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ORDINANCE NO. 3474

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE PURSUANT TO RCW 35A.63.220; AMENDING TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE BY ADDING A NEW CHAPTER 20.16 ESSENTIAL PUBLIC FACILITIES THERETO; ADOPTING REGULATIONS GOVERNING THE SITING, PERMITTING AND MITIGATION OF ESSENTIAL PUBLIC FACILITIES; SETTING A PUBLIC HEARING, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, essential public facilities as defined by Chapter 36.70A RCW are necessary to support orderly growth and delivery of various public services; and

WHEREAS, essential public facilities often implicate siting difficulties and create significant community impacts; and

WHEREAS, consistent with applicable state law, the City Council desires to establish a regulatory scheme for essential public facilities that will ensure the efficient and appropriate siting of said facilities while simultaneously providing for sufficient notice, public participation, mitigation and oversight; and

WHEREAS, the City's intent in adopting said regulations is not to preclude the siting of essential public facilities in contravention of applicable state law; and

WHEREAS, the City intervened in a case before the Central Puget Sound Growth Management Hearings Board styled as King County, et al, v. Snohomish County, et al, Case No. 03-3-0011; and

WHEREAS, the Growth Management Hearings Board decision invalidated Snohomish County's essential public facilities requirements and remanded the matter back to Snohomish County for action; and

WHEREAS, Snohomish County has filed a motion for reconsideration requesting a period of up to six months to amend its ordinance in order to comply with the provisions of the Board's order; and

WHEREAS, the City had hoped to have more specific guidance in that matter, but the continuing process indicates that a final decision may be many months off; and

WHEREAS, the City is anxious to comply with its Growth Management Act directive and to have in place an ordinance governing essential public facilities; and

WHEREAS, RCW 35A.63.220 permits the adoption of interim zoning ordinances so long as a public hearing is held at a later date in accordance with the provisions of the statute; and

WHEREAS, the preceding legislative findings are adopted as the basis for utilization of the interim zoning regulation NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Title 20 of the Edmonds Community Development Code is hereby amended by the addition of a new Chapter 20.16 Essential Public Facilities to provide in its entirety as follows:

Chapter 20.16

ESSENTIAL PUBLIC FACILITIES

20.16.010 Purpose and applicability
20.16.020 Definitions
20.16.030 Conditional use permit required
20.16.040 Optional site consultation process
20.16.045 Inter-jurisdictional siting
20.16.050 EPF conditional use permit procedure
20.16.060 Independent consultant review
20.16.070 Decision criteria
20.16.080 Decision criteria; EPF's proposed by a Regional Agency with jurisdiction
20.16.090 Denial of Regional EPF - Limitations
20.16.100 Permit Approval
20.16.110 Reconsideration and Appeal
10.26.120 Decision timing
10.16.130 Building permit application

20.16.010 Purpose and applicability

A. This chapter establishes the City's siting process for essential public facilities in order to support orderly growth and delivery of public 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. This chapter also seeks to promote enhanced public participation that will produce EPF siting decisions consistent with community goals.

B. Nothing in this chapter should be construed as an attempt by the City to preclude the siting of essential public facilities in contravention of applicable state law. The chapter shall be interpreted in a manner consistent with the City's statutory obligations.

C. The siting process established by this chapter does not apply to "secure community transition facilities" as defined under Chapter 71.09 RCW, or to residential health and social service facilities protected by state or federal law as residential uses permitted in residential zones.

20.16.020 Definitions

The following definitions shall apply for purposes of this chapter:

A. "City" means the City of Edmonds, Washington.

B "Department" means the City of Edmonds Development Services Department.

C. "Director" means the City of Edmonds Development Services Director.

D. "Essential Public Facility" or "EPF" means:

(i) a facility listed in RCW 36.70A.200;

(ii) appearing on the list maintained by the State Office of Financial Management pursuant to RCW 36.70A.200(4),

(iii) designated in the City's Comprehensive Plan;

(iv) designated by a regional Agency with jurisdiction; and/or

(v) including any facility owned or operated by a unit of local or state government, a public utility or transportation company, or any other entity under contract to a unit of local or state government to provide an essential public facility.

E. "Regional Essential Public Facility" or "Regional EPF" means a project designated as an EPF and sited by a bona fide Regional Agency acting within its legally constituted authority and geographical jurisdiction.

F. "Project sponsor" means the proponent and/or applicant for an essential public facility.

20.16.030 Conditional use permit required

All EPFs shall comply with the provisions of both this chapter and Chapter 20.05 ECDC. PROVIDED, HOWEVER, that a Regional EPF need comply only with the provisions of this Chapter and remain consistent with the City's Comprehensive Plan. An EPF shall be considered a conditional use in all zones in which it is listed as a permitted or conditional use under Title 16 ECDC. In the event of a conflict with any other ECDC provision, the provisions of this chapter shall govern.

20.16.040 Optional site consultation process

Prior to submitting a conditional use permit application, an EPF sponsor may initiate optional site consultation with the

Department. This consultation process, while not required, is encouraged as a means for project sponsors to present facility proposals, seek information about potential sites, and propose possible siting incentives and mitigation measures.

20.16.045 Inter-jurisdictional siting

In the event that the City has executed an interlocal agreement with one or more other jurisdictions regarding the siting of EPFs of a regional or state-wide nature, the City shall cooperate fully and in good faith with said jurisdictions to the extent specified in the interlocal agreement. PROVIDED, that nothing in this section nor in any such interlocal agreement shall be construed as waiving, limiting or otherwise abridging the City's regulatory authority.

20.16.050 EPF conditional use permit procedure

A. Application for EPF siting approval shall be made pursuant to ECDC 20.90.010, as consistent with this chapter. Approval, conditional approval or denial of the project sponsor's application shall be made by the City of Edmonds Hearing Examiner after a full public hearing.

B. The conditional use permit application shall also include a public participation plan designed to encourage early public involvement in the siting decision and in determining possible mitigation measures. Informational public meetings within the City shall be scheduled pursuant to this process; the number of meetings shall be set by the Director consistent with the size, complexity and estimated impacts of the proposal.

C. In addition to the conditional use permit application fee, an additional fee of $5,000 shall be required for the additional costs associated with review of the application under the criteria established in ECDC 20.16.070. Facilities for the disabled may apply for a reduction of this fee pursuant to Chapter 17.05 ECDC to a level consistent with the administrative burden placed upon the City's resources.

20.16.060 Independent consultant review

1. The Director may require independent consultant review of the proposal to assess its compliance with the criteria contained in ECDC 20.16.070 and 20.16.080.

2. If such independent consultant review is required, the project sponsor shall make a deposit with the Department sufficient to defray the cost of such review. Said deposit shall be

separate from and in addition to any other fee paid by this Chapter. The deposit shall be set at a level consistent with the anticipated cost of review based on the size, complexity and estimated impacts of the proposal. The deposit shall be supplemented by the applicant from time to time to ensure payment of the reasonable cost of consultant review. Any unexpended funds shall be returned to the applicant following the final decision on the application.

20.16.070 Decision criteria

An application for conditional use permit approval for an essential public facility must comply with conditional use permit requirements, any other applicable requirements for the proposed use, and the following site decision criteria:

1. The project sponsor has demonstrated a need for the project, as supported by a detailed written analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed.

2. If applicable, the project would serve a significant share of the local population or service area, and the proposed site will reasonably serve the project's overall service population.

3. The project sponsor has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology, as verified by the City and reviewed by associated jurisdictions and agencies.

4. The project is consistent with the sponsor's own long-range plans for facilities and operations, as well as the plans of those jurisdictions and agencies that may also be participating in a facilities plan.

5. The project sponsor's public participation plan has provided an opportunity for public participation in the siting decision and mitigation measures that is appropriate in light of the project's scope.

6. The project will not result in a disproportionate burden of essential public facilities on a particular geographic area.

7. The project is consistent and compatible with the City’s comprehensive plan, City-wide planning policies and local land use regulations.

8. The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements may be determined by the minimum size of the facility, access, support facilities, topography, geology, and on-site mitigation needs. The project sponsor shall identify future expansion needs of the proposed facility during the initial environmental review and the phasing of additional needs early in the process.

9. The project site, as developed with the proposed facility and under the proposed mitigation plan, is compatible with surrounding land uses.

10. The project sponsor has proposed mitigation measures that substantially avoid, reduce, or compensate for adverse impacts on the environment, including but not limited to buffers, impervious surfaces, design elements and other operational or programmatic measures contained in the proposal.

20.16.080 Decision criteria; EPFs proposed by a Regional Agency with jurisdiction

An application for conditional use permit approval for an essential public facility proposed by a Regional Agency with jurisdiction shall comply with, and only with, the following site decision criteria:

A. The project sponsor has established that it is a Regional Agency with jurisdiction. For the purpose of this chapter, "jurisdiction" shall mean within the boundaries of a Regional Agency's legal and physical jurisdiction as determined by the laws of the State of Washington or its charter. A claim of jurisdiction based upon service area shall meet the following criteria:

i. The project must serve a significant share of the Edmonds population or a significant portion of the land area of the City of Edmonds must lie within the Regional Agency service area; and

ii. The proposed site must reasonably serve the project's overall service population and the service population or service area lying within the City of Edmonds.

B. The site has been designated through a collaborative process which involved representatives of the City of Edmonds duly appointed by the City and through a public hearing process which was reasonably calculated to reach the citizens of the City of Edmonds.

C. The project is consistent with and compatible with the City's Comprehensive Plan, City-wide planning policies and local land use regulations. Regional Agency with jurisdiction shall notify the City in a timely fashion of its intent to establish this facility, and shall process any required Comprehensive Plan change necessary to incorporate the proposed EPF in the City's Comprehensive Plan provisions in accordance with the provisions of City ordinance.

D. The Project sponsor has proposed mitigation measures that substantially avoid, reduce, or compensate for adverse impacts on the environment, including but not limited to buffers, impervious surfaces, design elements and other operational or programmatic measures contained in the proposal.

10.16.090 Denial of Regional EPF - Limitations

A. Conditional Use Permit for an Essential Public Facility project proposed by a Regional Agency with jurisdiction shall be denied only if: The proposed project conflicts with the proposed use of a particular site by another Regional Agency with jurisdiction. In the event of a conflict, at least the following factors shall be considered:

a. Which proposal is most consistent with the City's Comprehensive Plan;

b. Which proposal best serves the broadest interests of the City and its citizens; and

c. Which proposal is first in time.

B. A Conditional Use Permit issued for an EPF, sponsored by a Regional Agency with jurisdiction may be suspended or revoked if the sponsor fails to comply with the conditions of approval, be suspended in accordance with the provisions of ECDC 20.16.120(C).

20.16.100 Permit approval

If the project sponsor demonstrates compliance with the review criteria listed in ECDC 20.16.070 and satisfies the requirements for a conditional use permit and all other applicable requirements, the Hearing Examiner shall approve issuance of a conditional use permit for the proposed EPF.

20.16.110 Reconsideration and appeal

Reconsideration of the hearing examiner's ruling shall be governed by ECDC 20.100.010. Appeal of the hearing examiner's ruling shall be governed by Chapter 20.105 ECDC.

20.16.120 Decision timing

Review, reconsideration and remand process shall not be used to preclude an EPF. Cost and delay do not, prima facie, make an EPF permit review process unfair and untimely, nor be deemed to preclude an EPF. A reasonable consideration schedule shall be established based on the size and complexity of EPF proposals.

20.16.130 Building permit application

A. Any building permit for an EPF approved under this chapter shall comply with all conditions of approval in the conditional use permit. In the event a building permit for an EPF is denied, the Department shall submit in writing the reasons for denial to the project sponsor.

B. No construction permits may be applied for prior to conditional use approval of the EPF unless the applicant signs a written release acknowledging that such approval is neither guaranteed nor implied by the Department's acceptance of the construction permit applications. The applicant shall expressly accept all financial risk associated with preparing and submitting construction plans before the final decision is made under this chapter.

C. Building permits for an EPF which fails to comply with the conditions of approval shall be suspended and a report made to the Director. The Director shall institute a proceeding before the Hearing Examiner to permit the EPF's sponsor a hearing at which to show cause why its CUP should not be revoked or further conditioned. Such hearing shall be conducted in accordance with ECDC 20.010.040(C); Provided, however, that the hearing examiner's decision shall be final and appealable only to Superior Court pursuant to the Land Use Petition Act.

Section 2. This ordinance has been enacted in accordance with the authorization of RCW 35A.63.220 as an interim zoning regulation and ordinance. In accordance with the provisions of said Chapter, a public hearing will be set on the ordinance before the City Council

at 7:00 PM or as soon thereafter as the parties may be heard on the 16th day of December, 2003, such date being within 60 days of adoption of this ordinance. The City Clerk is hereby directed to publish notice of such public hearing in accordance with the provisions of the Edmonds Community Development Code.

Section 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

_____
MAYOR GARY HAAKENSON

ATTEST/AUTHENTICATED:

_____
CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	10/31/2003
PASSED BY THE CITY COUNCIL:	11/03/2003
PUBLISHED:	11/09/2003
EFFECTIVE DATE:	11/14/2003

ORDINANCE NO. 3474

SUMMARY OF ORDINANCE NO. 3474

of the City of Edmonds, Washington

On the 3rd day of November, 2003, the City Council of the City of Edmonds, passed Ordinance No. 3474. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE PURSUANT TO RCW 35A.63.220; AMENDING TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE BY ADDING A NEW CHAPTER 20.16 ESSENTIAL PUBLIC FACILITIES THERETO; ADOPTING REGULATIONS GOVERNING THE SITING, PERMITTING AND MITIGATION OF ESSENTIAL PUBLIC FACILITIES; SETTING A PUBLIC HEARING, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 4th day of November, 2004.

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CITY CLERK, SANDRA S. CHASE