



Fred Podesta
City of Seattle
Department of Finance and Administrative Services
Attention: Frances Samaniego
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VIA EMAIL to frances.samaniego@seattle.gov

Dear Mr. Podesta,

We submit these comments regarding the draft FAS Encampment Removal Rule (FAS 17-01, "FAS Removal Rule") and the amended Multi-Departmental Administrative Rules (MDAR 17-01 "New MDARS"), both intended to replace the previous MDARs enacted in 2008 (MDAR 8-01, "Old MDARs").

There are certain developments in the FAS Removal Rule and New MDARs that we consider positive steps:

- **Offer of alternative shelter**
A removal must be accompanied by an offer to encampment residents of 1) "alternative locations" or 2) "available housing or other shelter", and such alternatives are named to include housing programs, shelter programs, authorized encampments, and "no barrier" authorized shelters and encampments (FAS Removal Rules 7.1, 7.2). This is a welcome improvement that indicates an orientation toward utilizing the rules for the outcome of exiting homelessness rather than just a relocation.
- **Outreach before and during removal**
Outreach personnel must visit the site at least once after removal notice has been posted and prior to the scheduled removal date and Outreach personnel must be present at the removal and available "to offer of shelter alternatives and other services" until the removal is completed. Integrating outreach into the removal process with an aim of assisting persons to exit from homelessness is an important and positive development.
- **Notice content**
Notice of removal has been improved by requiring six named pieces of information and requiring that it be posted on or near to every tent or structure at an encampment and by requiring that the notice be posted in Spanish and potentially other languages as determined by the City, in addition to English.
- **Retrieval of property**
The retrieval of unattended property of encampment occupants has been improved by the City offering next business day delivery services and requiring only a description of the property with particularity rather than personal identification to recover property.

That said, there are also critical gaps within a number of these positive provisions:

- **Gap regarding offer of alternative shelter and the need for creative approaches to permanent housing for persons with high barriers**

The City has not established a strong track record on offers of shelter or housing to homeless persons living outdoors resulting in actual placements in shelter or housing. Perhaps the most pertinent example was the City’s 2016 outreach and removal operation at the East Duwamish Greenbelt Encampments (EDGE). The City’s outreach and removal efforts in that case, through services provided by Union Gospel Mission, resulted in 80% of persons not accepting offers of shelter or services, and being dispersed without any knowledge of where they had gone.¹ The failure rate of the EDGE effort suggests there must be a requirement of matching the offer of shelter alternatives with the individual’s circumstances. Many individuals among the homeless living outdoors have high barriers—which is often the reason why they are not in shelter or housing in the first place. These barriers may include active drug use—which the Mayor acknowledges may affect 80% of persons living outdoors—and is a typical barrier to emergency shelters (other than the low-barrier Navigation Center).² If persons actively using drugs decline shelter offers, it may be because they are well aware they will not be accepted or will be discharged because they cannot adhere to shelter rules. Criminal records are another common barrier to permanent housing for a significant number of the homeless living outdoors. But instead of doing meaningful analysis of that failure rate in the EDGE and the reasons for it and offering new improved approaches to this problem, the City appears to be instituting this very same approach—of any offer being sufficient to justify relocation, as opposed to an appropriate match for typically high-barrier individuals—that did not result in success among EDGE residents.

Recommendations:

- 1) We propose that removal under the MDARs require that individuals be offered an alternative placement that is an appropriate placement given the individual’s particular attributes and circumstances, and where the individual will actually be permitted to stay in light of those attributes and circumstances.
- 2) The section on alternative shelter includes language that the City is not required to provide alternatives to individuals who have been “excluded from all usual and appropriate alternatives because of the individual’s behavior” (FAS Removal Rule 7.2). This does not appear to be consistent with an outreach approach that is intended to address barriers homeless people have and problem solve those issues to get them housed, nor does it grapple with the fact that the system of “usual alternatives” itself is presently deficient as it does not include sufficient low or no barrier options for the many people with behavioral health issues now living outdoors. It also virtually guarantees such individuals will be chased around the City from place to place without resolving their need to live outdoors, which is in no one’s interest. Permanent housing is often the best solution for individuals whose behavioral issues preclude successful placement in any sort of congregate shelter arrangement, and direct placement of such individuals into permanent housing from outdoor encampments should be encouraged by the MDARs, not made unnecessary.

¹ The Human Services Department report on EDGE outreach states that Union Gospel Mission outreach engaged 357 EDGE residents and of those persons, 70 (or 19.6%) accepted housing, shelter, services and/or relocation assistance. *Assessment of Union Gospel Mission’s East Duwamish Greenbelt Encampment Outreach*, Aug. 18, 2016, found at <http://murray.seattle.gov/wp-content/uploads/2016/08/Assessment-of-UGMs-East-Duwamish-Greenbelt-Encampment-Outreach.pdf>

² KIRO 7 News, *Why Homelessness Has Grown Worse a Year After Mayor’s Emergency Declaration*, Nov. 3, 2016, found at <http://mynorthwest.com/444181/why-homelessness-has-grown-worse-a-year-after-mayors-emergency-declaration>.

3) Finally, the amended FAS Removal Rule and New MDARs should be accompanied by a proposal from the City to explore new options to permanently house persons with high barriers at scale—and options that go beyond emergency shelter or authorized encampments and instead focus on permanent housing. Given the urgency we further recommend the City explore using existing publicly funded housing resources for such permanent housing as opposed to new construction. Such resources present possibilities for housing high-barrier homeless individuals quickly if stakeholders explored this issue with fresh approaches.

- **Successful outreach requires more time than 72 hours' notice**

Successful outreach requires longer engagement than 72 hours' notice allows. If the City's homeless outreach contingent is primarily deployed to sites slated for removal in 72 hours, we are missing the opportunity to work in the most effective fashion with homeless individuals who have well-founded trust issues and need more time to engage with the outreach team in order to potentially decide to accept the services that may be offered. The MDARs should not normalize a 72 hour engagement period, which is not best practice for many individuals, particularly those with mental health issues and/or trauma history.

Recommendation: Direct that first engagement with individuals and groups within the period 72 hours or less before removal is scheduled be unusual and only under urgent circumstances.

In addition there are other significant issues raised by the FAS Removal Rule and the New MDARs.

- **Amended standards appear to provide City with broad and arbitrary authority to conduct removals**

As far as we can determine, under the new MDARS removals can occur virtually anywhere within City limits and appear more or less arbitrary under the amended broadly worded standards for "Immediate Hazard", "Obstruction," and "Emphasis Area" (FAS Removal Rules 3.0, 4.0) and the new rule on prioritizing encampments for removal (FAS Removal Rule 5.0). In fact, this is not a departure from the Old MDARs as they too allowed for essentially arbitrary removals in any area of the City under vaguely worded standards. While consistent with the Old MDARs, the New MDARs appear to go a step further in the scope of arbitrary removals. Under the prioritization provision, for example, all City departments are to identify and prioritize encampments for removal under eight criteria that include activities and geographic locations that are so broad as to cover virtually any encampment and any area of the City. Meanwhile, the Emphasis Area provisions allow any area of "persistent encampment removal" to be fenced off and for encampments to be banned from that area indefinitely. This expansion of City enforcement against encampments under vague standards fails to prioritize in a transparent way, and fails to direct that City teams avoid, where possible, needless shuffling of people from one outdoor location to another.

Recommendation: Either sharply limit removal priorities to issues of immediate safety concerns above and beyond those involved in any instance of living outdoors in unsanctioned encampments; or acknowledge openly that there are no meaningful prioritization criteria, which will advance the value of transparency, even if we do not support the use of removal in an arbitrary fashion as a matter of policy.

- **Added rule that allows for potential criminalization of homelessness**

The City has added a new rule in the New MDARs that suggests a new intention to consider criminalizing the homeless during removals. The Old MDARs left open the possibility of being charged with Criminal Trespass for entering or remaining in areas closed to the public, for

entering or remaining when under a notice of exclusion, or for remaining on property when permission has been withdrawn (Old MDARs, Rule 5.2). The New MDARs still contain that old rule (New MDARs, Rule 6.2). But, in addition, new language is specific about FAS's authority to request police action to charge persons with criminal trespass or other crimes for individuals who "are reasonably believed to reside at the encampment being removed and who refuse to leave" or "obstruct the expeditious progress of the removal" (FAS Removal Rule 4.3). This new language is a troubling development. There is little to be accomplished, beyond physical removal from a site, by booking such individuals into jail or referring such cases for criminal charges; nor is there any indication that such charges would be filed by the City Attorney's Office in any event.

Recommendation: We recommend that the City remove this language and the intention behind it; jail bookings and filing criminal charges under these circumstances would be a step backward in the City's efforts regarding encampments that have moved toward an effort to place homeless individuals on a pathway to becoming housed not a route into the criminal justice system.

We look forward to working with the City on our recommendations to improve the FAS Removal Rule and the New MDARs, and our recommendation that the City explore creative approaches to providing permanent housing to high-barrier individuals with existing, publicly-funded housing stock.

Sincerely,



Andrew Kashyap
Senior Attorney



Lisa Daugaard
Executive Director