

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT: Community Planning

DATE: August 17, 2020

REQUESTED ACTION: Staff is seeking council approval to propose amendments to the Clark County Code (Title 40) to add a definition of Essential Public Facilities and a process for siting them.

x__ Consent ___ Hearing ___ County Manager

Background

A work session with council was scheduled for April and July 2020, but it has been postponed due to COVID-19. In lieu of a work session, staff is submitting this memo to council to seek direction on developing proposed code amendments related to Essential Public Facilities and will be available to answer any questions the council may have.

What is an Essential Public Facility (EPF)?

Essential Public Facility (EPF) means any public facility owned or operated by a local, state, or federal government, public utility, transportation company, or any other entity that provides a public service as its primary mission and is difficult to site. Examples of EPF include airports, state education facilities, state or regional transportation facilities, regional transit authority facilities, state and local correctional facilities, solid waste handling facilities, regional wastewater treatment facilities, hospitals, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities.

There are two types of EPF: 1) a “regional, state, or federal EPF” means an essential public facility identified and designated by the director as a facility that is likely or required to be built within six years and has been evaluated through a state, regional, or federal siting process or by a state or federal agency where state or federal law preempts the exercise of local regulatory authority over facility siting; and 2) a “local EPF” means an essential public facility that is not a regional, state, or federal EPF.

EPF may be publicly or privately owned. Siting of an EPF that does not pose siting difficulties needs to go through the normal development review process. However, if a publicly owned EPF does pose siting difficulties, the application must be reviewed using an EPF process that is established in the county's development regulations.

House Bill (HB) 2640 originated as a legislative solution to a conflict faced by the City of Tacoma. The city was at odds with a private operator of a detention facility that is holding people on behalf of its client, the U.S. Immigration and Customs Enforcement agency. The operator wanted to expand the facility in a designated seismic hazard and tsunami zone area, and the existing facility was in a zoning district that no longer allowed

private detention facility use (i.e., the current use could continue but not be expanded). This conflict ended up being bounced back and forth between the Growth Management Hearing Board and a state superior court on the question of whether private detention facilities are “essential public facilities” (EPFs) under the GMA.

The new law states that essential public facilities do not include:

Facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings but are not used for punishment, correction, counseling, or rehabilitation following the conviction of a criminal offense. Facilities included under this subsection (1)(b) shall not include facilities detaining persons under RCW 71.09.020 (6) or (15) 10.77 71.05 RCW.

In other words, such facilities are not “protected” by the GMA’s EPF provisions and, therefore, *can* be restricted or prohibited by a local zoning code.

Once the bill became law, it took effect on March 25, 2020, and applies retroactively to land-use actions imposed prior to January 1, 2018, as well as prospectively. While this law was initiated to address Tacoma’s quandary, it applies to all GMA-planning communities. If a community wants to regulate the siting or expansion of a detention facility within its borders, it should consider reviewing and revising any EPF-related comprehensive plan policies and zoning code provisions.

In January 2020, Washington State Legislature enacted ESSB 6168 (2020), Section 127 (27), which states that cities and counties can utilize a model ordinance for siting community-based behavioral health facilities, not any other types of EPF.

Pursuant to HB2640, the Department of Commerce recently issued a Request for Proposal for consultants to draft this model ordinance for siting community-based behavioral health facilities. The model ordinance should be available for use in 2021. The guidance must be consistent with the state’s new Integrated Managed Care policy to integrate and expand access to medical, mental health, and substance abuse services and treatment in local communities.

GMA Requirements

The Growth Management Act requires that the comprehensive plan and development regulations of each county planning under GMA include a process for identifying and siting essential public facilities (RCW 36.70A.200 and WAC 365-196-550). The GMA also states that a county can require appropriate and reasonable conditions and mitigation from the development of any local, regional, state, or federal essential public facility as long as the effect of the conditions and/or mitigation does not preclude the siting of the facility (RCW 36.70A.200(5)). If an essential public facility is of a regional, statewide, or federal nature and its location has been evaluated through a state, regional, or federal siting process, the county cannot require the sponsor of the facility to go through any local siting process (RCW 36.70A.200 and WAC 365-196-550).

WAC 365-196-550 outlines the criteria for what makes an EPF “difficult to site”:

- Specific type of site is needed, such as size, location, available public services, which there are few choices;
- Proximity to another public facility or is an expansion of an existing EPF;
- Public perception of significant adverse impacts;
- Use of the normal review process would preclude the siting of the EPF;

- Development regulations require the proposed EPF to use an EPF siting process.

EPF in Clark County Comprehensive Plan and Code

Under 6.0.11 and 6.1.6, the County's Comprehensive Growth Management Plan contains a countywide planning policy that identifies and sites essential public facilities.

Clark County Code contains criteria for Siting of State and Regional Public Facilities of a Countywide or Statewide Nature as follows:

CCC 40.560.010.N. "The county shall consider plan amendments to implement the policies of the comprehensive plan regarding proposals for siting essential public facilities such as airports, state educational facilities, and other institutions necessary to support community development, as follows:

1. Government facilities may be established as provided in other land use districts through the procedures specified in the applicable district without plan amendment.
2. Application for siting of public facilities may be approved if criteria, as noted herein, are met. In cooperation with other jurisdictions, the county shall ensure the following:
 - a. Siting of regional facilities is consistent with all elements of the adopted county comprehensive plan, local city plan and other supporting documents;
 - b. The proposed project complies with all applicable provisions of the comprehensive plan, including countywide planning policies;
 - c. The proposal for siting of a public facility contains interjurisdictional analysis and financial analysis to determine financial impact, and applicable intergovernmental agreement;
 - d. Needed infrastructure is provided;
 - e. Provision is made to mitigate adverse impacts on adjacent land uses;
 - f. The plan for the public facilities development is consistent with the county's development regulations established for protection of critical areas; and
 - g. Development agreements or regulations are established to ensure that urban growth will not occur if located adjacent to nonurban areas".

However, Clark County Code does not contain a process for identifying and siting EPF. By process, what is meant is:

- Is this a Type III (quasi-judicial) or Type IV (legislative) review process?
- Is a conditional use permit required? If yes, what are the conditions?

Other issues that need to be addressed in the code include:

- If an EPF does not present siting difficulties, it needs to be permitted through the normal development review process.
- If an EPF does present siting difficulties, the application needs to be reviewed using the EPF siting process that is established in the development regulations.
- The review process for siting EPF needs to include public noticing requirements and opportunity for public comment.
- The EPF siting process allows the county to impose reasonable conditions on an EPF to mitigate the impacts without precluding the siting of an EPF.

RECOMMENDATION

Staff is seeking council approval to amend the Clark County Code to include a definition of EPF and a process for siting essential public facilities. Because there is a new model ordinance being developed for the siting of community-based behavioral health facilities, staff proposes to incorporate these changes into one proposed ordinance for EPF in 2021.

COUNCIL POLICY IMPLICATIONS

Clark County Code needs to be amended to contain a process for identifying and siting essential public facilities in compliance with RCW 36.70A.200 and WAC 265-196-550.

ADMINISTRATIVE POLICY IMPLICATIONS

N/A

COMMUNITY OUTREACH

A Planning Commission and County Council hearing, SEPA review, and Commerce review would need to be held to consider the proposed Title 40 amendments.

BUDGET IMPLICATIONS

There are no budget implications associated with the proposed code change.

YES	NO	
Yes		Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	
Company Name	

DISTRIBUTION:

Council staff will post all staff reports to The Web. <https://www.clark.wa.gov/council-meetings>

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APPROVED: _____
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: _____

SR# _____

APPROVED: _____
Kathleen Otto, Interim County Manager

DATE: _____

BUDGET IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	2020 Annual Budget		2021 Annual Budget		2022 Annual Budget	
	GF	Total	GF	Total	GF	Total
Total						

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	2020 Annual Budget		2021 Annual Budget		2022 Annual Budget	
		GF	Total	GF	Total	GF	Total
Total							

III. B – Expenditure by object category

Fund #/Title	2020 Annual Budget		2021 Annual Budget		2022 Annual Budget	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						

Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total						