



# Planning Commission

**TO:** Planning Commission  
**FROM:** Chad Eiken, Director, Community and Economic Development  
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**SUBJECT:** Public hearing review of proposed repeal of VMC 20.870 entitled "Human Services Facilities Siting" and related amendments to VMC Title 20 Land Use and Development Code  
**HEARING DATE:** 9/25/2018  
**REPORT DATE:** 9/17/2018  
**PROPONENT:** City of Vancouver  
**LOCATION:** City-wide

## **I. BACKGROUND AND REVIEW PROCESS:**

In 1991 following an extensive public process to address a perceived overconcentration of shelters, soup kitchens and related services in the downtown and corresponding negative effects, and upon recommendations from a task force commissioned by the City Council, the City adopted a set of zoning laws that resulted in the mandatory dispersal of and operational requirements for new Human Service Facilities - uses that serve the poor such as shelters, food pantries, day centers, group meal service, counseling, etc. The siting restrictions of VMC 20.870 "Human Services Facilities Siting" make it more difficult for service providers to find a suitable location for their use, and require compliance with certain operational standards.

At a May 2, 2016 Council workshop, the City Attorney's Office raised concerns with the Human Services Facilities (HSF) Siting Ordinance in regard to applicable laws that prohibit discrimination against people based on their familial status or disabilities, including Title VIII of the Civil Rights Act, the Fair Housing Act, and a ruling from the 9<sup>th</sup> Circuit federal Court of Appeals. The attorney's analysis noted that the conclusions of the task force and subsequently-adopted ordinance had been based at least in part on stereotypes of clientele who utilize such services, as opposed to data which showed a close correlation to perceived impacts.

At the same workshop, City Council directed staff to bring forward an ordinance that would repeal and replace the Human Services Facilities (HSF) Ordinance in order to bring it into compliance with such laws and ruling. Additionally, City Council directed staff that, to the

extent possible, such replacement language should address neighborhood concerns with respect to any identified adverse effects from the siting of such uses, and that new regulations should further seek to minimize unintended impacts on existing businesses.

Since the ordinance was adopted in the early 1990’s, city records indicate that only 34 human service facilities have obtained siting approval or been exempted from the siting criteria under the ordinance. In 2004, the City’s Land Use and Development Code (VMC Title 20) was amended to require a public hearing for any new human service facility siting request. Recent crime statistics from the Vancouver Police Department indicate there is no significant correlation between human services and an increase in crime.

Since the first workshop with the City Council in 2016, the Planning Commission has held a total of six public workshops to discuss the legal concerns regarding the existing ordinance and possible approaches to integrate HSF uses into the most similar commercial use categories, address neighborhood compatibility issues, and determine in which zoning districts such uses should be allowed, and by what process. The City Council has in addition held four public workshops on the HSF Ordinance, as follows:

Planning Commission Workshops on HSF Ordinance	City Council Workshops on HSF Ordinance
November 14, 2017	May 2, 2016
December 12, 2017	November 27, 2017
February 13, 2018	March 5, 2018
March 27, 2018	May 7, 2018
May 22, 2018	
August 28, 2018	

A SEPA Determination of Non-significance (DNS) was issued and published in *The Columbian* on September 06, 2018. Notice of the September 25 Planning Commission public hearing was provided by City staff on September 14, through publication in *The Columbian* newspaper. A copy of the draft ordinance and SEPA documents with links to additional materials on the City’s website was sent to neighborhood association chairs, business membership organizations, and all non-profit organizations in the City, with a request to provide comments on the proposal. A web-based comment form was added to the City’s website to provide an additional method for the public to provide input on the proposal. In addition to the numerous public workshops at which the proposed changes have been discussed, city staff have given presentations on the topic over the past two years at over a dozen neighborhood, stakeholder, and service provider meetings. Several comments have been received to-date and are attached as exhibits to this staff report. Any written comments received after this report is published will be transmitted to the Commission separately.

## II. SUMMARY OF THE PROPOSAL:

The existing city code defines Human Service Facilities as *“(a)ny office, store, assembly place or facility, the general purpose of which is to provide human need services directly and at no or reduced cost to individuals who do not have the means, ability or opportunity to obtain such services themselves. Offices or clinics where medical, dental, psychological or other such essential human services are provided shall not be considered human service facilities unless low or no cost services are provided to more than 50% of patients or clients. Human Service Facilities that provide on-site food, shelter and/or sleeping accommodations or beds are contained in 20.160.020(A)(3) VMC Transitional Housing.”* Typical HSF uses include: Shelters, group meal service, homeless day centers, food banks, food and clothing pantries, counseling offices, and medical and dental clinics.

The proposed ordinance would apply to all properties and zoning district in the City and would amend the requirements for locating and operating a human service facility use. Simply put, the changes would allow human service facility uses to locate in the same zoning district and according to the same process and development standards as its most similar commercial use, with three exceptions discussed below. For example, a medical office with provides subsidized health care to clients who cannot afford it would be allowed wherever other medical offices are allowed, without any spacing restrictions or development/ operational standards (e.g. litter control plan, waiting area, additional restroom facilities, etc.). Similarly, food banks would be allowed wherever warehouses are allowed, food and clothing pantries would be allowed wherever retail uses are allowed, drug and alcohol treatment would be allowed wherever medical centers are allowed, counseling for the poor would be allowed wherever office uses are allowed, and job training for the poor would be allowed wherever personal services are allowed, and all such uses would no longer have special development or operational standards such as a litter control plan, etc.

Based on input from the Planning Commission and as noted above, several exceptions to this approach are recommended in order to address potential impacts to surrounding properties from three specific human service uses: homeless day centers (to be included in a new use classification “community centers”), shelters (to be combined with commercial and transient lodging use classification), and group meal service (to be combined with eating and drinking establishments use classification).

- Shelters as Commercial Lodging: In order to address potential impacts from guests who must check in at the same time (vs. other commercial lodging where guests may check in at any time), any lodging where guests must check in at the same time would require a conditional use permit and compliance with certain development standards intended to mitigate any impacts from guests gathering outside of the facility. Other commercial lodging would be permitted outright in the CX and CG Districts and the special

development standards would not apply in any zoning district to such lodging. This approach will provide for public notice and an opportunity to comment on any concerns from such a use where guests must check in at the same time, but would not subject other commercial lodging to a similar process or standards.

- Group Meal Service as Eating and Drinking Establishments: In order to address similar impacts as identified for shelters, eating and drinking establishments where customers are served meals at a specific time (vs. being able to show up at any time and order a meal), such uses would require a conditional use permit and compliance with certain development standards intended to mitigate any impacts from guests gathering outside of the facility. This approach would provide for public notice and an opportunity to comment on any concerns from such a use where customers must arrive for a meal at specific times.
- Day Centers as Community Centers: Unlike the previous two land use categories, no operational differences between day centers for unhoused individuals and other types of community centers has been identified, therefore the draft ordinance would require a conditional use permit for *all* types of community centers where allowed, as well as adherence to the development/operational standards such providing an indoor waiting area for customers, adequate restroom facilities and parking to serve peak periods of demand, litter control plan, etc.

Most of the substantive changes would be concentrated in the commercial and industrial zoning districts, as opposed to residential districts. All human services uses are considered commercial uses with the exception of food banks, which are considered to be an industrial use. Because commercial and industrial uses are currently not allowed in low density single residential (e.g. R2, R4, R6 and R9) zoning districts, these districts will remain unaffected by the proposed ordinance. Likewise, only a small number of commercial uses are allowed in the higher density residential (R18, R22, R30, R35) zoning districts, such as eating and drinking establishments, retail and personal services, and these are only in limited circumstances (e.g. as part of a mixed use project).

Based on City Council input at public workshops, the draft ordinance contains alternative language in numerous places (indicated in ***bold italics***) that may be substituted for the draft language as indicated in order to address specific concerns identified by City Council. The alternative language would have the practical effect of lessening permitting and operating requirements on social service providers, thereby making it easier to locate such facilities particularly in commercial zoning districts, when compared with the language of the draft ordinance. The alternative language would not, however, provide for any opportunity for public notice of or input on new proposed shelters or group meal service uses if such uses were to locate in an existing building. It is important to note that the City Attorney's office has reviewed

the alternative language and advised that either approach would satisfactorily address the legal concerns which prompted a review of the ordinance.

The proposed ordinance would result in the following substantive amendments to Vancouver Municipal Code (VMC) Title 20, the City's Land Use and Development Code:

1. Repeal Chapter 20.870 VMC entitled "Human Services Facilities Siting" in its entirety in order for the City to gain compliance with Title VIII of the Civil Rights Act (the Fair Housing Act), and Federal Court of Appeals 9<sup>th</sup> Circuit guidance regarding disparate treatment of individuals based on user status, rather than specified land use impacts; deletion of this chapter will eliminate minimum spacing requirements and a separate permit approval process for Human Service Facilities;
2. Revise VMC 20.160 "Use Classifications" to:
  - a. Delete "Transitional Housing" and "Human Service Facilities" as use classifications;
  - b. Amend "Medical Centers" to include Drug and Alcohol Treatment;
  - c. Amend "Religious Institutions" to allow for such uses to shelter, feed, or provide other services to the poor as an extension of their ministry;
  - d. Amend "Commercial Lodging" to include shelters and rename "Commercial and Transient Lodging";
  - e. Amend "Eating and Drinking Establishments" to include group meal service
  - f. Amend "General Retail – Sales Oriented" to include food and clothing pantries;
  - g. Amend "Warehouse/Freight Movement" to include food banks;
  - h. Add Community Centers as a new use classification to include homeless day centers;
3. Revise VMC 20.210 "Summary of Development Application Types" to delete Human Service Facilities – Collocation and Human Service Facilities – Initial/Spacing Modifications;
4. Revise VMC 20.410.030-1 "Lower Density Residential Districts Use Table" to delete Transitional Housing and Human Service Facilities, add Community Centers, modify Commercial Lodging title;
5. Revise VMC 20.420.030-1 "Higher Density Residential Districts Use Table" to delete Transitional Housing and Human Service Facilities, add Community Centers as conditional uses in all districts, modify Commercial Lodging title to include "and Transient," add footnotes referencing performance standards for community centers and certain eating and drinking facilities and commercial and transient lodging uses. ***Possible alternative language: Eliminate references to specific performance standards for all community centers and eating and drinking establishments where customers have a specified meal time (e.g. group meal service);***

6. Revise VMC 20.430.030-1 “Commercial and Mixed Use Districts Use Table” to delete Transitional Housing and Human Service Facilities, add Community Center as a conditional use in all districts except CN where it would be prohibited, modify Commercial Lodging title to include “and Transient” and allow as conditional use in CG, CX and RGX districts if guests must check in at the same time (otherwise permitted outright), add footnotes referencing performance standards for community centers and certain eating and drinking facilities and commercial and transient lodging uses, modify miscellaneous footnotes. Food banks, which currently are allowed in all commercial zones as a human service use, would only be allowed in industrial districts under the draft ordinance as it is most similar to a warehouse use. ***Possible alternative language: Eliminate language that distinguishes between lodging where guests must check in at the same time (e.g. shelters) and other lodging and allow all commercial lodging outright except in the CN Neighborhood Commercial District where it would be prohibited and the CC Community Commercial District where it would be a conditional use; Eliminate language that distinguishes between eating and drinking establishments where customers are served meals at specific times (e.g. group meal service) and other restaurants and allow all eating and drinking establishments outright in all commercial zoning districts; Eliminate references to specific performance standards for community centers, group meal service, and shelters;***
  
7. Revise VMC 20.440.030-1 “Industrial Zoning Districts Use Table” to delete Transitional Housing and Human Service Facilities, add Community Center as a limited use in the OCI, IL and ECX districts subject to certain performance standards (prohibited in the IH District), modify Commercial Lodging title and allow as limited use in IL District if guests must check in at the same time (otherwise prohibited) and as a conditional use in the ECX District if guests must check in at the same time (otherwise allowed outright), add footnotes referencing performance standards for community centers and certain eating and drinking facilities and commercial and transient lodging uses, modify miscellaneous footnotes. ***Possible alternative language: Allow community centers outright in the OCI Office Commercial Industrial District, IL Light Industrial District, ECX Employment Center Mixed Use District; Prohibit shelters from locating in the IL Light Industrial District; Eliminate language that references performance standards for community centers, shelters and group meal service;***
  
8. Revise VMC 20.450.030-1 “Open Space Districts Use Table” to delete Transitional Housing and Human Service Facilities, add Community Centers as new use that is prohibited in all districts, modify Commercial Lodging title to include “and Transient,” eliminate outdated industrial use categories;

9. Revise VMC 20.895.040 entitled “Miscellaneous Special Use Standards – Commercial Lodging” to modify the use classification title and add new performance standards for all commercial and transient lodging uses where customers must check in at the same time; ***Possible alternative language: Eliminate this proposed section from the ordinance;***
  
10. Add a new section VMC 20.895.050 entitled “Miscellaneous Special Use Standards – Community Centers” to add new performance standards for all community centers; ***Possible alternative language: Eliminate this proposed section from the ordinance;***
  
11. Add a new section VMC 20.895.080 entitled “Miscellaneous Special Standards – Eating and Drinking Establishments” to add new performance standards for Eating and Drinking Establishments where meals are served at specified times (versus customers being able to order meals at any time); and ***Possible alternative language: Eliminate this proposed section from the ordinance;***
  
12. Revise VMC 20.945.070-2 entitled “Minimum Off-Street Vehicle Parking Requirements” to delete Human Service Facilities, fix error regarding Accessory Dwelling Unit parking requirements, add new use category “Community Centers” and modify Commercial Lodging title to include “and Transient.”

Currently all new human service facilities must pay a review fee of \$617.00 to process a requested location under the Human Services Facilities Siting ordinance, in addition to other applicable land use, engineering, and building review and permit fees. Some uses such as food/clothing pantry, food bank, counseling, free medical clinic, and job training would see a decrease in fees. However, in the case of shelters, group meal service, and day center uses, the proposed ordinance would substitute the HSF siting provisions (which include public notice and a public hearing) for a conditional use permit in commercial zoning districts in order to ensure public notice and an opportunity to comment on the siting of such uses. A perhaps unintended consequence of the proposed approach is that in 17 cases such uses would see a substantial increase in permitting fees of up to \$7,450 for the conditional use permit. See Exhibit 5 for a table which illustrates the difference in fees from the existing to the proposed ordinance, including the suggested alternative approach.

### **III. REVIEW CRITERIA AND FINDINGS:**

#### *VMC 20.285.090 Zoning Code Text Amendments*

## B. Approval criteria for Zoning Code text amendments

*Proposed zoning or development regulation text changes shall be considered based on the following:*

- 1. The proposed change is consistent with the comprehensive plan; and*
- 2. The proposed change is necessary to further the public interest based on present needs and conditions.*

### **Applicable Vancouver Comprehensive Plan Policies**

#### *CD-6 Neighborhood livability*

*Maintain and facilitate development of stable, multi-use neighborhoods that contain a compatible mix of housing, jobs, stores, and open and public spaces in a well-planned, safe pedestrian environment.*

#### *CD-9 Compatible uses*

*Facilitate development that minimizes adverse impacts to adjacent areas, particularly neighborhoods.*

#### *CD-10 Complementary uses*

*Locate complementary land uses near one another to maximize opportunities to work or shop near where they live.*

#### *H-1 Housing options*

*Provide for a range of housing types and densities for all economic segments of the population. Encourage equal and fair access to housing for renters and homeowners.*

#### *H-6 Special needs housing*

*Facilitate housing for special needs populations dispersed throughout Vancouver and the region. Such housing may consist of residential care facilities, shelters, group homes, or low income housing, and should be located near transportation and other services such as health care, schools and stores.*

*Links to Existing Vancouver Municipal Code [Title 20](#) and [Comprehensive Plan](#)*

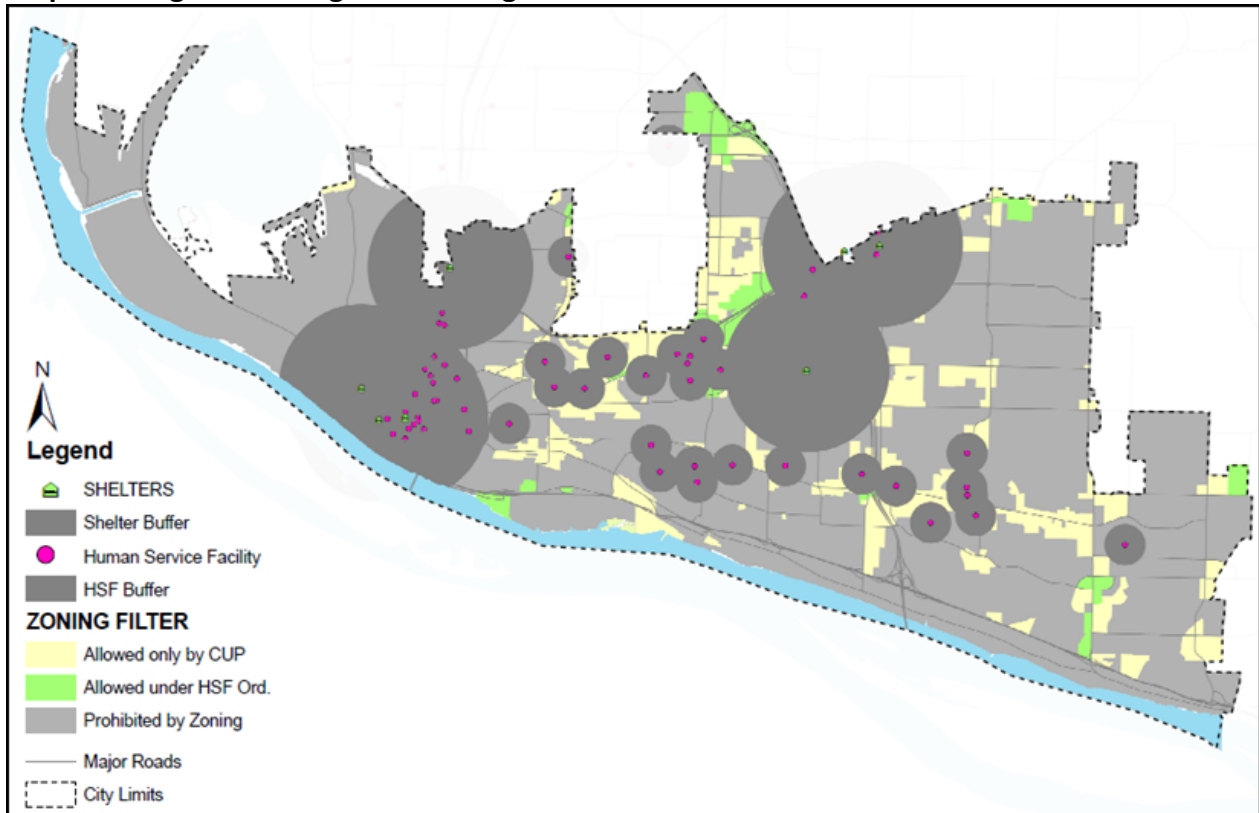
### **Staff Findings:**

It is clear from the record and comments received from stakeholders during the development of the ordinance that the current HSF ordinance makes it more difficult for service providers to find a location that will meet the minimum spacing requirements, not to mention one that they can



afford. The below map illustrates how difficult it might be site a new Class 1 facility such as a shelter for unhoused individuals or an alcohol or drug treatment center, which cannot be closer than one mile to another similar facility or within 1,320 feet from any other human service facility. Per the analysis by the City Attorney’s Office, this disparate treatment of uses based on familial status or disabilities of their clientele potentially violates several state and federal laws, including the Title VIII of the Civil Rights Act and a ruling by the 9<sup>th</sup> Circuit federal Court of Appeals and should therefore be amended.

**Map Showing Areas Ineligible for Siting of a Shelter**



The proposed ordinance attempts to address: 1) the legal concerns with the current ordinance, 2) lingering concerns with regard to compatibility of shelters, day centers, and group meal service with other commercial uses, and 3) a desire not to adversely impact other commercial uses by requiring conditional uses for broad categories in all commercial zoning districts.

The proposed ordinance would combine all current human service uses into the most similar use classification and the human service use would be allowed, conditionally permitted, or prohibited in the various zoning districts in the same manner as other uses in their “new” use classification. For example, food banks would be allowed in any industrial zoning district where warehouses (its new use classification) are allowed. Similarly, food and clothing pantries would be allowed wherever retail uses are allowed, and a free health clinic would be allowed in any zoning district

that allows other types of medical clinics. Across the board, uses would be regulated based on similar operational characteristics and impacts, rather than the ability of customers to pay for the services offered.

Two categories of use would be treated slightly differently than other uses in their new use classification based on specific operational differences, namely commercial lodging uses where customers must check in at the same time (e.g. shelters), and eating and drinking establishments where meals are served at specified times (e.g. group meals) in order to address adverse impacts identified such as clients congregating outside such facilities waiting for their specific check-in or meal time which can block sidewalks, result in storage of personal belongings in public areas, and increased solid waste and litter. In both cases, conditional use permits would be required as would several development/operational standards such as providing sufficient restrooms for peak demand, prohibiting outdoor storage, and requiring adherence to an approved litter control plan. While this different treatment may seem to contradict the city attorney's advice, both uses would be regulated based on operational characteristics that are narrowly different from other types of commercial lodging and eating and drinking establishments, respectively. As such, the additional notification, conditional use permit hearing, and standards *would apply to any land use that has the same operational characteristics* and is therefore would not result in disparate treatment based on the clientele of the use.

All uses in the new "Community Centers" classification, including day centers for unhoused individuals, would be treated the same by the zoning code, and would require a conditional use permit in most zoning districts where allowed, and would be required to meet certain development/operational standards.

As noted above, a proposed alternative approach to the draft ordinance (indicated by ***bold italic*** type) would not distinguish between shelters and other commercial lodging, nor group meal service and other types of restaurants, and therefore shelters would be allowed wherever commercial lodging is allowed, and group meal service would be allowed wherever other eating and drinking establishments are allowed. Additionally, no development/operational standards would apply under the alternative approach.

The draft ordinance meets the policies of the City's Comprehensive Plan CD-6, CD-9 and CD-10 with regard to promoting neighborhood livability, compatible and complementary uses as it will allow human services wherever other similar commercial uses are allowed. Where there are operational differences which warrant slightly different treatment of certain uses in terms of approval process and development standards, the ordinance would provide for more public notice and an opportunity to comment on potential impacts of such uses. The draft ordinance also meets the policies of the City's Comprehensive Plan H-1 and H-6 by increasing the potential locations for special needs housing such as shelters by eliminating the current minimum spacing requirements.

Finally, the draft ordinance is necessary to serve the public interest, which exists if all people regardless of economic means have access to basic services such as food, shelter, clothing, medical assistance, psychological counseling, and job training. The present needs and conditions indicate that arbitrary dispersal of such basic services based on a person's ability to pay for such services, as opposed to the operational characteristics of the use, is discriminatory. The proposed approach, which incorporates the current human services uses into other use classifications and treats them in the same manner under the zoning ordinance is a more fair and equitable means of regulating where such uses may locate.

#### **IV. RECOMMENDED ACTION:**

Based on analysis and findings in this report, staff recommends that the Planning Commission, subject to testimony received, forward a recommendation to the Vancouver City Council to approve the proposed draft ordinance repealing VMC 20.870 "Human Services Facilities Siting" and associated amendments to VMC Title 20, Land Use and Development Code. To the extent that the Planning Commission favors the incorporation of alternative language indicated in italics and bold type throughout the draft ordinance, the Commission should specifically indicate for the record which alternative language is selected.

#### **Attachments**

1. Draft Ordinance Repealing VMC 20.870 "Human Services Facilities Siting"
2. SEPA Determination of Non-significance (DNS), dated August 30, 2018
3. SEPA Checklist, dated August 30, 2018
4. HSF Ordinance Fact Sheet, dated August 28, 2018
5. Comparison of Human Service Facilities Use Application Fees (Current vs. Proposed)
6. Public Comments Received:
  - Letter from Council for the Homeless (undated)
  - Letter from Kachina Inman, Healthy Living Collaborative of Southwest Washington, dated 4/23/18