

Director's Report Essential Public Facilities Amendments

Introduction

The Washington State Growth Management Act (GMA), RCW 36.70C.200, requires cities and counties to have a process for identifying and siting "essential public facilities (EPF)." In 1994 the City of Seattle adopted EPF regulations into the Seattle Land Use Code in response to this requirement. Seattle Municipal Code (SMC) Chapter 23.80 establishes application submittal requirements and review criteria for essential public facilities. A definition in Section 23.84A.010 lists the types of uses currently classified as essential public facilities.

Since 1994 the Legislature has amended GMA provisions regarding EPF's on several occasions, the State Department of Commerce has recently amended WAC 365-195-550 to update the state regulations governing EPF's, and there has been case law regarding EPF's. The City now needs to update its regulation of EPF's to reflect these developments.

The definition of essential public facilities in the Land Use Code does not include all of the specific uses that are now identified in RCW 36.70A.200 as EPFs. Also, the City's current regulations do not expressly provide for modification or waiver of development regulations, which is required by the GMA if the regulation would preclude the siting of an EPF. Development regulations include the Land Use Code (including the Shoreline Master Program, SMC Chapter 23.60), Environmentally Critical Areas ordinance (Chapter 25.09), the Tree Protection ordinance (Chapter 25.11) and regulations for landmark\historic districts.

Proposal

The proposed amendments to essential public facilities regulations would accomplish the following:

- Amend regulations in Chapter 23.80 of the Seattle Municipal Code, to expressly allow modification or waiver of "development regulations" that would preclude the siting of an essential public facility.
- Consolidate regulations pertaining to essential public facilities, including the process for modification or waiver of development regulations, in Chapter 23.80
- Provide cross-references to Chapter 23.80 in separate amendments to the Shoreline Code (Chapter 23.60), and to other Seattle Municipal Code sections outside of Title 23 that contain development regulations.
- Add a new section 23.80.006 to provide an application process for waiver or modification of development regulations applicable to an essential public facility, expressly allowing the waiver

or modification to the extent necessary to site the facility, and authorizing the imposition of mitigation to avoid or modify any adverse effects that may result from the waiver or modification.

- Provide that if an applicant pursues waiver or modification of development regulations under Section 23.80.006, it is not necessary to seek relief from application of development regulations through any other process, such as a variance, exception, exemption, or similar procedure.
- Define the term “essential public facilities” to include all the uses identified in RCW 36.70A.200, as well as the uses currently included in the Land Use Code definition in Section 23.84A.010.
- In addition to sewage treatment plants, expand the list of essential public facilities to include “sewage or stormwater treatment, storage or pumping facilities.”

Analysis

The intent of the GMA is to make certain that specific uses of land defined as “essential public facilities” are not precluded by local development regulations. In general, if local development regulations allow an essential public facility to be located somewhere in the City, the City’s regulations do not preclude facility siting. However if a development regulation is shown to be preclusive, the GMA requires local jurisdictions to modify or waive development regulations that are preclusive. However, the State law also recognizes the authority of local jurisdictions to condition the modification or waiver to mitigate impacts that could occur as a result of the modification or waiver of their development regulations. The proposed changes to existing City of Seattle regulations for essential public facilities are intended to require a demonstration from an applicant that a development regulation would preclude an essential public facility and that a waiver of the regulation is required. The proposed amendments would achieve this purpose without requiring a new type of development permit for an essential public facility. Instead, applications to establish the uses defined as essential public facilities would be reviewed according to the existing processes for review of land use decisions in the Land Use Code, pursuant to Section 23.76.004 and Table A for 23.76.004 and, if the siting would be precluded by existing regulations, the modification or waiver process in Chapter 23.80 could be invoked to allow the use.

RCW 36.70A.200 (1) lists a variety of uses as essential public facilities that counties and cities are required to include in the process for identifying and siting of essential public facilities. These uses include the following: airports, state education facilities and state or regional transportation facilities, regional transit authority facilities, 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. These uses would be expressly incorporated into the Land Use Code definition of essential public facilities, in addition to sewage treatment plants, light rail transit systems, and power plants, which are already identified as essential public facilities. (The reference to “jails” in the existing definition would be deleted because it is subsumed within the statutory definition of “local correctional facilities.”). Seattle Public Utilities has proposed that sewage or stormwater treatment, storage or

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pumping facilities be included in the list of essential public facilities because these facilities may also be difficult to site.

Recommendation

The current regulations for “essential public facilities” in the Land Use Code and elsewhere in the Seattle Municipal Code should be updated to reflect current State law, and to provide a clear means to waive or modify development regulations that could otherwise preclude the siting of EPFs. Accordingly, DPD recommends approval of the proposed Code amendments.