

ORDINANCE NO. 1719

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

WHEREAS, the City of Des Moines has enacted a comprehensive land use plan codified at Title 18 DMMC, and

WHEREAS, Cities such as Des Moines that are required to plan under the State Growth Management Act, chapter 36.70A RCW, are required to adopt a process for identifying and siting of Essential Public Facilities ("EPF's"), and

WHEREAS, the City of Des Moines has adopted a policy for identifying and siting Essential Public Facilities in Ordinance no. 1697, codified at chapter 18.255 DMMC, and

WHEREAS, EPF's are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

WHEREAS, in 2014 the State of Washington began offering licenses to operate a new type of residential setting serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities ("ESF's") under chapter 70.97 RCW, and

WHEREAS, a typical ESF resident will have moved from a State or local psychiatric hospital, and

WHEREAS, a person may only be admitted to an ESF if the person has a mental disorder, chemical dependency disorder, or both; an organic or traumatic brain injury; or a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services, and

WHEREAS, a person may only be admitted to an ESF if the person additionally requires daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or assistance with three or more activities of daily living, and

WHEREAS, a person may only be admitted to an ESF if, in addition to the previous two requirements, the person has two or more of the following: self-endangering behaviors that are frequent or difficult to manage; aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage; intrusive behaviors that put residents or staff at risk; complex medication needs and those needs include psychotropic medications; a history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs; a history of frequent or protracted mental health hospitalizations; a history of offenses against a person or felony offenses that created substantial damage to property, and

WHEREAS, an ESF is required to maintain sufficient numbers of staff with the appropriate credentials and training to provide residents with such services as mental health treatment, chemical dependency treatment, and security as needed, and

WHEREAS, the State licenses ESF's as an entity of a different character than nursing homes; assisted living facilities; adult family homes; group training homes; and residential treatment facilities, and

WHEREAS, ESF's are a land use that is not specifically provided for in the Des Moines Zoning Code, and

WHEREAS, it is appropriate to identify Enhanced Service Facilities as a specific use type within the City Zoning Code and to designate zones in which the use may be permitted, not permitted or allowed by conditional use permit or unclassified use permit, and

WHEREAS, services offered by an ESF and the special needs of the residents make these facilities difficult to site similar to in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

WHEREAS, these characteristics make it appropriate for the City of Des Moines to identify Enhanced Services Facilities as Essential Public Facilities, and

WHEREAS, in accordance with RCW 35A.63.220, interim zoning controls may be effective for no longer than six months, but may be effective for up to a year if a work plan is developed for related studies providing for such a longer period, and

WHEREAS, the City Council enacted Ordinance No. 1714 as an interim zoning ordinance on March 14, 2019 in accordance with RCW 35A.63.200 to provide for appropriate land use regulation of ESF's, and

WHEREAS, the City Council in Ordinance No. 1714 set the date for a public hearing on the interim zoning ordinance for May 9, 2019, being less than sixty days after the adoption of the interim zoning ordinance, and

WHEREAS, notice of the public hearing was issued on April 24, 2019 in accordance with the DMMC, and

WHEREAS, the Community Development Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the proposed textual code amendments are within the scope of the existing environmental documents and fulfilled the SEPA requirements established by chapter 197-11 WAC and DMMC 16.05.04 pursuant to WAC 197-11-600 and DMMC 16.05.280, and

WHEREAS, the textual code amendments proposed in this Draft Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, a public hearing was held on May 9, 2019 and continued to June 27th and July 11, 2019, and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that confirming the amendments to the Des Moines Municipal Code enacted in Ordinance 1714 are appropriate and necessary for the preservation of the public health and welfare; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 18.52.010B and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A as amended by section 2 of Ordinance No. 1644 as amended by section 1 of Ordinance No. 1645 as amended by section 8 of Ordinance No. 1655 as amended by section 4 of Ordinance No. 1656 as amended by section 2 of Ordinance No. 1661 as amended by section 2 of Ordinance No. 1669 as amended by section 1 of Ordinance No. 1672 as amended by section 3 of Ordinance No. 1697 is amended to add or revise uses as follows:

Use is: P: Permitted	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
P/L: Permitted, but with special limitations									
CUP: Conditional use review required									
UUP: Unclassified use review required									
...									
Enhanced Services Facilities							UUP /L _[84, 85]		
...									
Essential public facilities not otherwise listed						UUP /L _[84, 85]	UUP /L _[84, 85]		
...									
Hospitals, Mental							UUP /L _[84, 85]		
...									

Sec. 2. DMMC 18.01.050 and section 5 of Ordinance No. 1591 as amended by section 1 of Ordinance No. 1628 as amended by section 1 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1661 as amended by section 3 of Ordinance No. 1669 as amended by section 15 of Ordinance No. 1671 as amended by section 1 of Ordinance No. 1697 are amended to add or revise the following definitions:

"Enhanced services facility" means a facility licensed by the Washington State Department of Social and Health Services under chapter 70.97 RCW.

"Essential public facilities (EPF)" include those facilities that are typically difficult to site, as defined in RCW 36.70A.200 and WAC 365-196-560, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, enhanced services facilities, and secure community transition facilities as defined in RCW 71.09.020.

~~"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals.~~

"Nursing home" means a facility licensed by the Washington State Department of Social and Health Services under chapter 18.51 RCW.

Sec. 3. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage and approval in accordance with law.


PASSED BY the City Council of the City of Des Moines this 11th day of July, 2019 and signed in authentication thereof this 11th day of July, 2019.


M A Y O R

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

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