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VIA EMAIL:

frances.samaniego@seattle.gov

City of Seattle
Department of Finance and Administrative Services
Attention: Frances Samaniego
P.O. Box 94689
Seattle, WA 98124-4689

Dear Directors:

Thank you for considering these comments on the proposed FAS Encampment Removal Rule 17-01 (“Removal Rule”), Multi-Departmental Administrative Rule 17-01 (“MDAR”), and accompanying SEPA environmental report. We appreciate the time and effort that went into developing these proposed rules. We agree with the need to reform the City of Seattle’s (“City”) response to those living unsheltered, and many aspects of the proposed rules represent positive developments. However, we still have concerns regarding the structure of the rules and the breadth of certain terms. Our positions have been informed and shaped by discussions with people experiencing homelessness, social service providers, advocacy organizations, and community members.

Overall, we commend the City for recognizing the need to differentiate between the locations of encampments, and the conditions of any given site. We also commend the City for recognizing the need to provide those who are being removed with alternative locations to go. However, there are issues with the overall structure and definitions contained in the Removal Rule and MDAR that stray from core principles that will reduce homelessness. In particular, we would welcome an opportunity to work with City staff to (1) alter provisions that could lead to increased criminalization of homelessness and visible poverty; (2) refine the structure to make sure that emphasis areas and priorities are not arbitrarily set and people who are in dangerous or obstructive locations receive offers of services and procedural protections; (3) ensure that definitions are not overbroad; and (4) address the unique issues posed by vehicle residency.



An effective response to homelessness should increase pathways to housing, adhere to principles of harm reduction, balance the needs and concerns of people experiencing homelessness and the community in general, and refrain from criminalizing necessary life sustaining activities. Ultimately, our comments are all based on these tenets.

A. Structural and general comments.

Increasing pathways to permanent housing. We understand that the Removal Rule and MDAR are just one aspect of the City's response to homelessness. Nonetheless, breaking the cycle of homelessness requires providing real solutions to those living unsheltered, including offers of safe, accessible housing options. Until people have a place where they can live, not just sleep on a given night, they will not be able to manage the other issues they face, be it mental illness, alcohol or chemical dependency, physical health issues, or unemployment. The inescapable reality is that those without stable housing and in extreme poverty will need to live somewhere, and be somewhere, at all hours of the day. Making the removal of encampments contingent only on an offer of overnight shelter does not increase or incentivize pathways to housing. Absent serious health or safety issues, a more effective policy would make the removal of an encampment contingent on the offer of a permanent exit from homelessness.

Decreasing criminalization. We are concerned with the continued presence of exclusion provisions in the MDAR that could lead to charges of criminal trespass. In particular, it is a violation of the MDAR to camp on any city property and camping can be the basis for a notice of exclusion. Violation of such an order can in turn result in prosecution for criminal trespass. The lax standards for issuing an exclusion notice are also suspect. Under the proposed rule, a person receiving an exclusion notice does not need to "be charged, tried or convicted of any crime or infraction" and that exclusion can be based on a civilian report. MDAR 7.2.4. Such broad authority makes arbitrary treatment possible and may lead to the increased criminalization of individuals experiencing homelessness for engaging in life-necessary activities.

The MDAR also allows for the exclusion or enforcement trespass laws against people who "obstruct the expeditious progress of the removal." MDAR 4.3. This is a very arbitrary standard that could be applied to an individual who hears of a removal and rushes back to save valuables, as well as to other scenarios which have historically arisen during the often chaotic removal process. In addition, this provision may, in reality, result in charging persons who are expressing their First Amendment rights or are otherwise engaged in lawful protest with criminal trespass. It is possible to ensure that law enforcement and city officials have the tools they need to keep peace and maintain safety without resorting to exclusion and criminalization.

Offering services to those who need them most. Under the Removal Rule, no notice or offers of services or alternatives need to be provided to individuals who are in the most precarious locations. This goes against best practices. If the City identifies an encampment that poses an immediate hazard or an obstruction and the residents of this encampment are present, the City

should point the individuals to an alternative prior to conducting a removal. Though mindful of the need to keep outreach workers safe, individuals in locations that pose immediate hazards or obstructions should nonetheless receive outreach to make sure their needs can be considered and to ensure that they do not wind up in another location that requires immediate removal.

Offers of shelter. The Removal Rule’s requirement that available housing or other shelter be offered leaves unaddressed the fundamental reason people are living outside—the lack of access to housing. There is no requirement that the offer actually be a space any particular individual can use. There is no clarity regarding the number of spaces that must be available. It appears that even one open bed could be used as the predicate offer to remove numerous individuals. As written, the City can proceed with a removal even if an offer of shelter is turned down and the City can proceed to use the same opening to remove the next person.

We know that there are a number of different barriers that makes shelter an unworkable option for certain individuals living unsheltered. In many cases, it is difficult for people to give up a place where they can stay during the day for a mat on the floor during nighttime hours only. For others, overnight shelters work well. It does not make sense to reserve beds that would otherwise get filled so that they can be used as predicates to encampment removals. Plainly put, an offer extended pursuant to the Removal Rule should be meaningful and should not result in the displacement of another individual who would otherwise use the space.

Moreover, excluding those who cannot return to a shelter due to the “individual’s behavior” is deeply problematic for the large numbers of chronically homeless with mental illness. There are many who simply cannot live within the shelter model, and need therapeutic housing options. Under the Removal Rule, these individuals would not need to be extended any sort of offer prior to removal. Largely, this would only serve to compound the issues faced by an unsheltered person struggling with mental illness.

Outreach. The Removal Rule is silent as to the qualifications for outreach workers. There has been a range of organizations that have provided outreach during removals. It would be beneficial for the City to clarify the standards for outreach and only enlist the efforts of well-trained, educated, and informed professionals who have the necessary qualifications to adequately assess needs, address mental illness, and competently manage very difficult situations. This could be done through the Removal Rule or otherwise.

Vehicle Residents. It is also important to note that the MDAR and Removal Rule do not address the unique issues inherent with vehicle residency. There are close to 1,000 people living in cars or RVs in the City. These vehicles offer a home, storage space, and transportation. They are often the only real asset left for a person or family experiencing homelessness. There are serious issues with how the City responds to vehicle residents. Though this does not have to be done in the context of the MDAR or Removal Rule, we would encourage the City to reassess the response and policies pertaining to vehicle residents.

B. Definitions and comments on overbreadth.

Emphasis area. The Removal Rule is silent on what criteria City officials will use to determine

what is and what is not an “emphasis area.” There are no limitations as to the location or size of an “emphasis area.” The only requirement is that it has to be an area that exists and has been previously swept. It is possible that such areas will encompass many locations where people currently stay. Given the lack of due process and broad enforcement authority that the City will have in such areas, it would be beneficial to have clear guidelines as to the process for establishing an “emphasis area” and a provision that would require sufficient outreach and offers of meaningful alternatives so that those impacted know the bounds of the “emphasis area” and know where they can and cannot go.

In addition, given the experience of the East Duwamish Green Belt and the lack of permanent housing options, we know what happens when a significant portion of the City suddenly becomes off limits. Those affected relocate to other parts of the City. This can have a negative impact on certain neighborhoods, as happened in the International District, which disproportionately absorb the consequences of such a designation. It would be advisable to include an equity and collateral consequences analysis before designating any location that currently hosts encampments as an “emphasis area.”

Immediate hazard. Under the Removal Rule, an encampment that poses an “immediate hazard” can be removed without notice or outreach. Given the complete lack of process, it is important for the definition to be narrowly applied to only situations that involve real and actual risks of injury or death. As written, this provision includes all locations that cannot be accessed by a marked crosswalk. Though jaywalking can certainly pose a danger, this alone should be insufficient to deprive the individuals staying at such encampments of all due process and outreach.

Obstruction. Similarly, an encampment that is an obstruction can also be removed without notice or outreach. Once again, considering the consequences of this designation, it is important that it be narrowly tailored. As written, it includes people, belongings, garbage or other objects which block the “normal use” of properties, facilities or rights-of-ways. Because camping on public property is never a “normal use,” this definition would effectively allow immediate removal and confiscation of property anywhere within the City. There are no locations that are not “blocked” when a tent and/or other items are located there. This language should be revised, and notice, offers of shelter and outreach should not be denied, if in fact, the obstruction is not so severe that these services could be offered.

Recovering stored personal property. Recovery of confiscated property remains a serious issue for those without a home. Many do not have access to a phone or transportation. Getting to the designated storage location and picking up property for those living with mental illness or physical disabilities are especially challenging. While the City attempts to resolve this problem by offering to deliver the property to a location which is safe and appropriate for delivery by vehicle, there are unanswered questions as to where people will be reunited with their belongings. It would be useful for the City to work with dayshelter, hygiene center, food bank, and other service providers that are frequented by unsheltered individuals during work hours to establish designated drop offs. The City should also consider the needs of those who work during business hours to make sure that such individuals could also recover their belongings.

Thank you for considering these comments.

Sincerely,

Ann LoGerfo, Directing Attorney
Yurij Rudensky, Attorney

cc:

Councilmember Sally Bagshaw
Councilmember Tim Burgess
Councilmember Lorena González
Council President Bruce Harrell
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