires the attention and resources of all City departments. We are focused on real solutions that help all City residents, sheltered and unsheltered, stay safe. This legislation is not a solution to the complex issues around homelessness.

Sincerely,



Mike Fong
Deputy Mayor