

Project title: An ordinance prohibiting certain conduct within designated rights of way**Council Bill #**

CB 2102-06

Agenda dates requested:

3/03/2021

Briefing 3/03/21

Proposed action 3/10/21

Action 3/17/21

Ordinance Yes

Public hearing

Yes No **Budget amendment:**Yes No **PowerPoint presentation:**Yes No **Attachments:**

Draft Ordinance

Department(s) involved:

Administration

Legal

Contact person:

David Hall

Phone number: 425-257-8700**Email:** dhall@everettwa.gov**Initialed by:**

Department head

Administration

Council President

Consideration: An ordinance prohibiting certain conduct within designated rights of way**Project:****Partner/Supplier:****Location:****Preceding action:****Fund:****Fiscal summary statement:****Project summary statement:** The proposed ordinance would prohibit sitting, lying, and the distribution of goods within a designated area.**Recommendation (exact action requested of Council):** Adopt An Ordinance Prohibiting Certain Conduct within Designated Rights of Way.

ORDINANCE NO. _____

An Ordinance Prohibiting Certain Conduct within Designated Public Rights of Way, including Sitting, Lying, Pedestrian Interference, and Distributing Goods, Products or Supplies without a Street Use Permit.

WHEREAS, 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; and

WHEREAS, homelessness is a significant problem in the City of Everett and the City is committed to providing additional temporary shelter and permanent housing for the City's unhoused residents; and

WHEREAS, the City also recognizes that the impacts of street-level social issues are not evenly distributed throughout the City; and

WHEREAS, the area in the vicinity of Smith Avenue (more specifically identified in Attachment A) is disproportionately affected by the adverse impacts of street-level social issues in public rights of way that make the use of the right of way difficult, unsafe, or unwelcoming and affect the safety and quality of life of nearby property owners, businesses, residents, and the general public; and

WHEREAS, adopting an ordinance prohibiting these activities in the delineated, limited geographic area will mitigate the inequitable concentration of impacts; and

WHEREAS, the Everett City Council finds that the provisions of this Ordinance are necessary for the public health, safety, and welfare;

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. A. Prohibition. No person shall sit or lie down upon, or place a blanket, sleeping bag, back pack, chair, mattress, couch, stool, or any similar equipment, item, or

furniture upon, a public sidewalk or any portion of the public right of way, whether improved or unimproved, in the area identified in Exhibit A.

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 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;
3. Operating or patronizing an activity on the public sidewalk 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 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 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 90 days in jail, a fine of up to \$500.00, or both.

Section 3. No Goods or Services to be Provided within the Right of Way without Permit.

No person may provide food, beverages, goods, supplies or services of any sort within the public right of way in the area described in section 2.A unless authorized by a valid right-of-way use permit issued by the department of Public Works. 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 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 the neighborhood, other uses in the vicinity, or the public's use of the right-of-way. The 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 permit shall be valid for longer than one year.

Section 4. Effective Date

The prohibitions in this ordinance shall not be enforced until the Pallet shelter project is available for occupancy.

Section 5. Severability

Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

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.

Section 7. 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 8. 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 references thereto.

Section 9. Codification

Sections 2 and 3 of this Ordinance shall be codified in a new chapter in Title 13 of the Everett Municipal Code entitled "Certain Conduct within Designated Public Rights of Way Prohibited."

Cassie Franklin, Mayor

ATTEST:

CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective: _____

