



CITY COUNCIL FINDINGS AND DECISION

- APPLICANT:** Sisters Cold Weather Shelter
- OWNER:** Desert Wind Holding, LLC
- SITE LOCATION:** 192 W. Barclay Drive, Sisters, OR 97759
Assessor Map and Tax Lot 151004CB02800
- REQUEST:** Approval of an emergency shelter (to be operated only during times of extreme weather) to accommodate up to 20 sleeping pads or cots and resource center providing services such as showers, laundry and case management and mental health and addiction and housing resources.
- APPLICABLE CRITERIA:** Oregon House Bill 2006 (2021 Regular Session) – partially codified as ORS 197.782
Oregon House Bill 3395 (2023 Regular Session) - not yet codified
- HEARING DATE:** September 5, 2023 at 5:00 pm
September 19, 2023 at 5:00 pm (continued deliberations)

FINDINGS OF FACT:

ZONING: The subject property is zoned Light Industrial (LI) Zone District and is within the Airport Overlay (AO) District.

COMPREHENSIVE PLAN DESIGNATION: The subject property has a Comprehensive Plan designation of Light Industrial (LI).

LOT OF RECORD: The legal description of the subject property is Lot 8, Block 1 of the Mountain View Industrial Park subdivision, which was platted on April 18, 1991. Based on this information and pursuant to SDC 4.1.700, the property is recognized as a lot of record.

SITE DESCRIPTION: The subject property is approximately 0.53 acres in size. The site is generally rectangular in shape. The topography is generally level throughout. There is no existing vegetation on the site. The property is bound by N. Curtis Street to the west and W. Barclay Drive to the south. The site is currently developed with a 6,000 square foot office/industrial building with a paved parking lot to the south and west of the building. The building is occupied by a manufacturing company and the site also includes a car dealership.

SURROUNDING LAND USES: All the surrounding land uses are zoned Light Industrial (LI) and include:

To the West: Bend River Window and Door, Solid Rock Granite and a contractor storage yard owned by Robinson & Owens Investments, LLC

To the East: Knaughty Log Homes (yard and manufacturing and office building) owned by Log Yard, LLC

To the South: 692 N. Aylor Court (owned by Sisters Enclave Properties; 7,252 sq. ft. industrial building) and 251 W. Barclay Dr. (owned by Vito Bartolotta; business: Sani Star, 13,312 sq. ft. industrial/office building)

To the North: Contractor storage yard owned by Robinson & Owen Investments, LLC.



Figure 1. Aerial photo of subject site and surrounding properties

PROCEDURAL HISTORY: Pursuant to a letter dated August 14, 2023, the applicant withdrew its prior application for an emergency shelter on the same subject property, which was originally submitted on June 27, 2023. Applicant then filed a new application for an emergency shelter on August 15, 2023. Re-filing of the application after the effective date of HB 3395, allowed for application of the amendments to HB 2006 contained within HB 3395.¹

City Council elected to be the decision maker for the application and scheduled a public hearing for September 5, 2023. In advance of the hearing, City staff prepared a staff report to identify, for all parties, the issues to be resolved by the hearing. After conducting the public hearing, council voted to close the record to both oral and written testimony, initiated deliberations, directed staff to prepare a draft written decision denying the application for Council's consideration, and voted to continue deliberations until September 19, 2023. At the September 19, 2023 meeting, Council voted to adopt this decision.

NOTICE: HB 2006 (as amended) does not expressly require any form of public notice concerning an emergency shelter. Nonetheless, City provided notices to those property owners within 250 feet of the subject property as a courtesy regarding the initial application. City further established an informational website. Following submission of the subject application, City Council, at its August 23, 2023 regular meeting, announced its decision to hold a public hearing on September 5, 2023. A second notice was then sent to property owners within 250 feet of the subject property with details of the scheduled public hearing. Information on the subject application and associated public hearing was also posted to the City's website.

¹ References herein to "HB 2006 (as amended)" are intended to refer to HB 2006 as modified by HB 3395. Because HB 2006 (as amended) has not been fully codified, or even fully placed within the "session laws", this decision refers to the legislation by the bill numbers and sections within the bills.

RECORD: All materials comprising the record were posted to the City’s website at (<https://www.ci.sisters.or.us/administration/page/emergency-shelter-siting>). This includes all application materials, agency comments, and public comments submitted on either the prior application or the present application, the recording of the August 9, 2023 Council Work Shop and Meeting, the recording of the September 5, 2023 public hearing, and all other materials related to the subject application received by City prior to the closing of the record at the conclusion of the September 5, 2023 public hearing. Any additional materials received after the record was closed are not part of the record and were not considered as part of this decision.

APPLICABLE CRITERIA AND FINDINGS

HB 2006 AS MODIFIED BY HB 3395 (PARTIALLY CODIFIED AS ORS 197.782)

197.782 Emergency shelters developed under temporary authorization

- 1) As used in this section, “emergency shelter” means a building or cluster of buildings that provides shelter on a temporary basis for individuals and families who lack permanent housing.**

Council Findings: According to the application, the applicant proposes to utilize the existing building on the subject property to shelter up to 20 individuals and/or families who lack permanent housing on a temporary basis. Council finds that the proposal meets the definition of “emergency shelter”. Although not proposed by the applicant, Council agrees with staff’s conclusion that the definition of emergency shelter requires a “building” that “provides shelter”. Accordingly, an outdoor camping arrangement, overnight parking program, or similar arrangement where individuals are not sheltered within a building, would not qualify as an emergency shelter.

- 2) A building or cluster of buildings used as an emergency shelter under an approval granted under section 3 of [HB 2006] or section 11, chapter 12, Oregon Laws 2020 (first special session):**

- a) May resume its use as an emergency shelter after an interruption or abandonment of that use for two years or less, notwithstanding ORS 215.130(7).**

Council Findings: If approved, any such approval would be voided if the use of the subject property as an emergency shelter is interrupted or abandoned for a period of more than two years.

- b) May not be used for any purpose other than as an emergency shelter except upon application for a permit demonstrating that the construction of the building and its use could be approved under current land use laws and local land use regulations.**

Council Findings: According to the application, applicant is proposing to use the existing building on the subject property as an emergency shelter (and specifically a facility for sheltering individuals during periods of extreme weather) to accommodate up to 20 sleeping pads or cots and an associated “resource center” providing services such as showers, laundry, and case management, mental health, addiction, and housing resources (discussed below). Council finds the foregoing to constitute emergency shelter uses permitted under HB 2006 (as amended) and thus not requiring any separate land use approval or otherwise requiring compliance with land use laws and local land use regulations (provided the criteria of HB 2006 (as amended) are met).

- 3) **An approval of an emergency shelter under section 3 of [HB 2006] or section 11, chapter 12, Oregon Laws 2020 (first special session) is void unless the shelter is operating within two years following the approval.**

Council Findings: If approved, any such approval would be voided if the use of the subject property as an emergency shelter is not initiated within two years following the approval.

Section 3 of HB 2006 (as modified by HB 3395)

- 1) **A local government shall approve an application for the development or use of land for an emergency shelter, as defined in ORS 197.782, on any property, notwithstanding this chapter or ORS chapter 195, 197A, 215 or 227 or any statewide land use planning goal, rule of the Land Conservation and Development Commission or local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:**

- a) **Includes sleeping and restroom facilities for clients;**

Council Findings: According to the submitted application, the proposed shelter will include sleeping facilities for clients, in the form of a large, open area on the first floor of the building where sleeping mats or cots can be laid down. The building already includes restrooms that can be used by shelter clients. The application also states that the facility can be configured to provide separate spaces for families with children, if necessary.

Public commenters have correctly noted that no floor plans were submitted denoting the layout of the emergency shelter or otherwise demonstrating the configuration of the sleeping and restroom facilities. However, City staff conducted a site visit and testified that the space that the application contends is available for sleeping appeared to be sufficient in size to fit 20 cots and that restroom facilities exist within the building.

- b) **Will comply with applicable building codes;**

Council Findings: Council agrees with City staff that this criterion is phrased in the future tense and therefore will be satisfied as long as the applicant pursues and receives applicable building permits and approvals, and otherwise meets requirements of the Deschutes County Building Department and State Fire Marshal (as administrators of "applicable building codes"). Council agrees with City staff that it is atypical, at least in the ordinary process, for such permits and approvals to be procured ahead of the approval authorizing the proposed use.

As City staff confirmed, the City contracts with the Deschutes County Building Department for its building permit review. The applicant has coordinated with the County and State Fire Marshal to determine the applicable building codes and improvements necessary to bring the building up to code for the proposed use of the building. Based on those communications, a variety of building/fire code related alterations and approvals appear to be required for the various aspects of the proposed use. Applicable building code administrators have identified applicable review and approval processes. Nothing from the various building code administrators otherwise indicates that the proposal could not comply with applicable codes if those required actions are undertaken (noting that the scale or scope of the proposal may need to be reduced if such actions are not undertaken).

Council finds that the application would comply with this criterion if subjected to a condition of approval requiring the applicant to obtain all required building permits, approvals, and inspections from the Deschutes County Building Department and State Fire Marshal prior to commencing the use or HB 2006 (as amended) permitted accessory use that requires such building permit, approval, or inspection and shall otherwise comply at all times with the requirements of the County Building Department and State Fire Marshal.

- c) Is located inside the urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;**

Council Findings: According to the Sisters Zoning Map, the subject property is located within the City's Urban Growth Boundary.

- d) Will not result in the development of a new building that is sited within an area designated under a statewide planning goal relating to natural disasters and hazards, including flood plains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;**

Council Finding: No new building is proposed. In any event, the subject property is not located within a floodplain and is not otherwise designated under the City's comprehensive plan, which implements the statewide planning goals, as mapped for a natural disaster or environmental health hazard.

- e) Has adequate transportation access to commercial and medical services; and**

Council Findings: HB 2006 (as amended) does not provide any guidance as to what constitutes "adequate transportation access". Moreover, there have been few, if any, meaningful attempts from the parties to these proceedings to define this term. Council understands the applicant as suggesting that this criterion is met as long as commercial and medical services are relatively proximate (with indication that one mile is sufficient) and that it is possible to travel to such services even if there are impediments to various modes of transportation. Council understands the opponents as suggesting that the criterion is not satisfied where there are significant impediments to various modes (and perhaps even a single mode) of transportation to the extent there are even "medical services" within the City. Without any guidance or any well-developed definition for Council to adopt, Council finds that transportation access is only "adequate" if it is reasonably safe, convenient, and reliable and that Council must engage in some form of balancing of the various modes of transportation to arrive at a conclusion as to whether the generic and seemingly all-encompassing term "transportation access" is "adequate".

As documented in the staff report, the subject site is located within one mile of at least some form of commercial and medical services. The nearest commercial areas are the Ray's Supermarket complex to the west (which is approximately .55 miles away when traveling along W. Barclay Dr. to N. Arrowleaf Trail) and Cascade Avenue to the south (which is approximately .53 miles away when traveling along W. Barclay Dr. to N. Pine St.). Public commenters have correctly noted that there is no emergency department or urgent care facility within the City. Rather, the most proximate medical services are St. Charles Family Care Clinic (which is approximately .55 miles away when traveling along Barclay Drive to N. Arrowleaf Trail) and, as the applicant has emphasized, there are emergency medical technicians located at the Sisters-Camp Sherman Fire Department (which is approximately .8 miles away when traveling along W. Barclay Dr. to N. Pine St. to W. Washington Ave.). Council is not entirely convinced that the foregoing are what HB 2006 (as amended) contemplated as "medical

services” as opposed to an urgent care facility, an emergency department, or some other facility that regularly treats the homeless.

To the extent the foregoing qualify as “medical services”, City Council finds that the proposed emergency shelter does not have adequate transportation access to (or from) commercial and medical services. Specifically, the subject property lacks sidewalk connectivity and public transportation is too sporadic.

Of greatest concern to the Council, sidewalks do not currently exist on Barclay Drive between the subject property and the intersection of Barclay Drive and N. Pine Street going west or between the facility and the intersection of Barclay Drive and N. Larch Street going east nor is there any street lighting. Moreover, there are no bike lanes and limited to no shoulders. Council finds this particularly troubling because the emergency shelter is proposed to be sited in an industrial area frequented by oversized vehicles that will be principally operated during non-daylight hours in the winter when visibility will be limited and snow and ice will be prevalent (particularly when snowplows create berms that would further force walkers and bikers into the poorly lit street). Council finds that access to the site by walking or biking to the proposed facility is not safe, convenient, or reliable. While staff noted future plans for such facilities, there is no funding secured for those facilities nor any timeline for construction (and further noting that the applicant did not propose to provide such facilities). Because those facilities are so speculative at this juncture, Council does not find it reasonable or prudent to grant approval on the assumption that such facilities may come to fruition in the future.

Several commenters noted that while public transportation may be “regular”, it is infrequent (one or two routes per day to other communities), does not necessarily have daily service (DIAL-A-RIDE is not a daily service), and generally requires multiple connections/transfers to reach desired destinations (and specifically urgent care and emergency department services). Council finds that access to the site by public transportation may be safe, and perhaps reliable (noting that public transportation is regularly affected by the very weather that clients to the proposed emergency shelter would be using the facility to seek shelter from), it is not convenient. Council further notes that at least some consideration must be given to the hours of operation of the proposed facility, as there is likely no public transportation when the facility would actually be in use. This is concerning to Council as the lack of convenience (or reliability if public transportation cannot be relied upon at all at critical times) could result in overreliance on emergency medical transport.

Council acknowledges that the street system may allow for passenger vehicles to access the site in a safe, convenient, and reliable manner (assuming that on-site parking areas are actually made available for such use as there is no safe, convenient, or reliable on-street parking in the vicinity of the subject property and noting that the applicant did not dispense with the concern raised in the staff report of other businesses continuing to operate on the subject property that would utilize parking spaces). However, there was no suggestion that all clients would utilize passenger vehicles or that this would even be the primary mode of transportation to the facility. Even if it were the primary means, the deficiencies in other modes of transportation are so glaring that it would not result, on balance, in a finding of “adequate transportation access”.

f) Will not pose any unreasonable risk to public health or safety.

Council Findings: HB 2006 (as amended) does not set out any guidance as to what constitutes an “unreasonable risk” to public health or safety. Council further notes that none of the parties to these proceedings made any meaningful attempt to define the term other than to identify circumstances

that would either constitute an unreasonable risk or mitigate such risk. In the absence of any guidance or well-developed definition to adopt, Council finds that an unreasonable risk exists where there is a sufficient probability, even with proposed mitigation measures, of a harmful event occurring such that a reasonable person would not subject the community to such a risk.

Public comments have identified a number of potential risks to public health and safety including the following:

- Proximity to businesses and homes (approximately 500 feet to the nearest house in the Clear Pine neighborhood with easy pedestrian access)
- Proximity to where children play and along routes they take to schools
- Insufficient law enforcement staffing and availability to serve the shelter or its clients
- Unstable shelter guests who may be under the influence of drugs and/or alcohol and who may have violent tendencies.
- Lack of sidewalks and lighting along Barclay and the risk posed to pedestrians/bicyclists attempting to get to and from the shelter and to motorists who may be unable to see them or have to take evasive action to avoid a collision.
- Concern about vandalism to neighboring businesses where expensive equipment is stored – do they have to build fences to protect their properties?
- Inadequate planning or resources to accommodate an emergency facility of this scale or scope.
- Inadequate staffing (either numbers or experience).
- Lack of monitoring of emergency shelter guests outside of shelter operational hours
- Concern that the facility will morph into a full-time shelter with services, facilities, and accessory uses not disclosed by the applicant.
- Incidents and safety concerns from prior shelters operated by the applicant.
- That opening of the emergency shelter will attract new houseless people from other communities that will exacerbate all of the foregoing and/or otherwise overwhelm the community's ability to support this population.

The applicant contends that the proposed emergency shelter will not pose any unreasonable risk to public health or safety because of its staffing, its code of conduct, and its prior performance. Specifically, the applicant states that there will be no less than two paid staff on site from 10 pm to 7 am to monitor the guests and that volunteers will be on site from 6 pm to 10 pm. The applicant did not further comment on the qualifications or experience of its staff. The Applicant's code of conduct, which the Applicant indicated was adopted from that employed by Shepherd's House Ministries, Inc. ("Shepherd's House"), includes requirements for respectful behavior, prohibits weapons, and prohibits the use of drug and alcohol use on premises. The Applicant further asserts there are restrictions on loitering near the building or in the neighborhood before and after open hours, and not being allowed to re-enter the emergency shelter once a client arrives for the evening (but such were not expressly included in the code of conduct contained in the record). Finally, the applicant asserts that there have been few incidents during its prior emergency shelter operations.

The subject property, and the rest of the community, is served by the Deschutes County Sheriff's Office (law enforcement services are provided through an agreement with the City) whose offices are located nearby at 703 N. Larch Street, less than a ¼ mile away from the proposed shelter. The force currently consists of a lieutenant and three deputies with a fourth deputy to start in January of 2024. The office is open Monday through Friday 8:30 a.m. to 4:30 p.m., but deputies work beyond 5:00 p.m. and there is 24-hour coverage for west Deschutes County (including the city of Sisters) with the west Deschutes County officer. In comments made during the public meeting on the shelter at City

Council's August 9, 2023 work session, the lieutenant indicated there were only a few calls or issues per season when applicant operated as an emergency shelter at local churches. The lieutenant expressed a desire for more resources but did not state the Sheriff's Office is unable to serve the proposed emergency shelter. The only comments from the Fire District pertained to compliance with fire codes. Council must note that a City of Bend Police Officer testified, on his own behalf and not of behalf of the Bend Police Department, that his agency receives a vastly disproportionate amount of calls for service at or in the vicinity of the emergency shelters located in Bend and that the volume of calls for service has been a challenge for his agency.

After fully considering the extremely conflicting evidence in the record, City Council finds that proposed shelter poses the following unreasonable risks to public health or safety:

- a. The lack of safe pedestrian and bicycle access to the facility as detailed above. Council finds that the nature of the use and the proposed operational characteristics of the facility present a substantial probability that clients will access the proposed facility by walking or biking, that the current transportation infrastructure will place clients and motorists in compromising positions (particularly in winter conditions), and that the serious injury or deaths that may result from such interactions rises to the degree of an unacceptable risk. No mitigation to this risk was proposed by the applicant.
- b. An over reliance on emergency services for both access to and actual provision of medical services. Council finds there is a substantial probability that clients of the facility will require medical services of an immediate (but non-emergency) nature, that there is a substantial probability that clients will not be able to access such services because they do not exist in the community (or at least not during hours of operation of the facility) or because of inadequate transportation to locations where such services are provided, and therefore a substantial probability that emergency services will be called upon to provide non-emergency medical services. This presents an unreasonable risk to the public health and safety of the community from misutilization of the limited emergency responder resources available to the community. There were some suggestions that medical services may be provided at the facility, but no specific commitment to provide such services nor any other mitigation proposed that would reduce this list to an "acceptable" level.
- c. The lack of evidence provided by the applicant as to the operational capacity of the organization to safely operate the facility. There was considerable public testimony as to the public health and safety issues existing at other emergency shelters and, in Council's view, insufficient evidence and explanation from the applicant as to why such issues would not occur at this facility. As discussed below, questions remain as to whether applicant is even eligible to operate an HB 2006 (as amended) facility. Further questions remain as to whether the applicant has the financial or staffing resources to operate a facility in a manner that would allow Council to make a finding, supported by substantial evidence in the record, that the foregoing criterion has been met.

Based on all the foregoing, City Council finds that the application does not comply with this criterion.

- 2) An emergency shelter allowed under this section must be operated by:**
 - a) A local government as defined in ORS 174.116;**
 - b) An organization with at least two years' experience operating an emergency shelter using best practices that is:**
 - A. A local housing authority as defined in ORS 456.375;**

- B. A religious corporation as defined in ORS 65.001; or
 - C. A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals, that has been recognized as exempt from income tax under 501(a) of the Internal Revenue Code for at least three years before the date of the application for a shelter; or
- c) A nonprofit corporation partnering with any other entity described in this subsection.

Council Findings: The applicant is a public benefit corporation under Section 2(b)(C). Accordingly, it must have both “two years’ experience operating an emergency shelter using best practices” and have been “recognized as exempt from income tax...for at least three years before the date of the application.” This criterion presents a variety of ambiguities including how the two years’ experience is measured, what constitutes “best practices”, and how to measure the duration of tax exemption.

- o Operational Experience: None of the parties to these proceedings offered any fully developed interpretations of this requirement other than the staff report setting out two potential interpretations. Rather, the parties largely just made conclusory statements as to whether or not the standard was met. In the absence of any guidance or well-developed definition to adopt, Council finds it reasonable to apply a similar meaning to comparable terminology employed in the job application context where, in the aggregate, the applicant has substantially engaged in the subject activity for at least two years (i.e. accounting for weekends, holidays, and ordinary leave for vacation as opposed to literally performing the subject activity on 730 separate days). This equates to approximately 480 days actually on the job.

The applicant asserts that it has six “seasons” of experience operating a cold weather shelter starting in 2017. Despite this very issue coming into question under the prior application, and the staff report for the subject application specifically raising the question, the applicant declined to provide further details on the duration of the various seasons, days of operation in each season, location of operations, or anything else corroborating applicant’s conclusory assertions that the standard is met. Instead, City staff provided documentation of all prior emergency declarations issued by the City that authorize emergency use of non-residential facilities as temporary shelters. These resolutions showed that some form of shelter, although not necessarily one operated by the applicant (and further noting that applicant was not even formally organized while some of these resolutions were in effect), could have operated for upwards of 435 days if operated every day that the emergency shelters were in effect (and there is no indication that such was the case). Council does not find there to be substantial evidence in the record on which to find that applicant has the requisite 2 years of experience.

- o Best Practices: Despite being raised as a question in the staff report, none of the parties to these proceedings offered any evidence, or any significant testimony, as to what constitutes best practices or whether or not they were implemented in applicant’s prior operations. The applicant asserted that it follows the same procedures as Shepherd’s House Ministries in Bend, Oregon with the presumption being that Shepherd’s House uses best practices. There is no corroborating evidence for this being the case. Council does not find there to be substantial evidence in the record on which to find that applicant has the requisite 2 years of implementing best practices.

- *Tax Exemption:* According to Oregon Secretary of State records, the applicant registered with the state as a domestic public benefit corporation on August 12, 2020, the date the state received applicant’s articles of incorporation. The applicant asserted that its charitable purpose is to support homeless persons and specifically by providing shelter during periods of extreme weather. The applicant supplied a letter from the IRS dated 1/22/21 that indicates that applicant is “exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3)” as a “public charity”. IRC 501(a) referenced in HB 2006 (as amended), is the provision establishing tax exempt status for various types of organization including those types of organizations listed under IRC 501(c). 501(c)(3) is a specific category of organizations eligible for tax exemption and includes organizations formed for charitable purposes.

The requirement of three years of “recognized” tax exemption status required under HB 3395 could refer to either the 01/22/2021 date of the IRS letter or the “effective date of exemption” of August 12, 2020 referenced in the IRS letter (i.e. the date the IRS is, arguably, willing to back date the recognition to). The effective date of the exemption corresponds to the date applicant was incorporated in the State of Oregon, which staff reported to be the typical practice of the IRS. Because the current application was submitted on August 15, 2023, applicant would meet the 3 years of tax-exempt status required under HB 3395 if measured from the “effective date of exemption” stated in the IRS letter but would not satisfy the standard if measured from the date of the letter. Council agrees with staff’s inclination that this criterion refers to the “effective date” as the apparent purpose of this provision is to establish the tenure of the organization rather than the seemingly arbitrary date on which the IRS issued a letter confirming tax exempt status (particularly if the common practice is for the IRS to recognize tax exempt status as of the date of formation).

- *Partner:* Although applicant does not independently meet both the two years of best practices operating experience and requisite amount of time for tax exempt status, this criterion can nonetheless be met if the applicant is “partnering” with another organization that qualifies. Although HB 2006 (as amended) provides no guidance as to what constitutes “partnering”, Council finds that it need not make any interpretation because the applicant indicated at the public hearing that it was not relying on a partnership for purposes of meeting the eligibility criteria. To the extent Council misunderstood applicant’s intentions, there is insufficient evidence of a partnership in the record. The letter from Shepherd’s House submitted by the applicant only seems to provide evidence of fiscal management assistance prior to applicant being formally organized as opposed to any current operational partnership (let alone evidence demonstrating that Shepherd’s House is an eligible entity).²

For the foregoing reasons, Council does not find there to be substantial evidence in the record to make a finding that the proposed emergency shelter will be operated by a party(s) meeting the eligibility criteria.

3) An emergency shelter approved under this section:

a) May provide on-site for its clients and at no cost to the clients:

- (A) Showering or bathing;**
- (B) Storage for personal property;**
- (C) Laundry facilities;**
- (D) Service of food prepared on-site or off-site;**

² Similarly the Shepherd’s House letter doesn’t provide any evidence of applicant’s operational experience.
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- (E) Recreation areas for children or pets;
- (F) Case management services for housing, financial, vocational, educational or physical or behavioral health care service; or
- (G) Any other services incidental to shelter.

- b) May include youth shelters, winter or warming shelters, day shelters and family violence shelter homes as defined in ORS 409.290.
- 4) An emergency shelter approved under this section may also provide additional services not described in subsection (3) of this section to individuals who are transitioning from unsheltered homeless status. An organization providing services under this subsection may charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.

Council Findings: The applicant states that the proposed emergency shelter is primarily aimed as a warming shelter (but may be used for other extreme weather events including heat and smoke) and will include showers, storage for personal items, laundry facilities, meals, case management (i.e. mental health, addiction, and housing resources), which Council finds to be permitted under HB 2006 (as amended) under either Section 3(3) or Section 3(4). The applicant states that they don't anticipate charging any client fees for any services and that, if that were to charge in the future, they would charge in a manner consistent with HB 2006. Council finds that this criterion would be met with a condition of approval requiring that any charges for services be consistent with the restrictions in the foregoing section.

- 5) (a) The approval or denial of an emergency shelter under this section may be made without a hearing. Whether or not a hearing is held, the approval or denial is not a land use decision and is subject to review only under ORS 34.010 to 34.100.

Council Findings: As stated above, HB 3395 clarified that a decision on an emergency shelter application may be made with or without a hearing. Council elected to conduct a hearing, which is consistent with the authority provided under HB 3395.

Regardless of whether or not a hearing is held, HB 2006 (as amended) makes clear that the resulting decision is not a land use decision, which precludes any appeal to the Land Use Board of Appeals (LUBA). Rather, any decision is subject to ORS 34.010 to 34.100, which are the statutes for a "Writ of Review".

- 6) An application for an emergency shelter is not subject to approval under this section if, at the time of filing, the most recently completed point-in-time count, as reported to the United States Department of Housing and Urban Development under 24 C.F.R. part 578, indicated that the total sheltered and unsheltered homeless population was less than 0.18 percent of the state population, based on the latest estimate from the Portland State University Population Research Center.

Council Findings: In lieu of having a fixed sunset date, HB 3395 provides that approval of an emergency shelter under HB 2006 (as amended) is only permitted as long as the homeless population exceeds the threshold specified above. Council concurs with staff's assessment that the HB 2006 (as amended) is in effect based on data from the 2022 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations report for Oregon produced by the United States

Department of Housing and Urban Development and state population estimate from Portland State University Population Research Center.

CONCLUSION

Based on the foregoing findings and conclusions, Council hereby **DENIES** the application.

This decision is the final action of the City on this matter and will become final for all purposes unless subject to the timely filing of a writ of review under ORS 34.010 to 34.100.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the City Council of City of Sisters and signed by the Mayor on this 19th day of September 2023



Michael Preedin, Mayor