



DATE: January 25, 2024  
TO: Mayor Hayden and City Council  
FROM: Ann Siegenthaler, Senior Planner and BERK Consulting  
RE: **Zoning Code Text Amendment – Essential Public Facilities**

## I. BACKGROUND / WHY THE AMENDMENTS ARE BEING PROPOSED

The State Growth Management Act requires local Comprehensive Plans to include a process for identifying and siting essential public facilities. The proposed code amendments address two types of facilities: Essential Public Facilities and Behavioral Health Facilities.

### **Essential Public Facilities**

Essential Public Facilities (EPFs) are public facilities that are typically difficult to site. These include facilities such as airports, regional transportation facilities, correctional facilities, solid waste handling facilities, mental health facilities, group homes, and secure community transition facilities (sex offender treatment). New legislation (ESSB 5536) in 2023 adds a requirement to include opioid treatment programs, recovery residences, and harm reduction programs (excluding safe injection sites) to the list of EPFs. Also, State laws limit local control of EPFs, by requiring the following:

- Jurisdictions may not impose a maximum capacity on opioid treatment programs.
- Jurisdictions may require a Conditional Use Permit with reasonable conditions for the siting of opioid treatment programs only to the extent that such reasonable conditional use requirements are similarly applied to other essential public facilities and health care.
- No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

### **Behavioral Health Facilities**

Behavioral Health Facilities (BHF) is a broad category of treatment facilities, most of which are also Essential Public Facilities. In 2020, under ESSB 6168 and in support of the goals of the Community Behavioral Health Services Act (RCW 71.24), the State Legislature directed the Department of Commerce to develop a Model Ordinance for cities and counties to use in siting community-based behavioral health facilities. These facilities are designed to assist people experiencing mental illness and/or a substance use disorder in a residential setting.

The City of Sumner currently does not have code in place addressing EPFs or BHF. Staff recommends adopting the new code now to have it in place before any new facilities are proposed within Sumner. Otherwise, the EPF/BHF code would not be adopted until completion of the Comprehensive Plan Update in December 2024.

## II. DESCRIPTION OF PROPOSAL

The Ordinance covers the following main topics:

### **A. Definitions.**

The Ordinance includes amended, new, and deleted definitions for EPFs and BHF (SMC 18.04):

- New definitions are added for a variety of State-defined EPFs and BHF.
- Existing definitions for Adult Family Home, Group Residence/Home, Congregate Care are updated,

- since these are considered BHF's, and definitions need to reflect new laws.
- The definition of Family is updated to be consistent with recent State law.

Proposed amendments to Definitions are consistent with state legislation and with Department of Commerce's Behavioral Health Facilities Model Ordinance, and are intended to improve clarity. The proposed ordinance includes both in-patient and outpatient Behavioral Health Facility provisions to ensure that a spectrum of facilities are allowed within Sumner to meet community need and comply with State law. Some facilities, such as Group Homes and Adult Family Homes, are considered types of EPFs. However, the definitions are not clear, the code needs to list them as land uses in the zoning tables, and some currently have no approval criteria. Note that most of the definitions do not include a size or scale (e.g. number of patients or residents). This matches required State definitions which do not specify a cap, presumably, to accommodate a variety of future agency needs. Siting criteria (see below) will address facility-specific impacts.

## **B. Land Uses and Zoning.**

The ordinance adds specific types of EPFs and BHF's to the list of permitted/conditionally permitted uses in Sumner's zoning districts (SMC Title 18). The following new land uses are proposed:

- a. Behavioral Health Facility, Inpatient
- b. Behavioral Health Facility, Outpatient
- c. Opioid Treatment Program, Mobile Unit
- d. Small Group Home
- e. Large Group Home
- f. Secure Community Transition Facility
- g. Other Essential Public Facilities (e.g. regional facility like a correction center).

State law allows some flexibility for the City to set location limits. Determining the appropriate zones for each type of facility involves consideration of several factors. Some zoning districts do not provide the level of connections to community services, such as medical providers or commercial services, that most facilities need. Some facilities, like small group homes, can fit well into single family zones as almost indistinguishable from surrounding residences. Also, most outpatient facilities function more like medical offices than residential facilities, and should not be allowed in residential zones. Based on such factors, the ordinance directs EPFs and BHF's to appropriate zones based on the size and nature of the facility and where more services are available as needed for the type of facility.

Group Homes. State law and case law require that group homes be treated like similar residential structures in similar zones, and prohibit limits on the number of unrelated persons that occupy a household. To address these laws, the occupancy limits for group homes are proposed to slightly increase. Occupancy limits would be consistent with the Fair Housing Act, Washington Building Code and other laws.

## **C. Permitting**

The City has options for the type of permit process applied to these facilities, so long as the facilities are reasonably accommodated. One option is to permit EPF/BHF through an administrative review with public notice but no public hearing, which streamlines the process for agencies proposing needed facilities. Instead, the proposed ordinance requires all EPF/BHF to go through a Conditional Use Permit (CUP) process. This process requires public notice and a public hearing with the Hearing Examiner, which allows for community input. Group homes are treated differently. Small group homes would be outright permitted in single-family zones while large group homes would be permitted in multifamily zones. This is consistent with the Fair Housing Act requirements to treat these facilities similar to other residential facilities.

## **D. Siting Criteria.**

The ordinance adds new sections to address facility siting:  
SMC 18.33.010 – Siting Criteria for Behavioral Health Facilities and  
SMC 18.33.020 – Siting Criteria for Essential Public Facilities.

The siting criteria for BHF's follows the State Commerce Department's Behavioral Health Model Ordinance. The siting criteria for EPFs and additional criteria for Secure Community Transition Facilities (SCTFs) are modeled from the City of Lakewood's siting process (Lakewood Municipal Code 18A.40.060). These criteria are also consistent with the adopted Countywide Planning Policies. An alternative to the recommended criteria would be to remove any siting criteria, and allow the proposing agency the flexibility to determine the best site and operations matched to the services they provide. Instead, the proposed Sumner ordinance establishes siting criteria that are reasonable

but give more local control over potential impacts. Below is a summary of the proposed siting criteria.

**Siting Criteria for Behavioral Health Facilities:**

- a. Proximity to social services and other services to meet the needs of residents and support facility operations.
- b. Operations Plan
- c. Proposed development shall be licensed by appropriate State authority and subject to their building requirements.
- d. Consistency with zoning district.
- e. Opioid Treatment Program Use Specific Provisions (may require a CUP as long as it is similarly applied to other facilities, may not impose a maximum capacity).
- f. Opioid Treatment Program (OTP) Mobile Unit – Use Specific Provisions (follow licensing steps, may only provide mobile unit services associated with fixed-location licensed OTP).

**Siting Criteria for Essential Public Facilities:**

- a. Documentation of Need
- b. Consistency with Applicant's Plans
- c. Consistency with Other Plans
- d. Relationship of Service Area to Population
- e. Minimum Site Requirements
- f. Alternative Site Selection
- g. Distribution of Essential Public Facilities
- h. Public Participation
- i. Consistency with Local Land Use Regulations
- j. Compatibility with Surrounding Land Uses
- k. Proposed Impact Mitigation
- l. Secure Community Transition Facilities – Additional Use Specific Siting Criteria.

**Group homes:** While group homes are considered an essential public facility, the recommendation is to exempt group homes from siting criteria. This is because group homes are often similar in scale and character as other residential uses, and siting criteria may conflict with fair housing law (see analysis below).

### **III. ANALYSIS**

The ordinance is consistent with State legislation, State and local guidelines, and the Sumner Comprehensive Plan, as discussed below.

#### **A. State Legislation.**

The ordinance is in response to and meets new state requirements passed in ESSB 5536, includes the newly added EPFs as land uses in the zoning use table, and provides a definition consistent with the legislation.

The ordinance meets the use-specific requirements laid out in ESSB 5536 for opioid treatment programs by including the following use-specific provisions in the siting criteria:

- a. The City may require conditional use permits with reasonable conditions for siting of opioid treatment programs only to the extent that such reasonable conditional use requirements applied to opioid treatment programs are similarly applied to other essential public facilities and health care settings (RCW 71.24.590(1)(b)).
- b. The City may not impose a maximum capacity for an opioid treatment program (RCW 71.24.590(2)).

The ordinance meets the State requirement that jurisdictions may not preclude the siting of an EPF and must have a process for siting EPFs, by including the new code sections SMC 18.33.010 (Siting Criteria for Behavioral Health Facilities) and SMC 18.33.020 (Siting Criteria for Essential Public Facilities) and by listing specific types of EPFs as land uses in the use table and allow them in appropriate zones across Sumner.

The ordinance updates Sumner Municipal Code (SMC) definitions to be consistent with State definitions for EPFs, such as those regional facilities defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, correctional facilities, solid waste handling facilities, opioid treatment programs including both mobile and fixed-site medication units, recovery residences,

harm reduction programs excluding safe injection sites, and inpatient facilities including substance use disorder treatment facilities, mental health facilities, group homes, community facilities as defined in RCW 72.05.020 and secure community transition facilities as defined in RCW 71.09.020. The ordinance also addresses RCW 36.70A.200(1)(a) requirements to include opioid treatment programs (including both mobile and fixed-site medication units), recovery residences, and harm reduction programs (excluding safe injection sites) to the list of EPFs.

#### **B. Department of Commerce Behavioral Health Model Ordinance.**

Following State legislation ESSB 6168 and the Community Behavioral Health Services Act (RCW 71.24), the Department of Commerce developed a Behavioral Health Model Ordinance to guide local jurisdictions. The proposed Sumner ordinance is consistent with the Behavioral Health Model Ordinance, specifically related to the zones that the proposed EPFs and Behavioral Health Facilities are allowed in and the proposed siting criteria for Behavioral Health Facilities.

The guidance in the Behavioral Health Model Ordinance identifies very low-density residential zones, industrial zones, and isolated areas as not being appropriate for Behavioral Health Facilities due to building size requirements and the need for proximity to other services. Accordingly, Behavioral Health Facilities are not proposed to be allowed in Sumner's Resource Protection District, Residential-Protection District, Interchange Commercial District, and Manufacturing Districts.

Additionally, the Model Ordinance guidance recommends requiring an applicant to submit an Operations Plan to the local jurisdiction prior to application for a new Behavioral Health Facility. The Sumner ordinance includes this provision (and all components of the Operations Plan as identified in the Model Ordinance) in the proposed new code section SMC 18.33.010 (Siting Criteria for Behavioral Health Facilities).

The Model Ordinance also identifies criteria that Behavioral Health Facilities shall be subject to, including the facility being licensed by the appropriate State authority and considerations to fit in with the surrounding area and to minimize any impacts. These criteria are included in the proposed new code section SMC 18.33.010 (Siting Criteria for Behavioral Health Facilities).

#### **C. Group Homes.**

Group homes are listed as EPFs in RCW 36.70A. Sumner's existing code includes definitions for different kinds of group homes/residences but does not list them as land uses in the use tables. Further, some group homes may be relatively large facilities but currently have no approval criteria. In addition, there are several Federal and State limits on how a city may treat a group home (and adult homes). Generally:

- Under the Federal Fair Housing Act Amendments, no jurisdiction may treat residential structures occupied by persons with handicaps differently than a similar residential structure.
- Case law prevents a city from limiting the number of unrelated persons who could live together in a dwelling (e.g. *City of Edmonds v. Oxford House, Inc.*) in a single-family zone.
- HB 5235 (2021) states that jurisdictions may not limit the number of unrelated persons that occupy a household (with few exceptions).

To address these requirements, the ordinance would add Group Homes (including Adult Family Homes) to the allowable list of EPFs. It would also exempt group homes from EPF siting criteria when located in residential zones, as siting criteria may conflict with fair housing law. Also, the current SMC definitions for Group Homes and Adult Family Homes would be updated to be more aligned with Fair Housing Act guidelines to allow care facilities an occupancy similar to similar residential dwellings. Staff also considered guidance from the State Building Code. The Building Code (WAC 51-54A-0202) includes "adult family homes" (up to eight residents) and "care facilities within a dwelling" (up to five residents) in the same category as buildings with two or fewer dwelling units, i.e. same as what is allowed in a Low Density Residential zone. These occupancies between 5-8 residents for small facilities are slightly higher than in current Sumner code. Based on this background, definitions are proposed to be updated:

- Adult Family Home: Change from 4 residents to allow up to 6 residents (or 8 if approved by DSHS); allowed in Low Density Residential.
- Small Group Home: Change from 6-14 residents to allow up to 8 residents only; allowed in Low Density Residential.
- Large Group Home: Change from 15 residents to 9 or more residents. These would not be allowed in Low Density Residential.

With these changes, the ordinance would provide for Group Homes and Adult Family Homes consistent with State law and case law.

#### **D. Countywide Planning Policies.**

The Countywide Planning Policies (CPPs) contain policies related to required Comprehensive Plan elements, such as Essential Public Facilities (PCC Ord. No. 2022-29). CPPs direct counties and cities to create their own lists of EPFs, which, at a minimum, should include those facilities defined in State law. The CPPs also direct cities and counties to adopt policies in their comprehensive plans regarding the siting of EPFs. The CPPs also include standards and criteria for EPFs that jurisdictions may include in local policies. EPF policies in the CPPs include the following:

- EPF-1: “Adopt a policy in local comprehensive plan, regarding the siting of essential public capital facilities of a Countywide or statewide nature.”
- EPF-2: “Identify lands useful for public purposes and incorporate such designations in local comprehensive plans.”
- EPF-3: “Incorporate a policy and process in local comprehensive plans to identify and site essential public facilities...”
- EPF 3.2: Which requires “that the state establish a public process by which the residents... of municipalities have a reasonable opportunity to participate in the site selection process.”
- EPF-4: Which describes siting and review criteria such as transportation needs and services, zoning, health and safety, and which calls for addressing the impacts of the facility on surrounding areas.

The proposed ordinance includes all EPFs defined by state law, and contains policies, review processes and siting criteria consistent with the CPPs.

#### **E. Sumner Comprehensive Plan**

Sumner’s Comprehensive Plan has general policies related to Essential Public Facilities, Land Use, Human Services, and Housing.

Essential Public Facilities Element. The ordinance is consistent with the Element, through adopting siting criteria in the Sumner Zoning Code, according to the following policies: including the following goal and policies:

- *Goal 1. Allow for the appropriate siting of essential public capital facilities of a statewide or countywide nature.*
- Policy 1.5 Through the zoning ordinance or other implementing ordinances, prepare siting criteria for essential public facilities which are difficult to site.

Land Use Element. The proposal requires facilities to meet the development standards of the underlying zone and other standards, which is consistent with the following:

- *Goal 1. Provide for orderly development within the Sumner community.*
- Policy S1.1 Ensure that appropriate transitions so that more intensive uses do not adversely impact adjacent uses.

Family and Human Services. The Comprehensive Plan contains policies related to providing support services, including the following:

*Goal 2. Support human service programs that focus on prevention, education, and families.*

- Policy 2.1 Provide human services that directly relate to other City services and programs and facilitate the delivery of services with emphasis on families, prevention and education.
- Policy 2.1.5 Support local efforts to prevent the occurrence of substance abuse.
- *Goal 3. Support programs and services for intervention and treatment.*
- Policy 3.1 Support efforts to provide access and to educate the public about counseling services, domestic violence, suicide, elder care issues, and other resources.

Housing Element. The proposal accommodates in-patient/residential BHF facilities, which are a small

but important component of housing in Sumner. The proposal is consistent with:

- Policy 2.5 Promote fair and equal access to housing for all persons in accordance with state law.

**Conclusion:** The proposal is consistent with the intent and vision of the City’s Comprehensive Plan in that it furthers goals and policies related to minimizing impacts between uses and establishes reasonable restrictions to ensure that more intense uses do not adversely impact adjacent uses. Further, the ordinance helps protect public health and safety by establishing siting criteria related to location and operations, and by requiring a conditional use permit. The proposed ordinance is consistent with the State Behavioral Health Model Ordinance, and allows for Group Homes and Adult Family Homes consistent with State law and case law. The ordinance also responds to new State ESSB requirements, meets the State requirement that jurisdictions may not preclude the siting of an EPF, and is consistent with State definitions for EPFs. Also, the proposed ordinance contains policies, review processes and siting criteria consistent with the Countywide Planning Policies.

#### **V. SEPA ENVIRONMENTAL REVIEW**

Amendments to the Zoning Code are required to be reviewed through the State Environmental Policy Act (SEPA). SEPA analysis of the proposed amendment has been completed. A Determination of Non-Significance was issued on October 18, 2023.

#### **VI. PUBLIC & AGENCY COMMENTS**

No public or agency comments have been received at the time of report publishing.

#### **VII. PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing on the ordinance on November 2, 2023, and recommended that the Council approve the ordinance as proposed. Since the Commission’s review, staff noted that the two mixed use districts, Town Center and East Sumner Neighborhood, were inadvertently omitted from the sections listed in the ordinance. These 2 districts currently allow multifamily residential and commercial uses; the Essential Public Facilities (EPF/BHFs) allowed there would be the same as allowed in all other multifamily and commercial zones throughout the city. The ordinance has been corrected for City Council review.

#### **VIII. STAFF RECOMMENDATION**

Staff recommends that the City Council pass the ordinance as proposed.

#### **IX. EXHIBITS**

- A. Draft Ordinance No. 2878