I. OVERVIEW

The briefing on October 7 is intended to provide the Planning Commission with an overview of the draft temporary encampment ordinance, and to provide feedback on the experience of Tent City 4 when it came to the City last year. The formal public hearing on the ordinance itself will be held November 18, 2009. The meeting tonight is informational only. The draft ordinance is provided to present a context for discussion for future regulation of temporary encampments, based upon the experience from last year. At this early point, it does not represent a “staff recommended ordinance.” It merely represents a starting point for the Commission’s and community’s discussion.

A. Background

For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to prepare a draft ordinance for Council’s consideration. The City Council asked to have an ordinance ready to pass by January 31, 2010. The Council directed staff to hold a public meeting with the First Hill neighborhood to receive their input and perspective regarding their experiences related to the 2008 hosting of Tent City, as well as a community wide public meeting to respond to the draft ordinance.

City staff held a public meeting on August 25th at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. On October 22, the City will hold a community-wide open house at the Community Center at Mercer View (“CCMV”) to provide a forum for additional public input, to discuss the lessons learned from the Tent City experience, and to provide an overview of the draft Temporary Encampment ordinance. The major areas of discussion will include:

- Legal Structure
Legal/constitutional requirements
Legal precedent

- Communications
  - Public noticing of neighbors, community
  - Opportunities for public involvement

- Location of future Tent City
  - Regulatory issues
  - Benefits/concerns of site

- Public Safety
  - Fire safety
  - Enforcement
  - Emergency medical services
  - Public health

- Compliance
  - City code requirements
  - City Ordinance
  - Tent City Code of Conduct

B. EXHIBITS

1. Exhibit A is the draft Temporary Encampment Ordinance.

2. Exhibit B is the process timeline.

3. Exhibit C is a map of the City identifying the location of the religious institutions which may potentially host a temporary encampment and their relation to transit stops, schools and daycares.

4. Attached as Exhibit D is a comparison chart of the proposed ordinance and other Eastside City Ordinances. Note that the comparisons are being drawn to the actual ordinances themselves, not to subsequent permits issued pursuant to those ordinances. (The Issaquah example is a mix of the ordinance and the conditions placed on the permit under the broad “any mitigation necessary” provision as Temporary Encampments are shoehorned into Temporary Use Permits.)

II. DRAFT ORDINANCE

The Washington Supreme Court has unanimously determined that religious organizations are allowed to minister to the homeless, so there is no ability by municipalities to completely prohibit temporary encampments at churches. Municipalities are permitted, however, to regulate such temporary use based on health, safety and welfare issues. In the land use realm, a number of strategies exist which allow local governments to address regulation of temporary uses, such as through temporary use agreements, permits, or ordinances. The temporary use agreement is useful in negotiating specific issues which have not been encountered previously. Some uses may be generally authorized by ordinance, but any regulations are provided specifically in the temporary use permit itself. Some ordinances permit the use and contain the regulations within
the body of the ordinance itself, and may not require a permit. Other ordinances do a blend of both.

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The draft ordinance provided by Mercer Island staff puts the majority of regulations within the ordinance, while allowing flexibility for the Code Official to adopt additional requirements in the permit itself based on the location of the temporary encampment. A matrix is attached to demonstrate the draft ordinance compared to other cities’ ordinances (as opposed to temporary permits). Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the draft ordinance.

The key provisions of the draft Temporary Encampment Ordinance are as follows:

- Maximum stay of 90 days at one location, in any 12 month period
- No permit is granted for a temporary encampment proposed to commence on site within one mile of any site that contained a temporary encampment within the last 12 months
- Although Design Review would not apply for temporary encampments, screening and setback provisions are required.
- Temporary Encampments cannot reduce a site below the minimum allowed parking requirement for the other uses on the site.
- Public notice is required for all property owners within 600 feet, rather than the standard 300 feet.
- The Code Official has the discretion to require an informal neighborhood meeting during the comment period.
- Criminal background checks are required of Temporary Encampment residents.
- Maximum amount of 100 persons.
- Compliance with Seattle-King County Health requirements and all state and city codes regarding drinking water connections, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.
- Hold harmless agreement required.
- Compliance with code of conduct.

Some other elements for discussion were not included in the current draft ordinance for a variety of reasons. Some are more appropriate for site-specific issues and can be addressed in the temporary encampment permit. Others are addressed through other code requirements. Some are likely to be considered unconstitutional. Those proposals are as follows, with some italicized commentary as appropriate:

- Permit fee: (highest cost in other cities is approximately $1600)
- Identification of Adverse Effects. “The applicant shall identify potential adverse effects of the proposed temporary encampment on neighboring properties and the community and shall develop measures to mitigate such effects. The applicant shall submit a temporary encampment impact mitigation plan with the permit
application. The plan shall contain a narrative and drawing(s) that describe, to the satisfaction of the community development director, the measures the applicant will use to mitigate the effects of the temporary encampment. At a minimum, the plan shall specifically describe the measures that will be implemented to satisfy the approval criteria provided in the MICC except for criteria specifically waived by the Code Official. The plan shall include a code of conduct and the names and phone numbers of all persons comprising the applicant. The form and mitigation plan shall be as specified by the community development director, but the elements of the plan shall be bound together. The approved temporary encampment impact mitigation plan shall be signed by the Code Official and the applicant and implementation and enforcement shall be a condition of the permit approval.”: (such adverse effects addressed via the ordinance and site-specific permit)

- Smoking requirements. Any established area for smoking shall conform to the following stipulations:
  A. Noncombustible, approved ashtrays shall be provided;
  B. A “designated smoking area” sign shall be posted
  C. The area shall be located as far from the tent area as possible, the location will be subject to inspection by Fire Marshal Office.

- Tent requirements: “Tents over 200 sf shall be flame treated.” (already addressed via requirement for compliance with codes/site-specific permit)

- Conduct and Security Requirements: “Any temporary encampment shall comply with the City regulations regarding lawful behavior set forth in Mercer Island Code. Any temporary encampment shall provide all required legal access to public areas of the site by the City of Mercer Island Police Department and any other relevant law enforcement agency at all times.”: (already required) “Additionally, where deemed necessary by the Development Director or the Police Chief, the applicant shall provide for the following:
  1. Verifiable Identification Required: The applicant shall take all reasonable and legal steps to obtain verifiable identification, such as a valid driver’s license, government issued identification card, military identification card, or passport, from all prospective and current camp residents.
  2. Other individuals who are turned away from the camp shall be handled as follows:
  3. A) Applicant shall walk the individual to the bus stop and wait with them until the bus arrives;
     B) A camp vehicle shall be used to drive the individual to the closest available bus service or
     C) A taxi or volunteer driver shall be called and the homeless encampment security workers shall be available to wait with the person. Taxi vouchers shall be available from sponsor when buses are not operating:

- Sidewalk monitor requirement. “Host shall provide sidewalk monitors during normal hours when elementary, junior high or high school students are going to and from the bus stops.” (may be addressed in site-specific permit)
• Prohibition of neighborhood security foot patrols. “Residents and guest of encampment shall not perform neighborhood security foot patrol into the adjoining residential neighborhood.”: (Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas)

• Prohibition of Neighborhood Trash Patrols: “Neighborhood and trash patrol by residents and guests of encampment in adjoining residential neighborhood is prohibited.”: (Unconstitutional to prohibit freedom to move about on public right—of-ways and public areas—note that Bellevue’s ordinance actually requires such patrols)

• Quiet hours requirement. “Quiet hours at encampment shall be between 9:00 PM and 8:00 AM.” (may be addressed in site-specific permit)

• Visiting Hours. “Visiting hours for Guests are between 8:00 AM and 9:00 PM. Guests must check-in and provide valid form of identification at camp security location and must leave by 9:00PM. Guests are prohibited from staying overnight in the camp.” (potentially unconstitutional elements—some aspects addressed elsewhere)

• Failure to apply for Permit. “If a temporary use for which a permit would be required is established without a permit first having been obtained, the Planning Director shall require all activities associated with the encampment shall cease immediately and the site shall immediately be vacated and restored to its pre-existing condition unless and until such time as a temporary use permit has been obtained.” (may be addressed elsewhere in the City Code)

III. CONCLUSION

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large, at the October 22, 2009 community-wide meeting.