

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Adoption of Resolution 5051 Clarifying that an Outpatient Clinic Operated by the United States Department of Veterans Affairs Is a “Government Service”

Meeting Date: January 9, 2012
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: 3E
Staff Contact: Steve Nystrom
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ISSUE STATEMENT

The City Council will consider adoption of a resolution clarifying that an outpatient clinic operated by the United States Department of Veterans Affairs is a permitted use under the “Government Services” category, as provided for in the Land Use Code.

BACKGROUND

The City Council has expressed a clear interest in supporting the siting of a new Veterans Affairs (VA) outpatient clinic in Eugene. The City is aware of at least one potential site in Eugene. That site is zoned I-1, Campus Industrial. However, a prior code interpretation issued by the City’s Hearings Official determined that a VA facility is not an allowed use in the I-1 zone. The Hearings Official’s interpretation of the code appears to be incorrect and, if left as the final word on the question, could be problematic for the location of the VA facility in Eugene. In response, the council directed the City Manager to pursue amendments to the Land Use Code to clarify the council’s interpretation of its Code: that a VA facility is an allowed use in the I-1 zone as a “Government Service.”

After evaluating various options, staff believes the most direct way to address this matter is for the council to approve a resolution clarifying that the City’s Land Use Code (Chapter 9) allows an outpatient clinic operated by the United States Department of Veterans Affairs as a permitted use under the “Government Services” category. If approved, I-1 sites in Eugene will be able to submit viable lease offers to the VA. It is our understanding that these offers are due to the VA by January 18, 2012.

Staff believes that the VA facility being proposed is an obvious “Government Service.” It will be operated by the federal government, by government employees who serve the public eligible for veterans’ services. In these ways, it is much like the DMV that serves the driving public, the postal service or the social security office. Like many municipal zoning codes, Eugene’s Land Use Code provides special accommodation for government services, allowing them in most city zones. Given the important community services that local, state and federal governments provide, the limited number of sites needed for these uses and the sometimes unique siting requirements attached to those uses (police and fire stations for example), the Land Use Code provides a higher level of flexibility and opportunity for siting government services than it affords to similar privately operated uses. In other words, it is consistent with the Land Use Code to determine that

a government-operated service facility may be permitted in a zone that does not allow a privately operated facility offering similar services.

To help illustrate this point, the code allows “Mailing and Package Service” as a permitted use in commercial zones, but not in residential or industrial zones. Therefore, a use such as UPS would be limited to commercial zones, while a federal post office (with very similar characteristics to UPS) would be permitted as a “Mailing and Package Service” in the commercial zone but also permitted in a variety of other zones under the “Government Services” category. This ensures appropriate mail service to the community. In the case of the potential VA facility, the code contains a category called “Clinic and other Medical Health Treatment Facility.” While this broad medical category allows a variety of privately- and publicly-operated medical facilities in certain zones (but not I-1), the code provides additional accommodation for medical uses specifically operated by a governmental agency through the inclusion of the “Government Services” category. With this understanding, it would be possible for the VA facility to fit within the “Clinic and other Medical Health Facility” category as well as the “Government Services” category. Staff believes the Hearings Official erred in determining that a use could not fall within more than one category in this way.

It is also worth noting that the broad accommodation of government uses is further supported in Federal law by making the U.S. government exempt from local zoning regulations. On property owned by the Federal government, it may site any use it wishes without regard for the uses allowed by the City in the applicable zone. This in fact occurred when the new Federal Courthouse was constructed on land zoned I-3, Heavy Industrial. It is clear that the Federal government could site the VA facility on I-1 zoned land (or anywhere else) without the need for council assistance, if they were intending to *own* the land rather than lease it (as proposed). It is not clear that the VA facility could take advantage of the federal exemption in this case, where it will not own the underlying land.

When considering the possible uses under “Government Services,” it is also important to recognize that this category is intended to include a wide range and scale of uses. While police stations, fire stations and post offices may be the most common uses that come to mind, government services includes a much wider spectrum, including such uses as courthouses (municipal, county, federal), the DMV, wastewater treatment facilities and city hall. Within this context, it is reasonable to conclude that a VA-operated facility also fits within the government services category.

RELATED CITY POLICIES

Approval of this resolution is supported by the City Council’s stated goal of supporting the location of the VA outpatient clinic in Eugene.

COUNCIL OPTIONS

The City Council has the following options:

1. Adopt the attached resolution;
2. Modify the attached resolution and adopt, or
3. Decline or delay to adopt the attached resolution.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends the City Council adopt the attached resolution.

SUGGESTED MOTIONS

Move to adopt Resolution 5051, "A Resolution Clarifying that an Outpatient Clinic Operated by the United States Department of Veterans Affairs Is a 'Government Service.'"

ATTACHMENTS

A. Resolution Regarding Government Services

FOR MORE INFORMATION

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RESOLUTION NO. _____

A RESOLUTION CLARIFYING THAT AN OUTPATIENT CLINIC OPERATED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS IS A “GOVERNMENT SERVICE”**The City Council of the City of Eugene finds that:**

A. The United States Department of Veterans Affairs is seeking a site on which to operate a new outpatient clinic (“VA clinic”) and the City Council has expressed interest in supporting the siting of the new VA clinic in Eugene.

B. The City Council wishes to provide the siting authority in United States Department of Veterans Affairs with certainty that siting options exist in Eugene for the VA’s consideration, thus increasing the possibility of development of the VA clinic in Eugene.

C. The City’s land use code allows “Government Services” to be established within the I-1 Campus Industrial zone, but a recent decision by the Eugene Hearings Official fails to recognize a VA clinic operated by the United States Department of Veterans Affairs as such a government service.

E. The City Council wishes to correct the hearings official’s code interpretation by providing the City Council’s own interpretation of its code, clarifying that a VA clinic is permitted within the I-1 Campus Industrial Zone because it falls with the category of uses entitled: “Government Services, not specifically listed in this or any other uses and permit requirements table.”

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. For the reasons stated in the Agenda Item Summary attached hereto as Exhibit A, the Eugene City Council hereby interprets the City’s land use code as follows:

- A. An outpatient clinic operated by the United States Department of Veterans Affairs is not *specifically* listed in any “Uses and Permit Requirements” table in Eugene Code Chapter 9.
- B. An outpatient clinic operated by the United States Department of Veterans Affairs does fall within the “Government Services” category of uses listed in Eugene Code Table 9.2450 Industrial Zone Land Use and Permit Requirements.
- C. An outpatient clinic operated by the United States Department of Veterans Affairs may also fall within other categories of uses listed in “Uses and Permit Requirements” tables in Eugene Code Chapter 9, such as the “Clinic or other Medical Health Treatment Facility (including mental health)” category.

Section 2. This Resolution is a final land use decision, binding on City staff in future applications of the land use code, effective immediately upon its passage by the City Council.

The foregoing Resolution adopted the ____ day of _____.

Deputy City Recorder