



May 1, 2023

Sent via email

To the Puyallup Mayor, Deputy Mayor, City Council and City Attorney,

I am again writing to urge you to not adopt proposed Ordinance 5.30 creating a special licensing scheme for Transitional and Permanent Supportive Housing that attempts to circumvent the intent of HB 1220 and the resulting code provision RCW 35A.21.430.¹ My previous letter outlined the many reasons why the proposed licensing ordinance would not stand up to legal challenge under federal law. In this letter, I will focus on why this ordinance would not withstand a legal challenge under state law, solely based on a plain reading of RCW 35A.21.430.

The intent of HB 1220, which was codified in part as RCW 35A.21.430, was to “[p]lan for and accommodate housing affordable to all economic segments of the population of this state”; identify the number of housing units necessary and a sufficient capacity of land “to manage projected growth, as provided by the department of commerce, including: ...[e]mergency housing, emergency shelters, and permanent supportive housing”; and identify “local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, including: ...[z]oning that may have a discriminatory effect.”² RCW 35A.21.340 allows for “[r]easonable occupancy, spacing, and intensity of use requirements...to protect public health and safety” but also specifies that any such requirements “may not prevent the siting of a sufficient number of permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters necessary to accommodate each code city’s projected need for such housing and shelter under RCW 36.70A.070(2)(a)(ii).”

Reasonable occupancy is a fact-based analysis that refers to the maximum number of occupants allowed in a given structure or facility and is generally dictated by existing health and safety laws, like the fire code. Permanent supportive housing units or buildings should not be subject to any special occupancy requirements beyond the rules for the zone it is in and the type of structure it is UNLESS there are unique public health and safety reasons for the special requirements supported by facts. “Intensity of Use” generally refers to things like building size and height, traffic levels, and noise. A large apartment building that isn’t near public transit will likely cause more traffic than a single-family home. A fraternity house may create more noise and thus result in more police calls than a dormitory. It is tempting to just use common sense around intensity of use but anytime there is a distinction made between the intensity of similarly situated uses (such as a triplex of market rate homes v. a triplex of permanent supportive housing), it is imperative that a community base these distinctions on actual

¹ “A code city shall not prohibit transitional housing or permanent supportive housing in any zones in which residential dwelling units or hotels are allowed. Effective September 30, 2021, a code city shall not prohibit indoor emergency shelters and indoor emergency housing in any zones in which hotels are allowed, except in such cities that have adopted an ordinance authorizing indoor emergency shelters and indoor emergency housing in a majority of zones within a one-mile proximity to transit...”
<https://app.leg.wa.gov/RCW/default.aspx?cite=35A.21.430>

² <https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1220-S2.SL.pdf?q=20230501121851>



factual evidence. There is no need to guess, as data is available regarding traffic, 911 calls, noise levels and pollution. Finally, reasonable spacing requirements refers to how close one designated use may be to another use of the same type, which is generally an effort to prevent facilities with a particularly high intensity of use from being overly concentrated in one area. However, what constitutes reasonable spacing is highly dependent on both the zone and type of building. Communities generally want single family homes in a residential district or office buildings in a commercial district clustered near each other. But those same communities might not want elementary schools spaced too near adult-oriented businesses. Permanent supportive housing, which is really just housing, should not be subject to special spacing requirements unless there are provable facts that support different spacing.

Classifying proposed Ordinance 5.30 as a “business license” does not remove it from the purview of RCW 35A.21.430. This ordinance, if passed, will surely inhibit providers from operating a sufficient number of permanent supportive, transitional, and emergency housing programs to accommodate Puyallup’s projected need. Many of the provisions in proposed 5.30.070 “Standards of safety and operation” are completely redundant to other local laws and standards relating to rental or residential property in general. Requiring permanent supportive housing operators to develop an “operational plan” explaining how they are “[m]aintain[ing] the premises to substantially comply with any applicable code, statute, ordinance, regulation governing their maintenance or operation” is clearly an effort to create hoops for these providers to jump through...AND charge them a fee for it. The “Standards of conduct” that a provider must enforce (but also encourage?) in 5.30.080 includes “[n]uisance is not permitted”. It is otherwise permitted in Puyallup? Am I missing something? There are so many examples I could list but the requirements in this licensing ordinance range from redundant to contradictory to ridiculous and go WAY beyond reasonable occupancy, intensity of use and spacing requirements allowed under RCW 35A.21.430. The intent of this ordinance is to make it as difficult as possible for unhoused and formerly unhoused people in Puyallup to live near those who view themselves as “regular” people. The public comments made by lawmakers, public officials, and community members in Puyallup are more than sufficient to prove this intent in court and puts Puyallup on very shaky legal ground.

Again, I would welcome the opportunity to meet with you to discuss how Puyallup can improve its zoning code to better address homelessness without passing an ineffective and illegal ordinance.

Sincerely,

A handwritten signature in black ink that reads "Katie Scott". The signature is written in a cursive, flowing style.

Katie Meyer Scott, Directing Attorney
National Homelessness Law Center
kmeyerscott@homelesslaw.org, p: 202-638-2535, ext. 108
WSBA #38978