



MEMORANDUM

Temporary activities and emergencies Portland Code Research Project (Task 5)

DATE August 28, 2019
TO Al Burns, City of Portland
FROM Cathy Corliss, Angelo Planning Group
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This research was conducted under contract with the City of Portland, but the recommendations contained within this memorandum are the product of the consultant, not the City. The recommendations have not been adopted by and are not a final decision of the City. The City is not obligated to initiate legislative action to adopt the recommendations; that any forthcoming code revisions are subject to the City's legislative procedures.

INTRODUCTION

This memorandum summarizes our research and provides some draft code concepts to amend the current authorization for temporary activities needed to respond to a natural disasters and emergencies. The original authorization would apply to only natural disasters and force majeure type emergencies and would continue to require a Council declaration. The intention of drafting new provisions to allow temporary activities in response humanitarian exigencies and allow for temporary facilities such as warming, cooling and other needed forms of temporary needed shelter, without a Council declaration of an emergency.

CURRENT REGULATORY FRAMEWORK

Title 15 is the City's Emergency Code. Housing emergencies are included in the definition of "emergency."

15.04.030.A. "Emergency" means any natural, technological or human-made event or circumstance causing or threatening: widespread loss of life, injury to persons or property, human suffering or financial loss, including but not limited to fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other

*oceanic phenomena, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, **housing emergencies**, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism and war.*¹

Per Section 15.04.040, the initial duration of a housing emergency shall not exceed one year but may be extended in six-month increments. Among the tools available to the City Council to address housing emergencies, Section 15.08.025 allows the Council to “...waive Portland City Code regulations or administrative rules to the extent necessary to respond to the housing emergency” and to “...direct the expeditious issuance of permits.” Section 15.04.040.F. states that a “...housing emergency is a health and safety emergency under Portland City Code Subsection 33.296.030 G. and mass shelters are allowed as temporary activities for the duration of the emergency subject to the standards in Section 33.296.040.”

These provisions have allowed the Council to authorize facilities such as:

- R2DToo, a rest area (sleeping in tents and small structures) with portable rest room facilities, which would otherwise have required land use approval for new development and additional improvements such as screening.
- Willamette Center, a mass shelter located inside an existing building, which would have otherwise required land use approval to increase shelter beds from 75 to 120.
- Storage containers under Steel Bridge or in right-of-way that allow houseless individuals to store their belongings during the day use, which would have otherwise required approval through a Type II Design Review or would have been prohibited by Section 16.20.120 (Public Right-of-Way Parking).

In addition to allowing the Council to waive applicable land use regulations, declaring a housing crisis an “emergency” pursuant to Title 15 enables the Council to use the other provisions of Title 15 related to contracts and funding.

PROPOSED APPROACH (DRAFT CONCEPTS)

Declaration of an emergency pursuant to Title 15 confers more than just land use flexibility and expediency. Amending Title 33 to allow shelters as temporary uses without a declaration of emergency would provide some, but not all, of the benefits conferred by Title 15. However, the regulations need not be mutually exclusive – the City could retain its ability to declare a housing emergency pursuant to Title 15 to ensure the availability of the full spectrum of tools **and** add

¹ The authority for 15.04.030.A. is ORS 401.025. https://www.oregonlegislature.gov/bills_laws/ors/ors401.html

community service shelters as a temporary use. This is the approach outlined in the draft amendments below.

Potential Amendments to Title 15

As noted above, the proposed approach would maintain the Council’s ability to declare a housing emergency. However, a minor change to Section 15.04.040 is proposed to avoid conflict with the proposed new provision in Chapter 33.296.

Title 15 Emergency Code	Commentary
<p>15.04.040 Declaration of State of Emergency.</p> <p>A. A state of emergency exists when:</p> <ol style="list-style-type: none"> 1. The situation requires a coordinated response beyond that which occurs routinely; 2. The required response is not achievable solely with the added resources available through mutual aid or cooperative assistance agreements; and 3. The Mayor or other City official, as provided in Portland City Code Section 15.08.010, has declared by proclamation that a State of Emergency exists. <p>B. The declaration shall be in writing, shall designate the geographic boundaries of the area in which the State of Emergency exists, and shall fix the duration of time in which the State of Emergency shall exist. Except for a declared housing emergency, the initial duration shall not exceed a two-week period, but may be extended in two-week increments. The initial duration of a housing emergency shall not exceed one year, but may be extended in six-month increments.</p> <p>C. The Mayor must declare the City in a State of Emergency prior to requesting from the governing body of Multnomah County resources not available through mutual aid or cooperative assistance agreements.</p> <p>D. The Mayor shall have the power to ask the Governor to declare a State of Emergency within the City. Pursuant to ORS 401.165 (2), the Mayor must submit the request through the governing body of Multnomah County.</p> <p>E. Except for a declared housing emergency, the Mayor shall terminate the State of Emergency by proclamation when the emergency no longer exists or when the threat of an emergency has passed. The Mayor will communicate the change from the disaster response phase to the recovery phase with all appropriate officials.</p> <p>F. When circumstances create an immediate need to provide adequate, safe, and habitable shelter to persons experiencing homelessness, the Council may declare a housing emergency exists. A housing emergency is a health and safety emergency under Portland City Code Subsection 33.296.030 G. and mass shelters are allowed as temporary activities for</p>	<p>F. To avoid a potential conflict/confusion with Title 33, it might helpful to delete the language which refers to 33.296.030 G. Other provisions of Title 15 allow the Council to waive land use regulations, so this sentence appears to be unnecessary; and as</p>

<p>the duration of the emergency subject to the standards in Section 33.296.040.</p> <p><i>G. The Council shall terminate a housing emergency by resolution when the emergency no longer exists or when the threat of an emergency has passed.</i></p>	<p>proposed below under potential amendments to Title 33, mass shelters would also be allowed as a temporary use without the declaration of emergency.</p>
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Potential Amendments to Title 33

The draft language includes a new section entitled “temporary shelter facilities and services.” It assumes these facilities would be public or non-profit organization that will take responsibility for maintaining the site and submitting the necessary documents. Some temporary uses (such as staging areas) are reviewed as part of an application for a permanent use. For others, the permit requirements weren’t clear. For temporary uses on public property, the City has a form and a process: <https://www.portlandoregon.gov/transportation/article/69109> However, the City will need to clarify the process by which temporary shelter facilities and services (as outlined below) would be approved.

Chapter 33.296 Temporary Activities	Commentary
<p>33.296.010 Purpose</p> <p><i>This chapter allows short-term and minor deviations from the requirements of the zoning code for uses that are truly temporary in nature, will not adversely impact the surrounding area and land uses, and which can be terminated and removed immediately. Temporary uses have no inherent rights within the zone in which they locate.</i></p>	<p>The purpose statement states that temporary uses will not adversely impact the surrounding area; however, most of the listed temporary uses do impact the surrounding area.</p>
<p>33.296.020 Description</p> <p><i>Temporary activities are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary activities include construction staging, garage sales, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales. Temporary activities that meet the regulations described in this chapter are not considered primary or accessory uses. There are two categories of temporary activities. First, there are those which are allowed by the zone but do not meet the development standards. Examples include Christmas tree sales and a parking lot sale in a commercial zone. Second, there are temporary activities which if permanent, would not be allowed by the base zone. Examples include church carnivals in residential zones and retail warehouse sales in industrial zones.</i></p>	<p>The second sentence does not provide a complete list of temporary activities. Further amendments would be needed if the intent is that it list all temporary uses allowed by this chapter.</p> <p>The categories described in this section don’t appear to relate to the organization or description of the temporary uses described below. If it isn’t serving a purpose, consider deleting.</p>
<p>33.296.030 Temporary Activities Allowed</p>	<p>Currently the code describes “temporary” activities as having a</p>

A. Residential sales offices. Sales offices for major subdivisions or planned unit developments are allowed in the IR, CI2, and RF through RH and RMP zones. Sales offices are allowed at the development site until all lots or houses are sold or for 10 years after the final plat is approved, whichever is less. Use of the sales office for sites outside of the project is prohibited.

B. Show of model homes.

C. Incidental Sales. ...

D. Farmers Markets. ...

E. Fairs, carnivals, and other major public gatherings. ...

F. Construction activities

1. Use of existing house or manufactured dwelling. In the IR, CI1, and RF through RH and RMP zones, an existing house or a manufactured dwelling may be used temporarily for a residence while a permanent residence is being constructed. The existing house or manufactured dwelling may remain on the site until the completion of the construction, or for not more than 2 years, whichever time period is less. The existing house or manufactured dwelling must be removed within 1 month after approval of final occupancy for the new residence. A performance bond or other surety must be posted in conformance with 33.700.050, Performance Guarantees, to ensure removal of the existing house or manufactured dwelling.

2. Building relocation. ...

3. Construction parking. ...

4. Construction staging areas

a. General construction projects. ...

b. Public utility projects. ...

c. Staging area standards. Adjustments to the following standards are prohibited

(1) Staging areas that last more than one year require that a community relations representative is designated for the project. The community relations representative must be available to respond to neighbors related to the operation of the staging area. The community relations representative must also be available to meet on at least a quarterly basis with the affected neighborhood association and business association until the staging area is removed.

(2) Staging areas that last longer than 3 years are subject to the regulations for permanent uses, except for staging areas located within an Environmental or River Natural overlay zone, in which case the staging area is subject to the regulations for a

wide range of durations as noted below.

A. Not all temporary uses are short-term. Sales offices are allowed as a temporary use for as long as 10 years.

F.1 The use of a house on a construction site is allowed as a temporary use for 2 years.

F.4.c. Construction staging areas are allowed as temporary uses for up to 3 years. However, staging areas that will last more than one year require that a community relations representative be designated for the project. This duration and requirement could be considered for temporary shelter.

permanent use regardless of the length of time the staging area will be in place.

(3) Dust, mud and erosion control. ...

(4) Final condition. ...

(5) Building permit. ...

G. Natural disasters and emergencies. *Temporary activities and structures needed as the result of a natural disaster or other health and safety emergencies are allowed for the duration of the emergency. Temporary activities include food, water, and equipment distribution centers, ~~warming or cooling shelters~~, and triage stations.*

H. Radio Frequency Transmission Facilities. ...

I. Commercial filming. ...

G. Warming and cooling shelters have been moved to temporary shelter in subsection J, below.

[Section J that follows is entirely new. It's not shown in underline for ease of reading]

J. Temporary Shelter Facilities and Services

Community service uses, including mass shelters, short-term housing, encampments for persons without permanent shelter and personal storage, which are managed by a public or non-profit agency licensed by the City to operate such facilities may be allowed on a temporary basis in accordance with the following standards.

These uses are included within the Community Service use category which means they must be of a public, nonprofit, or charitable nature. In addition, the managing agency must be licensed by the City to operate the facility. The issuing of a license will provide the City with the opportunity to ensure ongoing compliance by the operator with health, safety and good neighbor standards. The licensing provisions, including good neighbor provisions, are not appropriate for Title 33 but will need to be included in another title of the Municipal Code.

1. Warming and cooling shelters

a. Warming and cooling shelters are allowed in all Commercial, Mixed Use, Employment, Industrial and Campus Institutional Zones and within existing institutional buildings in residential zones for the duration of a severe weather event declared by the Portland Housing Bureau.

b. The licensed agency operating the shelter is responsible for ensuring compliance with building safety standards of the Building Official, fire safety

The City cannot delegate decisions to non-city bureaus therefore responsibility has been assigned to the Portland Housing Bureau. Currently the Joint Office of Homeless Services declares a severe weather event whenever any of the following conditions are met:

- Temperatures forecast at 25°F or below
- Forecasts predict at least an inch of snow in most areas

requirements of the Fire Marshal and health standards of the Multnomah County Health Department and for posting and distributing to occupants, copies of health or safety information provided by these agencies or any other public agency.

- Overnight temperatures forecast at 32°F or below, with at least an inch of driving rain
 - Other conditions, including severe wind chills or extreme temperature fluctuations
- <https://www.portlandoregon.gov/wheeler/article/663408>

Multnomah County recently updated its protocols for heat advisories:

<https://multco.us/multnomah-county/news/heat-risk-tool-makes-regional-hot-weather-response-smarter>

2. Mass shelters and short-term housing in existing structures

a. Mass shelters and short-term housing are allowed for three years or less as a temporary use in existing structures in all Commercial, Mixed Use, Employment, Industrial and Campus Institutional Zones. Temporary uses must desist for a minimum of one year before resuming on the same site.

b. Facilities and services may include access to counseling, medical care, water, toilet, shower, laundry, cooking, telephone facilities and similar support services.

c. The licensed agency operating the facility is responsible for ensuring compliance with building safety standards of the Building Official, fire safety requirements of the Fire Marshal and health standards of the Multnomah County Health Department and for posting and distributing to occupants, copies of health or safety information provided by these agencies or any other public agency.

d. Temporary uses with an overnight occupancy of more than sixteen (16) individuals must meet the requirements of Section 33.237.500, Neighbor Notification and Meeting, and have an Implementation Plan approved by the Portland Housing Bureau, prior to commencing the

NOTE: The terms “mass shelter” and “short-term housing” are defined. Changing the term “short-term housing” to “transitional shelter” and updating the related definition and standards was the subject of the 2019 DLCD Housing project.

a. As proposed in this draft, the temporary use could exist for up to 3 years. The use must then desist for at least one year or apply to become a permanent use.

d. There’s no land use application process for temporary uses (and in some cases there may not be a building permit required), but the draft language reflects some of the good neighbor requirements for convenience stores in Chapter 33.219.

use. At a minimum the Implementation Plan must include the following:

(1) Crime prevention and awareness training program. Written verification from the Police Bureau that a crime prevention and crime awareness training program has been approved.

(2) Litter control program. The operator must ensure that litter is picked up at least once a day from the site and from the sidewalks adjacent to the site.

(3) Communication agreement. The operator must designate and include contact information for a person responsible for on-going communication with the local recognized organizations and other concerned individuals regarding any problems they may have with current operations or impacts on the neighborhood. All responses to concerns raised by recognized organizations or concerned individuals should be written within 30 days of receiving the initial letter and be from the designated contact person. A file of all letters received and written is to be maintained by the operator and be available to the public upon request. The operator should notify the local recognized organizations and property owners within 150 feet of the site of changes to the designated contact person or contact information within 30 days of the change.

(4) Participation in Neighborhood Mediation Program. The operator must agree to participate in a Neighborhood Mediation Program should that process be initiated.

For mass shelters and short-term housing and encampments, the draft language assigns review of the Implementation Plan to the Portland Housing Bureau. This should be discussed with that Bureau.

Alternatively, these elements could be covered by “good neighbor” requirements of the licensing provisions. If retained in Title 33, the draft language proposes 16 individuals as an appropriate threshold for both Mass shelters and short-term housing in existing structures and encampments; however, other thresholds could be considered.

As written, an Implementation Plan is required regardless of the length of time the temporary use will be in operation. Alternatively, the Implementation Plan could be required only when the temporary use is going to in existence for more than a certain amount of time (e.g., more than three months).

3. Encampments for persons who lack permanent shelter

a. Encampments for persons who lack permanent shelter, including transitional housing accommodations as

ORS 446.265 (as amended by HB 2916) allows “transitional housing accommodations” includes yurts, huts, cabins, fabric structures, tents and similar

defined by ORS 446.265 and recreational vehicle and car camping, are allowed for three years or less as a temporary use in Commercial, Employment, Industrial and Campus Institutional Zones. Temporary uses must desist for a minimum of one year before resuming on the same site.

b. Encampments must comply with the standards in Section 33.296.030.J.2.b. through d.

c. The site must be 5,000 square feet or larger and provide a minimum of 100 square feet of land area for each occupant that is permitted to occupy the encampment site.

d. All encampment facilities, improvements, activities, and uses must be located at least 25 feet from any residentially-zoned lot or environmental overlay zone. Access to the encampment site may be located within the 25-foot setback area.

e. Toilets, potable water, and garbage collection must be provided according to the following standards:

- (1) Provide and maintain chemical toilets as recommended by the portable toilet service provider or provide access to toilets in an indoor location;*
- (2) Provide potable water in an indoor location or alternatively, continuously maintain outdoor potable water and discharge the water to a location approved by the City; and*
- (3) Remove garbage frequently enough to prevent overflow.*

f. Cooking facilities, if they are provided, must be in an indoor location and meet the following standards:

- (1) Provide a sink with potable water in an indoor location or alternatively, continuously maintain outdoor potable water and discharge the water to a location approved by the City;*
- (2) Provide a nonabsorbent and easily-cleanable food preparation counter;*
- (3) Provide a means to keep perishable food cold; and*

accommodations. ORS 446.265 used to require that the shared facilities of transitional housing accommodations meet the recreation park specialty code described under ORS 446.310 to 446.350. However, that requirement was deleted by HB 2916. The revised language says the Oregon Health Authority may develop public health best practices for shared health and sanitation facilities for transitional housing accommodations. OAR 918-650 establishes minimum safety standards for the design and construction of recreational parks and organizational camps, but it's not clear whether it applies to transitional housing accommodations as defined in ORS 446. Camping in recreational vehicles and cars is not covered in the definition "transitional housing accommodations" so it's listed separately in the draft.

Subsection 3 is based in part on Seattle's standards for encampments. Other possible size and location standards could include a maximum size (e.g., 100 occupants); or, a limit on the number of encampments permitted within a set distance.

e & f. Instead of including these standards in the Title 33, the City could create a new chapter in Title 24.

(4) Provide all products necessary to maintain the cooking facilities in a clean condition.

g. Open flames and propane tanks are prohibited.

h. Prior to commencing the temporary use, the licensed managing agency must file a site plan with the Bureau of Development Services showing the arrangement of the encampment, including numbers of tents or similar sleeping shelters, all facilities that are separate from the sleeping shelters, and all existing structures on the property, if any. The site plan is for informational purposes and is not subject to City review or permitting requirements.

i. A site inspection of the encampment by a City inspector is required prior to commencing encampment operations and officials have the right to inspect areas of the encampment that are located outdoors and plainly visible without prior notice to determine compliance with these standards.

h & i. Encampments will also be subject to the Implementation Plan requirements in subsection 2.d. These subsections could be included with the Implementation Plan submittal. Alternatively, both h and I could be covered by the “good neighbor” requirements of the licensing provisions.

33.296.040 General Regulations.

All temporary activities are subject to the regulations listed below.

A. *New development or alterations to existing development are prohibited, unless consistent with the development standards for uses allowed by right in the underlying zone or required by applicable building, fire, health, or safety codes.*

B. *Temporary activities may not cause the elimination of required off-street parking, except for Farmers Markets and Temporary Shelter Facilities and Services. Required parking may be temporarily occupied by a Farmers Market, as follows:*

- 1. The market may occupy up to 3 required spaces or 30 percent of the required spaces, whichever is more; or*
- 2. If the market occurs at a time other than a peak time for the primary use on the site, the market may occupy all of the required spaces. If this option is used, the operator of the market must keep an analysis on file. The analysis must document when*

B. Minor change to recognize that temporary shelter uses may eliminate parking.

the peak times are for the primary use, and the hours of operation (including set-up and take-down) for the market.

C. Temporary activities that are maintained beyond the allowed time limits are subject to the applicable use and development standards of the zoning code.

D. Temporary activities on sites where the primary use is a conditional use may not violate the conditions of approval for the primary use, except as allowed by Subsection B.

E. These regulations do not exempt the operator from any other required permits such as sanitation facility permits or electrical permits

E. Providing new water, electric, or other hookups for temporary activities, may require modification of other than Title 33 codes.

CONCLUSION

This memorandum summarizes our research and provides some draft code concepts which are intended as starting place for discussion. The goal of the amendments is to allow temporary activities in response humanitarian exigencies and allow for temporary facilities such as warming, cooling and other needed forms of temporary needed shelter, without a Council declaration of an emergency.

Key Points

- Under the proposed approach the City would retain its ability to declare a housing emergency pursuant to Title 15 to ensure the availability of the full spectrum of tools and add community service shelters as a temporary use in Title 33.
- A minor change to Title 15 (Section 15.04.040) is suggested to avoid a potential conflict with the proposed new provision in Chapter 33.296.
- A new subsection is outlined in Title 33 (33. 296.030.J) to provide standards for temporary activities within the Community Service use category including: warming and cooling shelters, mass shelters and short-term housing in existing structures, and encampments for persons who lack permanent shelter.
- As proposed in the draft language, the managing agency must be licensed by the City to operate the facility. The issuing of a license will provide the City with the opportunity to ensure ongoing compliance by the operator with health, safety and good neighbor standards. Ideally, the licensing provisions, including good neighbor provisions, would be included in another title of the Municipal Code and the Title 33 provisions would be limited to physical, rather than operational, attributes.