

ORDINANCE NO. 1714

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning, enacting an interim zoning Ordinance relating to land use, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050, setting a public hearing, and declaring an emergency.

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 finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health and welfare, and to provide for the siting of Enhanced Services Facilities within the City, and

WHEREAS, the City Council further finds that passage of this Ordinance constitutes an emergency; now therefore,

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

Sec. 1. Findings. RCW 35A.63.220 and RCW 36.70A.390 authorize adoption of interim zoning measures with certain limitations. In compliance with the requirements of these statutes and applicable case law authority, the City Council adopts as findings the pronouncements contained in the above recital provisions.

Sec. 2. Interim regulation adopted. 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 the following use as follows:

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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. 3. Interim definition added. 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. 4. Public hearing on interim zoning control.

Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim control regulation within sixty (60) days of its adoption, or before May 13, 2019. The Council shall hold this hearing on May 9, 2019. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this interim control regulation and either justify its continued imposition or rescind the regulation.

Sec. 5. Declaration of emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediately effective interim zoning regulation, applicants for such projects or uses could become vested, leading to development that could be incompatible with the regulations adopted in this interim control and which may eventually be adopted by the City. Therefore, the interim regulation in this Ordinance must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights.

Sec. 6. 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.

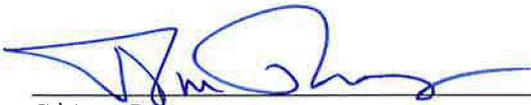
Sec. 7. Effective date. This Ordinance shall take effect and be in full force immediately upon adoption, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED BY a majority plus one of the whole membership of the City Council of the City of Des Moines this March 14, 2019 and signed in authentication thereof this March 14, 2019.



M A Y O R

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

Published: 3/21, 2019

Effective Date: Immediately Upon Adoption