

ORDINANCE NO. 1697

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to essential public facilities and amending DMMC 18.01.050, Table 18.52.010A, Table 18.52.010B, DMMC 18.140.020, DMMC 18.140.030, DMMC 18.140.100, DMMC 18.140.110; repealing DMMC 18.140.050 and DMMC 18.140.060; adding DMMC 18.140.105; and adding and codifying a new chapter entitled "*Essential Public Facilities*" that establishes a process, regulations, and criteria for the siting and expansion of essential public facilities (EPFs) pursuant to RCW 36.70A.

WHEREAS, the City Council is considering amendments to Title 18 to establish a new chapter entitled "*Essential Public Facilities*" that establishes a process, regulations, and criteria for the siting and expansion of essential public facilities (EPFs) pursuant to RCW 36.70A.200, and

WHEREAS, the City of Des Moines 2035 Comprehensive Plan Goal LU5 and supporting policies and implementation strategies LU 5.1, LU 5.1.1, LU 5.1.2, CF 1.3, CF 1.3.1, CF 1.4, CF 1.4.1 and CF 1.4.2 provide the policy basis for a siting process to be developed and implemented through the City's development regulations, and

WHEREAS, the Des Moines City Council desires to amend its process for siting essential public facilities, and

WHEREAS, the Des Moines City Council intends to comply with RCW 36.70A.200, and

WHEREAS, Draft Ordinance No. 15-206 provides guidance for the siting of essential public facilities and provides the City with broad discretion to protect the health and safety of our citizens, and

WHEREAS, on December 17, 2015 the City Council passed Resolution No. 1320 setting a Public Hearing on February 11, 2016, or as soon thereafter as the matter could be heard, to consider Draft Ordinance No. 15-206, and

WHEREAS, notice of the public hearing was issued on January 25, 2016 in accordance with the DMMC, and

WHEREAS, the public hearing was opened on February 11, 2016 and continued to May 12, 2016 to allow more time for staff and the Council to prepare the draft ordinance, and

WHEREAS, the City Council Finance and Economic Development Committee met on February 11, 2016, March 10, 2016, and April 14, 2016 to review, discuss, and provide guidance on the development of Draft Ordinance No. 15-206, and directed staff to bring the Draft Ordinance to the full Council, and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce on March 11, 2016 for a 60-day review and comment period in accordance with state law, and

WHEREAS, the Planning, Building and Public Works Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued and published on April 14, 2016, in the *Seattle Times*, and the appropriate comment period expired on April 28, 2016, and the appeal period concluded on May 9, 2016, and two comments from the public were received, and

WHEREAS, a public hearing was held on the 12th day of May, 2016, all persons wishing to be heard were heard, and Draft Ordinance No. 15-206 was passed to a second reading, and

WHEREAS, the City Council directed staff to make changes to Draft Ordinance No. 15-206 and staff has prepared Second Draft Ordinance No. 15-206 for the City Council's consideration, and

WHEREAS, notice of the continued public hearing was issued on March 7, 2018, and

WHEREAS, the continued public hearing was held on March 22, 2018, where all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance 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 18.01.050, *Definitions*, and section 5 of Ordinance No. 1591, shall be amended to add or revise the following definitions as follows:

"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, and secure community transition facilities as defined in RCW 71.09.020."

"Hospital" means an institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and licensed by the state to provide facilities and services in surgery, obstetrics, and general medical practice, excluding substance abuse facilities and mental hospitals.

"Hospital, mental" means an institution specializing in treatment of mental illness, licensed by the state to provide such services.

"Substance abuse facility" means a facility specializing in the treatment of drug and/or alcohol dependency, either outpatient or inpatient, licensed by the state to provide such services.

"Transportation facilities of statewide significance" are essential public facilities as defined in RCW 47.06.140, to include the interstate highway system, interregional state principal arterials, intercity high-speed ground transportation, major passenger intermodal terminals, regional high-capacity transportation systems, and any improvements identified in the statewide multimodal plan.

...											
Group home facilities [47,48,49]	UUP /L	UUP /L,]									
...											
]											
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...											
Sewage treatment plants [47,48]	UUP /L										
...											
Transportation facilities of statewide significance [47,48]	UUP/L	UUP/L	UUP /L	UUP/L	UUP/L	UUP/L	UUP/ L	UUP/L	UUP /L	UUP/L	UUP/L
...											

Notes:

- Limitations that correspond to the bracketed numbers [] are set forth below.
- Bracketed numbers listed next to the use in the right hand column apply in all allowed zones.
- Uses and developments are also subject to the specific standards for each zone.
- Conditional and Unclassified Use Permit requirements may be found in chapter 18.140 DMMC.
- Uses permitted in PR-C Zone when part of a contiguous PR-C development under single ownership shall be permitted in the PR-R Zone.

The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010A.

...

46. These essential public facilities are permitted as Type III quasi-judicial decision by the Hearing Examiner in accordance with DMMC 18.20.080 and shall comply with chapter 18.140 DMMC and section 11.

47. These essential public facilities are permitted as Type IV quasi-judicial decision by the City Council in accordance with DMMC 18.20.080 and shall comply with chapters 18.140 DMMC and section 11.

48. These essential public facilities are a permitted use and do not require a CUP/UUP only when the City and the proponent agree to process the application with a development agreement in accordance with the provisions of section 11.

49. Non-transferrable without prior consent of the City Council and subject to the provisions governing home occupations found in DMMC 18.52.010A (11).

Notes:

- Limitations that correspond to the bracketed numbers [] are set forth below.
- Bracketed numbers listed next to the use in the right hand column apply in all allowed zones.
- Uses and developments are also subject to the specific standards for each zone.
- Conditional and Unclassified Use Permit requirements may be found in chapter 18.140 DMMC.

All Zones

83. These essential public facilities are permitted as Type III quasi-judicial decision by the Hearing Examiner in accordance with DMMC 18.20.080 and shall comply with chapters 18.140 DMMC and section 11.

84. These essential public facilities are permitted as Type IV quasi-judicial decision by the City Council in accordance with DMMC 18.20.080 and shall comply with chapters 18.140 DMMC and section 11.

85. These essential public facilities are a permitted use and do not require a CUP/UUP only when the City and the proponent agree to process the application with a development agreement in accordance with the provisions of section 11.

86. Limited to facilities for public purposes by a public agency.

87. Permitted uses listed in DMMC 18.52.010B utilizing hazardous material exceeding the quantities in the International Building or Fire Codes with regard to exempt amounts of materials presenting a physical or health hazard – maximum quantities per control area.

88. For fire stations and public works maintenance and storage facilities, all buildings and structures shall maintain a distance of not less than 20 feet from any property line that is a common property line with Residential zoned property; and, a building from which fire-fighting equipment emerges onto a street shall maintain a distance of 35 feet from such street.

89. Excluding family day care providers, subject to the following minimum conditions:

- (a) A play yard or equipment yard shall not be located in any required side or front yard;
- (b) All buildings and structures on the lot shall maintain a distance of not less than 20 feet from any property line that is common property line with single-family residential property. If a greater setback is specified in a particular zone then the setback requirements of the particular zone shall prevail over the minimum setback set forth in this subsection;
- (c) No day care center shall be located within 150 feet of a Highway Commercial Zone;
- (d) State licensing standards for such facilities, chapter 388-73 WAC, shall be met;
- (e) Such uses shall comply with the parking code requirements of chapter 18.210 DMMC.

90. Includes wholesale trade and distribution of groceries (SIC 5141), grocery and related products not elsewhere classified (SIC 5149), fish and seafoods (SIC 5146), meats and meat products (SIC 5147), manufacturing and processing of sausages and other prepared meat products (SIC 2013), and servicing machines, coin-operated (SIC 3589); provided, the following conditions shall be conformed to:

- (a) Uses shall be limited only to property zoned C-C, Community Commercial; and
- (b) Required perimeter landscape and screening requirements adjacent to residentially zoned properties shall be increased as follows:

- (i) Minimum width of required landscape planters shall be 15 feet; and
 - (ii) Planting beds shall contain appropriately amended soils and be bermed to a height of three feet; and
 - (iii) Type I landscape plant material requirements shall include the use of eight-foot-tall specimen trees throughout; and
 - (iv) A solid wall six feet in height shall be constructed adjacent to the property line; and
- (c) Submittal of a traffic report and a binding truck routing plan prepared by a licensed engineer demonstrating that impacts to local streets will not be significantly adverse and that the existing street system has both the capacity and physical improvements necessary to accommodate the type of vehicles serving the uses proposed.

Sec. 4. DMMC 18.140.020 and section 321 of Ordinance No. 1591 are amended as follows:

18.140.020 Application. Unclassified and conditional use permits may be granted upon the filing of an application therefore by a property owner or a lessee pursuant to chapters 18.20 and 18.240 DMMC and the provisions of this chapter. The procedures to be followed in considering an application for a conditional use permit shall be those for a Type III land use action as set forth in chapter 18.20 DMMC. The procedures to be followed in considering an application for an unclassified use permit shall be those for a Type IV land use action as set forth in chapter 18.20 DMMC. Unclassified and conditional use permit applications filed for uses defined as essential public facilities will be processed in accordance with state law and section 11 of this Ordinance.

Sec. 5. DMMC 18.14.030 and section 322 of Ordinance No. 1591 are amended to read as follows:

18.140.030 Purpose. The purpose of a review shall be to determine that the characteristics of any such use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas and for the further purpose of stipulating such conditions as may reasonably assure that the basic purpose of this Title shall be served.

Sec. 6. Repealer. DMMC 18.140.050 and section 324 of Ordinance No. 1591 are repealed.

Sec. 7. Repealer. DMMC 18.140.060 and section 325 of Ordinance No. 1591 are repealed.

Sec. 8. DMMC 18.140.100 and section 329 of Ordinance No. 1591 are amended to read as follows:

18.140.100 Conditional use permits - Criteria.

(1) The Hearing Examiner may grant a conditional use permit after a hearing if, but only if, sufficient evidence is presented that the characteristics of any such proposed use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas, or, that the proposed use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas if certain conditions are attached to the proposed use. Furthermore, the Hearing Examiner shall give due regard for the nature and condition of all adjacent uses and structures and any testimony presented with reference to such adjacent uses and structures, and, in authorizing a conditional use, may impose such requirements and conditions with respect to location, landscaping, traffic control, dedication, maintenance, and operation in addition to those expressly set forth in this chapter and other ordinances as may be deemed necessary for the protection of adjacent properties and the public interest.

(2) Uses requiring a conditional use permit that are classified as essential public facilities shall meet the requirements of section 11 of this Ordinance.

Sec. 9. A new section is added to DMMC 18.140 as follows:

18.140.105 Unclassified Use Permits - Criteria.

(1) The Council may grant an unclassified use permit if sufficient evidence is presented that the characteristics of any such proposed use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas, or, that the proposed use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas if certain conditions are attached

to the proposed use. Furthermore, the Council shall give due regard for the nature and condition of all adjacent uses and structures and any testimony presented with reference to such adjacent uses and structures, and, in authorizing an unclassified use, may impose such requirements and conditions with respect to location, landscaping, traffic control, dedication, maintenance, and operation in addition to those expressly set forth in this chapter and other ordinances as may be deemed necessary for the protection of neighborhood properties and the public interest.

(2) Uses requiring an unclassified use permit that are classified as essential public facilities shall meet the requirements of section 11 of this Ordinance.

Sec. 10. DMMC 18.140.110 and section 330 of Ordinance No. 1591 are amended as follows:

18.140.110 Appeal. An unclassified or conditional use permit may be appealed pursuant to chapter 18.20 DMMC.

Sec. 11. A new chapter is added to Title 18 DMMC to read as follows:

ESSENTIAL PUBLIC FACILITIES (EPF)

(1) Title. This chapter shall be entitled "Essential Public Facilities (EPF)."

(2) Application. This chapter shall be applicable to all essential public facilities and zones as set forth herein.

(3) Purpose. The purpose of this chapter is to implement the Growth Management Act (RCW 36.70A) and the Des Moines Comprehensive Plan by establishing a process for the siting and expansion of essential public facilities, as necessary, to support orderly growth and delivery of public services. Essential public facilities (EPFs) including transportation facilities of state-wide significance, are necessary and important in the provision of public systems and services. The City's goal in promulgating the regulations under this chapter is to ensure the timely, efficient and appropriate siting of EPFs while simultaneously acknowledging and mitigating the significant community impacts often created by

such facilities. Nothing in this chapter is intended to preclude the siting of essential public facilities in contravention of applicable state law (RCW 36.70A.200, WAC 365-196-550).

(4) Authority. This chapter is established to regulate the siting of essential public facilities pursuant to RCW 36.70A.200 and WAC 365-196-550.

(5) Permit type.

(a) Essential Public Facilities shall be processed in accordance with the permit type as listed in 18.52.010A and 18.52.010B or with a development agreement using the alternative process of section 11(10) of this Ordinance and in accordance with the requirements of this chapter.

(b) In accordance with chapter 18.240.160 DMMC, the City Council may choose to delegate review of an Essential Public Facility unclassified use permit to the Hearings Examiner.

(c) For unclassified use permits, in addition to the requirements for notice set forth in chapter 18.20 DMMC, notice shall be mailed to property owners within 1,000 feet of the project site.

(6) Affected agencies/neighborhood meeting.

(a) The applicant shall conduct at least one neighborhood meeting to discuss the proposed EPF development. The meeting shall be held at least 45 days before submitting the EPF notification to the City pursuant to section 11(7) of this Ordinance.

(b) The purpose of the neighborhood meeting is to:

(i) Ensure that an applicant pursues early public participation in conjunction with and prior to the application, giving the applicant an opportunity to understand and mitigate any impacts that the proposed development might have, and

(ii) Ensure that neighborhood residents, tribes, public service agencies and utility providers, federal, state and local governments, and business owners have an

opportunity at an early stage to learn about how the proposed development might affect them and to work with the applicant to resolve concerns prior to submitting an application.

(iii) The applicant is responsible for notifying, facilitating and summarizing the neighborhood meeting pursuant to the following requirements:

(A) Public notice for the neighborhood meeting shall include:

(I) Date, start time, and location of the meeting;

(II) Proposed development name;

(III) Map showing the location of the proposed development and the location of the meeting;

(IV) Description of proposed development; and

(V) Name, address and phone number of the applicant or representative of the applicant to contact for additional information.

(B) The notice must be provided to the City at least 21 days prior to the meeting and at least 7 days prior to mailing the public notice. Notice shall be mailed at least 14 days prior to the neighborhood meeting and shall, at a minimum, be mailed to:

(I) Each taxpayer of record and each known site address within one-half mile (1,000 feet) of any portion of the boundary of the property on which the EPF is proposed to be located and any contiguous property owned by the applicant;

(II) Any city or town whose boundaries are within one mile of the property on which the EPF is proposed to be located and any contiguous property owned by the applicant; and

(III) Any affected public service agencies and utility providers, federal, state and local governments, and school districts.

(C) The City, upon request, shall provide the applicant with necessary names and addresses or mailing labels. The applicant shall reimburse the City for any costs associated with this request consistent with City procedures.

(D) The neighborhood meeting shall be held at a location accessible to the public and within a reasonable distance from the boundary of the proposed development.

(E) At a minimum the applicant shall provide at the neighborhood meeting:

(I) Conceptual graphic presentation depicting the layout and design of the proposed development;

(II) Size of the proposed development;

(III) The proposed uses including the square footage;

(IV) Project narrative and description;

(V) Site plan;

(VI) Potential expansion areas;
and

(VII) Potential impacts and how those impacts will be addressed by the applicant.

(F) The applicant shall prepare a written summary of the neighborhood meeting to be included with the EPF notice required in section 11(7) of this Ordinance, including:

(I) A copy of the notice of the neighborhood meeting along with a list of persons to whom it was mailed;

(II) A signed affidavit listing the persons who attended the meeting and their addresses if provided; and

(III) A signed affidavit providing a summary of concerns, issues, problems and mitigation expressed during the neighborhood meeting.

(7) Essential public facilities - Notification, determination of permit process, and appeal.

(a) Any public or private entity proposing to site an EPF in the City shall provide written notification of its intent to site the EPF to the City Manager or the City Manager's designee at least 90 days prior to submittal of an application. Such notification shall include the following:

(b) An EPF pre-application conference request and fee as listed in the City's fee schedule.

(c) When the EPF is proposed to be processed through a development agreement, a request to utilize the alternative procedures of section 11(10) of this Ordinance, and a description of the completed and proposed public process.

(d) A detailed description of the proposal including:

(i) An explanation of the operations and the need for the proposed facility, why the facility is difficult to site and why it qualifies as an EPF;

(ii) Documentation that affected jurisdictions and the public have been notified and given an opportunity to comment pursuant to chapter 18.20 DMMC or equivalent process;

(iii) Proof of a published notice regarding the proposed EPF in the City's official newspaper describing the

proposal and soliciting comments, together with any written comments received on the proposed EPF;

(iv) An analysis of the facility siting criteria, including size, physical characteristics, support facilities, access, future expansion needs and analysis of alternative sites and a description of any applicable state or regional siting process;

(v) A description of general environmental, traffic and social impacts and proposed mitigation measures;

(vi) A description of community amenities proposed.

(vii) The site's relationship to the projected service area and distribution of similar facilities within that service area;

(viii) An analysis of the proposal's consistency with the City's comprehensive plan and applicable development regulations, and an identification of any inconsistencies; and

(iv) A proposed site plan and vicinity map with current zoning designations.

(v) A written summary of the neighborhood meeting prepared in accordance with section 11(6)(b)(iii)(F).

(e) The City Manager or the City Manager's designee shall issue a determination as to whether the proposal is designated as an EPF consistent with the definition of EPFs pursuant to RCW 36.70A.200, WAC 365-196-550 and DMMC 18.01.050 and a determination of the applicable permitting process. The City Manager or designee shall provide written notice of his or her determination within 90 days from the filing of the notice to the applicant and City Council and publish notice of the determination in the official newspaper of record.

(f) The City Manager or the City Manager's designee's determination shall be appealable to the City Council by the applicant or by any affected person. Appeals shall be filed

pursuant to chapter 18.20 DMMC. The City Council shall hold a public hearing on the appeal within 30 days of the filing of the appeal. At the hearing, any interested person may provide oral or written comment on matters relevant to the appeal. The City Council shall issue a decision on the appeal within 14 days of the close of the hearing. The City Council's decision shall be a final decision subject to appeal under chapter 36.70C RCW.

(8) Decision criteria for siting and expansion of essential public facilities. The City's decision-maker may consider whether the proposal is consistent with the following factors:

(a) The proposal is consistent with the objectives and policies of the Des Moines Comprehensive Plan;

(b) The project applicant has demonstrated a need for the project, as supported by an analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed;

(c) If applicable, the project would serve a significant share of the City's population, and the proposed site will reasonably serve the project's overall service population;

(d) The applicant has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology;

(e) The project is consistent with the applicant's own long-range plans for facilities and operations;

(f) The project will not result in a disproportionate burden on a geographic area;

(g) The project proposes public amenities that benefit the surrounding community;

(h) The applicant has provided an opportunity for public participation in the siting decision and development of mitigation measures that is appropriate considering the project's

scope, applicable requirements of the City Code, and state or federal law;

(i) The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation;

(j) The proposal, as conditioned, adequately mitigates adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

(k) The proposal incorporates specific features to ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property;

(l) The applicant has proposed mitigation measures that aid displaced or impacted businesses including assistance in relocating within the City;

(m) The facility satisfies the provisions of this title for development within the zoning district in which it is proposed to be located, except as provided in this chapter, and

(n) The proposal incorporates the principles of Crime Prevention through Environmental Design (CPTED).

(o) Whether the essential public facility and its location have been evaluated through a valid state or regional siting process. In the case of an EPF sited through a state or regional siting process, the City shall accept the valid siting determination with respect to any such facility.

(9) Conditions.

(a) In issuing an approval or permit under this chapter, the City's decision-maker may impose such reasonable conditions as necessary to ensure that a proposed essential public facility satisfies, to the extent practicable, the applicable

criteria therefor and does not unreasonably impact the public health, safety, environment and welfare.

(b) Reasonable conditions of approval may include, but are not limited to, the following:

(i) Increase requirements in the standards, criteria, or policies established by this title;

(ii) Limit the manner in which the proposed use is conducted, including restricting the time during which an activity may take place, and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor;

(iii) Stipulate the exact location of an EPF as a means of minimizing hazards to life or limb, property damage, impacts to the environment, erosion, underground collapse, landslides, and transportation systems;

(iv) Impose reasonable conditions necessary to avoid, minimize or mitigate any adverse impacts identified resulting from the project;

(v) Require the posting of construction and maintenance bonds or other security as provided in chapter 14.20 DMMC sufficient to secure to the City the estimated cost of construction, installation and maintenance of required improvements;

(vi) Require a special yard or other open space or lot area or dimension;

(vii) Limit the height, size or location of a building or other structure;

(viii) Designate the size, number, location or nature of vehicle access points;

(ix) Designate the amount of street dedication, roadway width or improvements within the street right-of-way;

(x) Designate the size, location, screening, drainage, surfacing or other improvement of parking or vehicle loading areas;

(xi) Limit or otherwise designate the number, size, location, and height of lighting of signs;

(xii) Limit the location and intensity of outdoor lighting, and/or requiring shielding thereof;

(xiii) Require screening, landscaping or another facility to protect adjacent or nearby property, and designate standards for the installation or maintenance of such facility;

(xiv) Designate the size, height, location or constituent materials for on-site fencing;

(xv) Protect existing trees, vegetation, water resources, wildlife habitat or other significant natural resources;

(xvi) Require provisions for public access, both physical and visual, to natural, scenic and recreational resources;

(xvii) Require provisions for stormwater drainage, including designating the size, location, screening, or other improvements of detention ponds and related facilities;

(xviii) Impose special conditions on the proposed use to reasonably ensure its conformance with the surrounding neighborhood and the intent and purpose of the underlying zoning district; and

(xix) Require provision of public amenities that benefit the surrounding community;

(xx) Require building and site design changes to increase compatibility with the surrounding neighborhood.

(xxi) Require that necessary infrastructure is or will be made available to ensure safe transportation access and transportation concurrency;

(xxii) Require that necessary infrastructure is or will be made available to ensure that public safety responders have sufficient capacity to handle increased calls or expenses that will occur as the result of the facility;

(xxiii) Require that all capital costs associated with on-site and off-site improvements necessitated by the facility are borne by the project sponsor to the extent legally permissible;

(xxiv) Require that the facility not unreasonably increase noise levels in residential areas, especially at night;

(xxv) Require visual screening be provided that will mitigate the visual impacts from streets and adjoining properties while using the principles of Crime Prevention through Environmental Design (CPTED);

(xxvi) Require that probable significant adverse environmental impacts, including but not limited to impacts to wetlands, shorelines and wildlife habitat, are adequately mitigated;

(xxvii) Require conditions to assure that any other applicable criteria set forth in this title are satisfied; and

(c) In the event that an EPF sited through a state or regional siting process cannot, by the imposition of reasonable conditions of approval, satisfy the criteria set forth in this section, the City shall approve the siting or expansion of the facility with such reasonable conditions of approval as may mitigate such impacts to the maximum extent practicable.

(d) The list of conditions enumerated in subsections (a) and (b) of this section is nonexclusive. Nothing in this chapter is intended to diminish or otherwise abridge the City's authority to require mitigation measures or impose

conditions pursuant to any other applicable requirement, including but not limited to the SEPA regulations codified in chapter 16.05 DMMC.

(10) Alternative process - Development agreement. A Conditional Use Permit (CUP) or Unclassified Use Permit (UUP) shall not be required for an essential public facility as set forth in section 11(5) of this Ordinance if an applicant and the City agree to process the EPF with a development agreement, and the applicant demonstrates the following:

(a) The public has been notified and given an opportunity to comment in a process as rigorous as that required by chapter 18.20 and this chapter;

(b) Proof of a published notice(s) regarding the proposed EPF in the City's official newspaper or equivalent media describing the proposal and soliciting comments, together with any written comments received on the proposed EPF;

(c) Proof that the applicant has had at least one neighborhood meeting consistent with the requirements of section 11(7) of this Ordinance to discuss the proposed EPF;

(d) An analysis of the facility siting criteria, including size, physical characteristics, support facilities, access, future expansion needs and analysis of alternative sites and a description of any applicable state or regional siting process;

(e) A description of general environmental, traffic and social impacts and proposed mitigation measures;

(f) The site's relationship to the projected service area and distribution of similar facilities within that service area;

(g) An analysis of the proposal's consistency with the City's comprehensive plan and applicable development regulations, and an identification of any inconsistencies; and

(h) A proposed site plan and vicinity map with current zoning designations.

An exemption from the CUP or UUP process shall not be deemed to exempt the EPF from any other applicable City, State and/or Federal regulations.

The development agreement shall contain such reasonable conditions as necessary to ensure the proposed essential public facility satisfies, to the extent practicable, the permit criteria therefor and does not unreasonably impact the public health, safety, environment and welfare as enumerated in sections 11(8) through 11(11) of this Ordinance.

The City Council shall hold a public hearing prior to approval of the development agreement. At the hearing, any interested person may provide oral or written comment on matters relevant to the agreement. The City Council's decision shall be a final decision subject to appeal under chapter 36.70C RCW.

(11) Independent consultant review and environmental review.

(a) The City may require independent consultant review of an EPF proposal to assess its compliance with applicable regulations and the requirements of this chapter.

(b) If independent consultant review is required, the applicant shall bear and secure all consultant and City costs incurred in the preparation of studies or review as determined by the City. The applicant shall make a deposit with the City sufficient to defray the cost of such review. The applicant shall pay all costs prior to issuance of permits. Unexpended funds will be returned to the applicant following the final decision on the application.

(c) The applicant may, at its expense and to the extent determined by the City, provide additional studies or other information.

(d) Any applicant applying for an EPF shall pay the cost of environmental review and studies necessary under SEPA, pursuant to chapter 16.05 DMMC.

(12) Decision timing. The review, reconsideration and appeal process set forth in this chapter shall not be used to preclude an EPF. The City's decision-maker shall render a final, appealable decision with respect to an EPF within 240 days of the City's notice of completion regarding the permit application.

(13) Building permit application.

(a) Any building permit issued for an EPF approved under this chapter shall be consistent with all conditions of approval of the conditional use permit, unclassified use permit or development agreement, and other city requirements.

(b) In the event a building permit for an EPF is denied because the building permit application does not comply with construction codes, the City shall submit in writing the reasons for denial to the project applicant.

(c) No building or construction permits may be applied for prior to a conditional use permit, unclassified use permit, or development agreement approval for an EPF unless the applicant signs a written release acknowledging that such approval is neither guaranteed nor implied by the City's acceptance of the building or construction permit applications.

(d) The applicant shall expressly hold the City harmless and accept all financial risk associated with preparing and submitting construction plans before a final decision is made under this chapter.

(14) Suspension or revocation of permit. In the event a building permit for an EPF is denied, suspended or revoked due to a failure to comply with conditions of approval for the CUP, UUP, development agreement or other approval, the City Manager or City Manager's designee shall submit in writing the reasons for such action to the applicant.

Sec. 12. Codification. Section No. 11 of this Ordinance shall be codified as a new chapter in Title 18 DMMC entitled "*Essential Public Facilities.*"

Sec. 13. 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. 14. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council in accordance to law.

PASSED BY the City Council of the City of Des Moines this 22nd day of March, 2018 and signed in authentication thereof this 22nd day of March, 2018.


M A Y O R

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: March 28, 2018

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1697, Adopted March 22, 2018.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to essential public facilities and amends DMMC 18.01.050, Table 18.52.010A, Table 18.52.010B, DMMC 18.140.020, DMMC 18.140.030, DMMC 18.140.100, DMMC 18.140.110; repeals DMMC 18.140.050 and DMMC 18.140.060; adds DMMC 18.140.105; and adds and codifies a new chapter entitled "*Essential Public Facilities*" that establishes a process, regulations, and criteria for the siting and expansion of essential public facilities (EPFs) pursuant to RCW 36.70A.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins, CMC
City Clerk

Published: March 28, 2018