



Adopt an Ordinance relating to public health and safety creating Service Facility Buffer Zones for social services providers, shelter and temporary housing providers, and other high impact areas and amending Title 9 of the Everett Municipal Code by enacting a new Chapter 9.54 EMC

Project title:

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

CB 2304-30

Agenda dates requested:

4/19, 4/26 and 5/3

Briefing 4/19

Proposed action 4/26

Consent

Action 5/3

Ordinance X

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

X Yes No

Attachments:

Ordinance

Department(s) involved:

Legal

Community Development

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Initialed by:

Department head

Administration

Council President

Consideration: Ordinance for Service Facility Buffer Zone

Project: N/A

Partner/Supplier : N/A

Location: Everett, Washington

Preceding action: N/A

Fund: N/A

Fiscal summary statement:

N/A

Project summary statement:

This ordinance will add a new chapter 9.54 to Title 9 of the Everett Municipal Code and is necessary to ensure safe access to services to individuals seeking care and mitigate negative impacts in areas with intensive services to ensure general public safety. The proposed new code (EMC 9.54.020.A) states that "no person shall sit or lie down upon, or place a blanket, sleeping bag, backpack, chair, mattress, couch, stool, or any similar equipment, item, or furniture upon City property, whether improved or unimproved, within a Service Facility Buffer Zone." This prohibition is subject to certain exceptions contained in proposed EMC 9.54.020.B. "City property" means any City street, park, utility property or other City property or right of way. "Service Facility Buffer Zones" under proposed EMC 9.54.030 are designated by the Mayor. The Mayor may designate a two-block-radius Service Facility Buffer Zones around either (1) a social service provider (such as substance abuse treatment provider, behavioral health provider, shelter/ temporary housing provider, etc.) or (2) an area highly impacted by street-level issues. Proposed EMC 9.54.040 also states that no person on City property may provide within a Service Facility Buffer Zone any food, beverages, goods, supplies or services of any sort to any persons engaging in conduct prohibited by EMC 9.54.020, unless authorized by a valid City permit.

The attached ordinance is updated from the first reading on April 19, reflecting discussion from the Council and the public at that meeting. Updates include changes to:

1. In 9.54.010, adjusted definitions to simplify mapping and allow for uniformity.
2. Also in 9.54.010, adjusted the definition of "city property" to exclude parks and outdoor eating spaces operated by private entities.
3. In 9.54.030, added objective criteria to outline a minimum threshold needed before designation as either a high-impact location or a qualified service location. The events that qualify a location for consideration may be found in 9.54.010(J).

Recommendation (exact action requested of Council):

Adopt an Ordinance relating to public health and safety creating Service Facility Buffer Zones for social services providers, shelter and temporary housing providers, and other high impact areas and amending Title 9 of the Everett Municipal Code by enacting a new Chapter 9.54 EMC



ORDINANCE NO. _____

An **ORDINANCE** relating to public health and safety creating Service Facility Buffer Zones for social services providers, shelter and temporary housing providers, and other high impact areas and amending Title 9 of the Everett Municipal Code by enacting a new Chapter 9.54 EMC.

WHEREAS,

- A. The Revised Code of Washington (RCW) 35.22.280 empowers first-class cities to regulate and control the use of streets and sidewalks, to declare and abate nuisances, to provide for the punishment of conduct and practices dangerous to public health or safety, and to provide for regulations necessary for the preservation of public morality, health, peace, and good order, and Article XI, section 11 of the State Constitution authorizes cities to make and enforce all police, sanitary, and other regulations not in conflict with general laws.
- B. It is the objective of the City Council that all individuals residing in the City have adequate shelter and access to treatment services, and this ordinance is intended to encourage and promote this objective.
- C. Homelessness, substance use disorders, and insufficient access to substance use and mental health treatment are all significant problems in the City of Everett and the City is committed to providing additional treatment capacity and permitted emergency shelter and permanent housing for the City's unhoused residents.
- D. The City recognizes that the impacts of street-level social issues are not evenly distributed throughout the City.
- E. The areas surrounding treatment and housing services and surrounding certain other high impact locations such as large retail stores are disproportionately adversely impacted by street-level social issues on public property that make the use of the public property difficult, unsafe, or unwelcoming and affect the safety and quality of life of nearby property owners, businesses, residents, and the general public.
- F. The impact of street-level social issues, nuisance criminal activity, and open air drug activity that sometimes exist near treatment or housing services impacts the health and safety of the surrounding community by causing excessive garbage, used hypodermic needles, human feces, rat infestations, and personal violence against, by, and among those gathered there.
- G. Street-level social issues, nuisance criminal activity, and open air drug activity that sometimes exist near treatment or housing services all have a negative impact on neighborhoods where they are located by inhibiting the public use of those areas for their intended purposes and can

decrease a neighborhood's willingness to host treatment or housing services. It also negatively impacts individuals who access treatment and housing services.

- H. Alleviating street-level social issues, nuisance criminal activity, and open air drug activity around treatment or housing services and surrounding certain other high impact locations will foster support from community members to host treatment facilities and/or temporary shelter in their neighborhood.
- I. Adopting an ordinance allowing the Mayor to designate a two-block Service Facility Buffer Zones around treatment or housing services will mitigate the inequitable concentration of impacts and support the City's ability to keep the community safe and promote public health in the zones surrounding treatment and housing services.
- J. Adopting an ordinance allowing the Mayor to designate a two block Service Facility Buffer Zones around other locations based on information showing a pattern of criminal activity and public complaints showing a high concentration of street-level social issues in those locations will help keep the community safe and promote public health in those locations.
- K. The City is actively working on expanding capacity to accommodate individuals experiencing homelessness.
- L. Service providers and law enforcement have found that those seeking to access treatment or housing services are often hindered in their ability to do so by criminal activity in the areas surrounding service providers and by unsafe access paths to services.
- M. Pursuant to *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), and *Johnson v. City of Grants Pass*, 50 F.4th 787, (9th Cir. 2022), the Ninth Circuit Court of Appeals has determined that the United States Constitution prohibits the imposition of criminal penalties on homeless individuals who could not otherwise obtain shelter for sitting, sleeping, lying, or taking necessary minimal measures to protect oneself from the elements while outside on all public property within a jurisdiction.
- N. The City has the power to provide for the punishment of all practices dangerous to public health or safety, and to make necessary for the preservation of public health, peace, and good order, and to provide for the punishment of all persons charged with violating any City ordinance.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Findings adopted

The findings set forth in the above recitals are hereby adopted and incorporated by reference. Further, the City Council specifically finds that the regulation of the conduct addressed in this Ordinance is a valid exercise of police power.

Section 2. New Chapter 9.54 EMC

A new chapter 9.54 is hereby added to the Everett Municipal Code as chapter 9.54 EMC as follows:

Chapter 9.54

Prohibition of Certain Conduct on City Property within Service Facility Buffer Zones

9.54.010 Definitions

- A. "Service Facility Buffer Zone" means either (1) the entire area within a two-block radius of any Designated Qualifying Service Location or Designated High Impact Qualifying Location, provided that if the two-block radius bisects a block that the entire block shall be included in the Service Facility Buffer Zone, or (2) a smaller area defined in the Mayor's designation under EMC 9.54.030.
- B. "Qualifying Service Provider" means any agency or organization that provides on-site social services as that term is defined in EMC 19.04.060, and includes substance use disorder treatment, mental health treatment, and prepared meals distribution, as well as any city-permitted indoor emergency shelter, outdoor emergency shelter, emergency housing facilities, extreme weather shelter, permanent supportive housing, and transitional housing as those terms are defined in EMC 19.04.050, whether publicly or privately funded, and does so at a Qualifying Service Location where individuals regularly access those services. Once deemed a Qualifying Service Provider, such qualification continues only as long as the Qualifying Service Provider is providing such services.
- C. "Qualifying Service Location" means any physical location within the City of Everett where a Qualifying Service Provider provides on-site social services as that term is defined in EMC 19.04.060, and includes substance-use treatment, mental health treatment, prepared meals distribution, or the physical location where any permitted indoor emergency shelter, outdoor emergency shelter, emergency housing facilities, extreme weather shelter, permanent supportive housing, or transitional housing as those terms are defined in EMC 19.04.050 exist.
- D. "Block" means a portion of the city bounded on all sides by streets or avenues.
- E. "City property" means all property in which the City has a property interest, including easements. The term includes, without limitation, all parks, rights-of-way, piers, streets, trails, forests, museums, pools, beaches, open spaces, public squares, athletic facilities, and grounds around City owned or leased buildings, including, but not limited to, parking lots, and any other property in which the City has a property interest of any type.
 - i. *Exceptions.* "City property" does not include parks, museums, beaches, pools, or athletic facilities when such facilities are open to the public during operational hours, unless such

facility is designated as a Qualifying High-Impact Location pursuant to EMC 9.54.030(B). “City property” does not include areas of private property where tables and chairs are placed for the use of patrons consuming food and/or beverages.

- F. “Designated Qualifying Service Location” means a Qualifying Service Location designated by the Mayor under EMC 9.54.030(A).
- G. “Designated Qualifying High-Impact Location” means a specific address or cluster of addresses designated by the Mayor under EMC 9.54.030(B).
- H. “Encampment” means one or more tent, lean-to, structure, tarpaulin, pallet, or makeshift structure used for purposes of habitation located in an identifiable area within the City of Everett. Habitation is evidenced by the presence of bedding materials, campfires, cooking materials, storage of clothing or other personal belongings or items, gathered together in a manner where it appears to a reasonable person that the site is being used for habitation purposes. Encampments do not include sites a reasonable person would conclude are no longer in use, because any remaining materials are garbage, debris, or waste.
- I. “Qualifying Event” means any of the following activities, behaviors, or conduct, as shown through crime-report data, criminal activity, police calls for service, reports from city employees, or credible reports made by members of the public:
 - i. Trespass and related offenses as defined in Chapter 10.68 EMC.
 - ii. Theft-related offenses as defined in Chapter 10.56 EMC.
 - iii. Lewd Conduct and related offenses as defined in Chapter 10.24 EMC.
 - iv. Harassment offenses as defined in Chapter 10.23 EMC.
 - v. Assault or reckless endangerment as defined in Chapter 10.16 EMC.
 - vi. Disorderly conduct as defined in Chapter 10.48.010 EMC .
 - vii. Unlawful Transit Conduct as defined in Chapter 10.49 EMC.
 - viii. Criminal Mischief and related offenses as defined in Chapter 10.66 EMC
 - ix. Offensive littering as defined in Chapter 10.70.010 EMC.
 - x. Drug-related offenses as defined in Chapter 69.50 RCW or Chapter 10.35 EMC.
 - xi. Legend drug offenses as defined in Chapter 10.36 EMC.
 - xii. Precursor drug-related offenses as defined in Chapter 69.43 RCW and Chapter 10.39 EMC.
 - xiii. Loitering for the purpose of engaging in drug-related activity as defined in Chapter 10.37 EMC.
 - xiv. Inhalation of toxic fumes as defined in Chapter 10.40 EMC.
 - xv. Liquor-related offenses as defined in Chapters 66.28 and 66.44 RCW and in Chapters 10.42 and 10.74 EMC.
 - xvi. Violation of stay out of drug areas orders issued pursuant to Chapter 10.13.025 EMC.

- xvii. Firearms and dangerous weapons offenses as defined in Chapter 9.41 RCW and Chapter 10.78 EMC.
- xviii. Persons Obstructing Streets as defined in Chapter 9.60 EMC.
- xix. Unlawful abandonment of a junk motor vehicle as defined in Chapter 46.40.030 EMC.
- xx. Public disturbance noises as defined in Chapter 20.08 EMC.
- xxi. The presence of an Encampment as defined in Chapter 9.54 EMC.
- xxii. Activities, behavior or conduct that is contrary to the City health and safety code (EMC Title 8), building and fire code (Chapters 16.005 through 16.09 EMC), or noise control code (Chapter 20.08 EMC) .

9.54.020 Prohibition

- A. *Prohibition.* No person shall sit or lie down upon, or place a blanket, sleeping bag, backpack, chair, mattress, couch, stool, or any similar equipment, item, or furniture upon City property, whether improved or unimproved, within a Service Facility Buffer Zone.
- B. *Exceptions.* The prohibitions in subsection (A) of this section shall not apply to any person:
 - 1. Temporarily sitting or lying down on a sidewalk or other City property due to a medical emergency;
 - 2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk or other City property; or
 - 3. Operating or patronizing an activity on the public sidewalk or other City property pursuant to a city-issued permit for the activity; or a person participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk or other City property pursuant to a street use or other applicable permit issued by the City.

Nothing in any of these exceptions shall be construed to permit any conduct which is prohibited by any City ordinance, code, or regulation.

- C. No person shall be cited under this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section and refuses or intentionally fails to cease such activity when ordered to do so.
- D. A violation of this section shall be a misdemeanor punishable by up to ninety days in jail, a fine of up to five hundred dollars, or both.

9.54.030 Establishing a Service Facility Buffer Zone

- A. *Designated Qualified Service Locations.* The Mayor shall have the authority from time to time to designate in writing one or more Qualifying Service Locations as Designated Qualifying Service

Locations, taking into consideration the impact to public health and safety for residents, businesses, staff, and individuals seeking services, as well as the city resources utilized in the area. A Service Facility Buffer Zone for such Designated Qualifying Service Location is established effective upon designation and remains effective until revoked by the Mayor. The Mayor shall review each Designated Qualifying Service Location at least every six months.

1. No Qualifying Service Location may be designated as provided in EMC 9.54.030 (A) unless the proposed Qualifying Service Location has, within the preceding six months:
 - i. Had six or more Qualifying Events occur or exist upon the property; or
 - ii. Had six or more Qualifying Events occur or exists upon the property or within two-hundred feet of the property where a nexus exists between the Qualifying Event and the proposed Qualifying Service Location.

B. *Designated Qualifying High-Impact Locations.* The Mayor shall have the authority from time to time to designate in writing one or more specific addresses or cluster of addresses as a Designated Qualifying High-Impact Location, taking into consideration the impact to public health and safety for residents, businesses, staff, and individuals seeking services, as well as the city resources utilized in the area. A Service Facility Buffer Zone for such Designated Qualifying High-Impact Location is established effective upon designation and remains effective until revoked by the Mayor. The Mayor shall review each Designated Qualifying High-Impact Location at least every six months.

1. No Qualifying High-Impact Location may be designated as provided in EMC 9.54.030 (B) unless the proposed Qualifying High-Impact Location has, within the preceding six months:
 - i. Had six or more Qualifying Events occur or exist upon the specific addresses or cluster of addresses; or
 - ii. Had six or more Qualifying Events occur or exists upon the specific addresses or cluster of addresses or within two-hundred feet of the specific addresses or cluster of addresses where a nexus exists between the Qualifying Event and the proposed Qualifying High-Impact Location.

Prohibited Conduct and Enforcement. Prohibited conduct and enforcement for Service Facility Buffer Zones are the same, regardless of whether the Service Facility Buffer Zone is established by Designated Qualifying Service Location or Designated Qualifying High-Impact Location.

9.54.040. No Goods or Services to be Provided on City Property within a Service Facility Buffer Zone without Permit.

No person may provide on City property within a Service Facility Buffer Zone any food, beverages, goods, supplies or services of any sort to any person engaging in conduct prohibited by EMC 9.54.020, unless such provision is authorized by a valid right-of-way use permit or other applicable permit or permission

issued by the department of public works or by other City department. Such permit shall identify the specific activity authorized by the permit, the specific location at which such activity is permitted, and the times during which the activity may occur. The City department may issue such permit only if it determines that the activity and location for which the permit is requested will not have an unreasonable adverse impact on City property. The City department may revoke such permit at any time if it determines that the activity does have an unreasonable adverse impact on the neighborhood, other uses in the vicinity, or the public's use of the right-of-way. No such City permit or other permission shall be valid for longer than one year.

9.54.050. Service Facility Buffer Zone Maps

The City Community Development Director or designee will establish maps documenting the Service Facility Buffer Zones, post such maps on the City's website, and provide additional outreach to the community and update such maps at least every six months.

Section 3. Corrections

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 4. Severability

The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 5. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 6. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or

inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Cassie Franklin, Mayor

ATTEST:

City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

DRAFT