

ORDINANCE NO. 2006-07-068

**AN ORDINANCE OF THE CITY OF BELLINGHAM ADDING A NEW CHAPTER, 20.17 ESSENTIAL PUBLIC FACILITIES, TO THE BELLINGHAM MUNICIPAL CODE THAT SETS FORTH SITING PROCEDURES FOR REVIEW OF ESSENTIAL PUBLIC FACILITIES AND AMENDING BMC 20.08.020 TO ADD APPROPRIATE SUPPORTING DEFINITIONS.**

**WHEREAS**, the City is required under State law to develop and adopt siting procedures for Essential Public Facilities as defined by RCW 36.70A.200; and

**WHEREAS**, the establishment of appropriate siting criteria for Essential Public Facilities is in the best interest of the public; and

**WHEREAS**, the City's SEPA Official has reviewed this Ordinance and related environmental checklist and has issued a Determination of Non-Significant (DNS) environmental impact (SEP2005-00076) under the State Environmental Policy Act; and

**WHEREAS**, as required by RCW 36.70.106, notice of the City's intent to adopt siting procedures for Essential Public Facilities was filed with the Department of Community, Trade and Economic Development on October 14, 2005, and sent to other reviewing agencies at least 60 days prior to the effective date of this ordinance; and

**WHEREAS**, after mailed and published notice of the draft ordinance establishing siting procedures for Essential Public Facilities, the Planning Commission held a public hearing on the proposed ordinance on October 20, 2005 and accepted written public comment through December 15, 2005; and

**WHEREAS**, the Planning Commission considered the staff report and public comment received and recommended that this ordinance be forwarded to City Council for adoption; and

**WHEREAS**, after mailed and published notice, the City Council held a public hearing on the proposed ordinance on February 27, 2006; and

**WHEREAS**, the City Council has considered the staff report, public comment received, and recommendations of the Planning Commission;

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**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:**

**Section 1:** A new Bellingham Municipal Code Chapter “**BMC 20.17.000 ESSENTIAL PUBLIC FACILITIES**” is hereby adopted as follows:

**20.17.010 AUTHORITY AND PURPOSE**

**A. Authority.** Each county and city that is planning under the Growth Management Act (RCW 36.70A.040) must include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

**B. Purpose.** The purpose of this section is to provide a process to site essential public facilities that may not be specifically addressed as permitted or conditional uses. Essential public facilities are defined in BMC 20.08.010 - .020, Definitions.

**20.17.020 SCOPE**

**A.** This chapter establishes the process and criteria that the City will use in making a decision upon an application for an essential public facility.

1. The City may establish a list of uses that qualify as essential public facilities. This list shall be established through a Type VI process. A use or facility may be added to Bellingham’s adopted list of essential public facilities based on one of the following criteria:

(a) The use meets the definition of an essential public facility; or

(b) The use is identified on the list of State essential public facilities for Whatcom County maintained by the State of Washington Office of Financial Management.

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## **20.17.030 DETERMINATION OF APPLICABILITY**

**A.** If the proposed facility is not a permitted or conditional use in the district in which it is proposed, but has been determined to be eligible as an EPF as per this section .030 B. or C., then the proposed facility shall be reviewed following the procedures of section .040 of this chapter. If the facility would require a conditional use permit, variance, or other development permit, those approvals shall be decided through the processes appropriate for those actions.

**B.** All correctional facilities, except those under BMC 20.08.020 S. (4) Service Care, and secure community transition facilities shall use the procedure described in section 20.17.040.

**C.** An agency or organization may request in writing that a proposed facility be reviewed through the essential public facilities siting process contained in this chapter if it is not a permitted or conditional use under Bellingham Land Use Development Ordinance (BMC Title 20). This request shall be in the form of a letter to the Director of Planning and Community Development, addressing the criteria in 1. below.

1. The Director of Planning and Community Development shall review this request and grant it if criteria a. through d. are met:

a. The facility meets one of the following:

(1) Facilities, conveyances, or sites used to provide services to the public that are on the list of Essential Public Facilities adopted by the Bellingham City Council;

(2) Facilities and services that are delivered by government agencies, private or non-profit organizations under contract to or with substantial funding from government agencies, or private firms or organizations subject to public service obligations; and

(3) Facilities, conveyances or sites that are necessary to adequately provide a public service.

b. The facility is a type difficult to site because of one or more of the following:

(1) the facility needs a type of site of which there are few sites,

(2) the facility can locate only near another public facility,

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- (3) the facility has or is generally perceived by the public to have significant adverse impacts that make it difficult to site, or
- (4) the facility is of a type that has been difficult to site in the past;
- c. It is likely that the proposed facility will be difficult to site, and
- d. There is need for the facility and Bellingham is in the facility service area.

#### **20.17.040 PROCEDURE**

**A.** Applications that seek approval for an essential public facility under this chapter, as defined in **BMC 20.08.020**, shall follow the procedures established in **BMC 21.10.040.G** for a **Type V-A** permit process for Institutional Master Plan approval under 20.40. The Master Plan may include a specific development proposal or may require subsequent development approval through BMC 20.40.060.

#### **20.17.050 ESSENTIAL PUBLIC FACILITY REVIEW PROCESS**

- A. Service Area.** The Director of Planning and Community Development shall determine if the facility serves a regional, countywide, statewide or national need. If it does, then the Director may condition the review with a requirement that the review process include one or more sites in parts of the service area outside of Bellingham.
- B. Multi-jurisdictional Review.** Where more than one local government is involved in the review process, Bellingham staff shall participate in a multi-jurisdictional review process and use the data, analysis and environmental documents prepared in that process in the City's review, if Bellingham determines those documents are adequate.
- C. Timeline for Review.** BMC 21.10.080 A. requires that, under normal circumstances, a decision on a Type V-A application shall be made within 180 days. An exception is provided in BMC 21.10.080 A.4. for timing of decisions on applications for a project requiring an approval for siting of an essential public facility as provided in RCW 36.70A.200.

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## **20.17.060 CRITERIA**

**A.** The City may approve, or approve with modifications, an application for a proposed Essential Public Facility based on criteria 1 through 9, below.

1. Whether there is a public need for the facility.
2. The impact of the facility on the surrounding uses and environment, the City, and the region.
3. Whether the design of the facility or the operation of the facility can be conditioned, or the impacts otherwise mitigated, to make the facility compatible with the affected area and the environment.
4. Whether a package of incentives can be developed that would make siting the facility within the community more acceptable.
5. Whether the factors that make the facility difficult to site can be modified to increase the range of available sites or to minimize impacts on affected areas and the environment.
6. Whether the proposed essential public facility is consistent with the Bellingham Comprehensive Plan.
7. If a variance is requested, the proposal shall also comply with the variance criteria.
8. Essential public facilities shall comply with any applicable state siting and permitting requirements (e.g., hazardous waste facilities).
9. A financial analysis of the proposed facility's impact on the City of Bellingham's budget shall be completed by the organization proposing the essential public facility. If the study shows that locating a facility in a community would result in a disproportionate financial burden on the City, an agreement to mitigate the adverse financial impact shall be required.

## **20.17.070 DECISION**

**A.** Upon approval of an Institutional Master Plan, the official Zoning Map and classification for the property shall be changed to Institutional and shall indicate the ordinance number approving the Master Plan. All development shall be consistent with the approved Master Plan.

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**Section 2:** Amend Bellingham Municipal Code Section 20.08.020 as follows:

**20.08.020 – Specific Definitions**

**A. through B. [No changes.]**

**C. (1) through (21) [No changes.]**

**(22) Correctional Facility:** A public or private-contracted facility for pre-trial detention and long-term detention of criminally committed persons. A correctional facility under this definition includes adult and juvenile detention facilities and work release detention facilities, but does not include Secure Community Transition Facilities, as defined in BMC 20.08.020 S. (3) or uses allowed under BMC 20.08.020 S. (5) Service Care.

**(23) Council:** The City Council of the City of Bellingham.

**(24) County:** Whatcom County of the State of Washington.

**(25) Coverage; Lot:** See "Lot Coverage."

**(26) Crematory:** Shall mean a furnace or place of incineration of remains, whether human or animal.

**(27) Cul-de-sac:** A street right of way intersecting another street right of way at one end and which terminates with a permanent vehicular turn around at the other end. Dead end streets or right of way planned for future extension shall not be considered a cul-de-sac.

**(28) Cut-Out Extension:** An appendage on a billboard which is no larger than 45 square feet, existing only for the lifetime of the sign graphic.

**D. [No changes.]**

**E. (1) Eating Establishment:** An establishment or any part thereof, where prepared food is sold, but not alcoholic beverages.

**(2) Essential Public Facility:** Public facilities that may be difficult to site, but are considered essential for the community and are included under RCW 36.70A.200 and the types of public facilities that Bellingham may consider to be Essential Public Facilities under BMC 20.17.020. Essential Public Facilities under this definition are facilities, conveyances, or sites that are: (1) used to

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provide services to the public; (2) delivered by government agencies, private or non-profit organizations under contract to or with substantial funding from government agencies, or private firms or organizations subject to public service obligations; and (3) necessary to adequately provide a public service.

**(3) Existing Grade:** The natural or legally created grade approved by the City prior to August 1, 2002 or as subsequently approved by a preliminary plat, planned development or binding site plan. If buildings are demolished, the existing grade at their exterior walls shall be construed as the existing grade across the remaining foundation excavation. On any lot exhibiting evidence of fill not authorized, the Building Official or Director may require the applicant to provide a professional soil analysis to determine the existing grade. An approved benchmark shall be used to establish the relative elevation of the natural topography. In Commercial and Industrial General Use Types, if walls are parallel to, and within 5' of a city sidewalk, the mean sidewalk elevation shall be considered the existing grade.

**F. through G. [No changes.]**

**H. (1) through (3) [No changes.]**

**(4) Hospital:** See Medical Care Facility (BMC 20.08.020 M. (4)).

**(5) Hotel:** A building, other than a motel, providing lodging with or without meals for the public and especially for temporary guests, but which does not have cooking facilities in individual rooms.

**I. through R. [No changes.]**

**S. (1) through (2) [No changes.]**

**(3) Secure Community Transition Facility (SCTF):** As per RCW 71.09.020, "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

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**(4) Senior Citizen Housing:** A housing development in which all dwelling units are to be occupied by a person or persons who (a) meet the minimum age requirement for "housing for older persons" contained in Section 3607 (b) of the Federal Fair Housing Act, as amended, or are at least age 55, whichever is the higher age, or (b) are disabled or handicapped regardless of age, and (c) their domestic partners and/or live-in caregivers who need not be 55 years of age or older and/or disabled.

**(5) Service Care:** A group residence licensed by the State operated with full-time supervision for housing resident persons who, by reasons of their mental or physical disability, addiction to drugs or alcohol or family and social adjustment problems, require a transitional nonmedical treatment program for rehabilitation and social readjustment. For the purposes of this Ordinance, a nonmedical treatment program consists of counseling, vocational guidance, training, group therapy and other similar rehabilitative services but does not include drug and/or alcohol detoxification. Monitoring the taking of prescription medication shall be permitted. The use of medication by any resident shall be incidental to that person's residence in the facility and shall not be a criterion for residence in the facility. Programs providing alternatives to imprisonment, including pre-release, work-release and probationary programs which are under the supervision of a court, state or local agency are included in this definition. Residences occupied by persons qualifying under the definition of "family" and "secure community transition facilities" are excluded from this definition.

**(6) Service Station:** A retail establishment for the sale on the premises of motor vehicle fuel and other petroleum products and automobile accessories, and for the washing, lubrication, and minor repair of automotive vehicles. Such definition does not include the sale of motor vehicles or trailers.

**(7) Shopping Center:** A grouping of retail and/or service establishments located on a contiguous site designed and built as a unit or organized as a unified and coordinated shopping area.

**(8) Sidewalk:** "Sidewalk shall mean a publicly owned, hard surfaced pedestrian circulation facility constructed to the standards of the City located within the public right-of-way.

**(9) Sign:** Any communication device, structure, or fixture which is visible from any public right of way or publicly owned property intended to aid the establishment in question in promoting the sale of a product, goods, service or other activity using graphics, symbols, or written copy.

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**(10) Sign, Freeway Oriented:** A sign which is or will be erected upon property abutting the freeway.

**(11) Sign, Off Premise:** Any sign other than a banner or billboard, defined above, which advertises an establishment, merchandise, service, goods, or entertainment which is sold, produced, manufactured or furnished at a place other than on the property on which said sign is located.

**(12) Sign, Real Estate:** A portable sign erected by the owner, or his agent, advertising the real estate upon which the sign is located for rent, sale or lease.

**(13) Sign, Specific Service:** A sign placed in the public rights-of-way for the purpose of directing motorists to business locations originally displayed on the freeway.

**(14) Sign, Temporary Building:** A sign erected and maintained on the premises undergoing construction.

**(15) Site Area:** The measured square footage of any lot, or contiguous number of lots, or parcels of land to be utilized by a single development.

**(16) Specified Anatomical Areas:** Any of the following:

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**(17) Specified Sexual Activities:** Any of the following:

(a) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or

(b) Acts of human sex, actual or simulated, including intercourse, oral copulation, or sodomy; or

(c) Human masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

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**(18) Story:** That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar, or unused under-floor space is more than 6' above grade, as defined in the building code adopted by the City, or more than 50% of the total perimeter or is more than 12' above grade as defined at any point, such basement, cellar or unused under floor space shall be considered a story.

**(19) Street:** A right of way having a width of 30' or more which provides the principal means of access to abutting property. Any residential access street within the City of Bellingham's Lake Whatcom Watershed shall also have the meaning and standards required in BMC 13.04.075.


**(20) Street, Through:** A street which intersects with another street at both ends.

**T. through Z. [No changes.]**

**PASSED** by the Council this 10th day of July, 2006.

  
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Council President

**APPROVED** by me this 17th day of July, 2006.

  
\_\_\_\_\_  
Mayor

**ATTEST:**   
\_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Office of the City Attorney

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