

RESOLUTION No. 2018-30

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLITS ASSERTING ITS RIGHTS AND OBLIGATIONS RELEVANT TO THE PROPOSED CONVERSION OF THE FORMER HOWARD MEMORIAL HOSPITAL BY THE COUNTY OF MENDOCINO TO OPERATE AN ACUTE PSYCHIATRIC HOSPITAL OR PSYCHIATRIC HEALTH FACILITY; REQUEST FOR NOTICE AND PARTICIPATION IN THE EVALUATION AND APPROVAL OF SUCH USE; REQUEST THAT ANY SUCH USE CONFORM WITH APPLICABLE LAWS AND REGULATIONS OF THE CITY OF WILLITS; AND REQUEST FOR PRODUCTION OF PUBLIC RECORDS

Introduction

The City Council is informed that the County of Mendocino proposes to acquire and to use the former, and now vacant, Howard Memorial Hospital site ("Site") to operate a state licensed 32 bed acute psychiatric hospital or other psychiatric health facility primarily to admit patients, on an involuntary basis, in a secure, locked down unit, for observation and emergency treatment pursuant to the authority of the Lanterman-Petris-Short Act (Welfare and Institutions Code, Division 5, §5150) to determine whether, as a result of a mental illness they are gravely disabled and are unable to provide for their basic needs, or otherwise pose an immediate danger to themselves or to others (the "Project").

The Council is further informed that the intended use of the Site would extend beyond the needs of Mendocino County, and may include admitting patients from other nearby counties within the region, including Marin County. The City of Willits, however, has not been consulted by the County in any planning process for the approval of this Project and therefore has no direct information concerning the size and scope of the Project or any details including the proposed bed count or planned aesthetic improvements or security features. The Council adopts this resolution to assert its legal basis to comment and participate in the County's evaluation and potential approval of this Project and to assert the Council's intention to require that the Project be subject to Willits City Codes and regulations and the City's land use authority.

WHEREFORE, the City Council of the City of Willits makes the following findings and statements:

Recitals

1. Title 22 of the California Code of Regulations (22 CCR §71005) defines an "acute psychiatric hospital" to include a hospital "that provides 24-hour inpatient care for mentally disordered, incompetent or other patients referred to in Division 5, commencing with §5000, of the Welfare and Institutions Code." The City is thus informed and believes that the facility that the County proposes to operate at the Site for W&I Code §5150 psychiatric observation and emergency treatment is an "acute psychiatric hospital" and is therefore subject to applicable state regulations and licensing requirements.
2. In order to operate an acute psychiatric hospital at the Site, the County must first submit an application and receive a license from the CA State Department of Health Services (22 CCR 71103 and 71105). Further, "...a license shall not issue

to any hospital which does not conform to the regulations in this chapter; state requirements on seismic safety, fire and life safety and environmental impact and local fire safety, zoning and building ordinances". Evidence of such compliance shall be presented in writing to the Department.

3. The City Council is informed and believes that (1) the Site does not comply with state requirements on seismic safety, and that it is not economically practical to achieve compliance. Further, this seismic safety deficiency was one of the major factors that led to the closure of the Site as an acute care hospital and to its relocation; and (2) Conversion of the Site to construct a state licensed acute psychiatric hospital would not conform with the City's zoning ordinance and current zoning designation, may require a general plan amendment, rezone and satisfaction of a conditional use permit to address local fire, safety and building ordinances, and mitigation of environmental, aesthetic, public safety and other impacts to the community. For the type of use contemplated for the Site the City has reserved its right to exercise discretionary approval and mitigation of impacts.
4. In the event that the County's proposed use of the Site is not to operate an "acute psychiatric hospital" pursuant to Title 22 CCR, Division 5, chapter 2 and the proposed use is instead to operate a "psychiatric health facility" pursuant to chapter 9 of Title 22 CCR, Division 5, both of these facilities must satisfy local, fire, safety, zoning and building ordinances before a license will be issued. (See Title 22 CCR §77039 concerning licensure of psychiatric health facilities).
5. The Site is in close proximity to three schools for children: Blosser Lane Elementry, 1275 Blosser Lane; New Horizons Independent Study, 1277 Blosser Lane; and Baechtel Grove Middle School, 1150 Magnolia Avenue. The Site is also surrounded by many residential homes in close proximity. The Council has received numerous public comments from residents and from school officials about having this secure, lockdown facility, enclosed and fortified with barbed wire or razor ribbon capped chain link fencing, in this quiet residential neighborhood frequented by children living in the area and by students walking to and from school. The Council shares these concerns as well as the concerns of property owners who fear that the project would result in declining property values. While the Council requires additional information about the Project, and potential mitigation measures, a preliminary observation is that there must be a better location for such a facility elsewhere in the County that would pose fewer land use conflicts and be more compatible with surrounding land uses.
6. In addition to the County's obligation to satisfy the City's fire, safety, zoning and building codes, pursuant to state licensing regulations, the City has the further and independent constitutional right and obligation to make and enforce land use and zoning regulations pursuant to the City's general police power. (See Cal. Const. at XI, section 7). This police power allows cities to establish land use and zoning laws that govern the development and use of the community. In Village of Belle Terre v. Boraas, (1974) 416 U.S. 1, the U.S Supreme Court addressed the scope of such power and stated: "The police power is not confined to elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quite seclusion and clean air make the area a sanctuary for people."

7. While the Government Code generally provides both cities and counties with an intergovernmental immunity from the others' applicable building and zoning ordinances, that immunity cannot be absolute. That immunity cannot be exercised in an indiscriminate and injudicious manner to allow the County to construct and operate *any* public facility at *any* location it desires within the City, and without regard to the impacts and hardship that neighboring property owners will endure. Further, this immunity cannot apply to the subject Project. Conversion of the old hospital to a State of California approved and licensed psychiatric facility is subject to State of California regulations that explicitly require compliance with the City's building and zoning ordinances. The state has completely occupied the field of regulating and licensing state approved psychiatric facilities, and any immunity otherwise available to the County pursuant to Government Code sections 53090 and 53091 is preempted by the State regulations cited above.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Willits hereby orders and resolves that:

This Resolution be delivered to the Mendocino County Board of Supervisors with the request that the Board:

I. Provide to the Council the following written assurances:

- (a) That the City of Willits will receive due notice and the right to participate in the County's continuing evaluation and approval process of the subject Project;
- (b) That the County acknowledge and confirm that the Project approval and the County's licensure to operate a psychiatric facility at the Site is subject to the City's fire, safety, zoning and building ordinances and to the City's general land use authority;
- (c) That before making any decision to approve the location of a site for the operation of a County psychiatric facility, the County will first perform a detailed study on the financial feasibility of such a site in Willits, including the likelihood and costs of attracting enough physicians and other mental health professionals to ensure that the facility is appropriately staffed by licensed personnel on a 24 hour basis; and
- (d) That before making any decision to approve the Project at the site of the former Howard Memorial Hospital, the County will first perform a detailed study on the likely and potential effects and impacts to both the City of Willits generally, and to the residents and business in the vicinity of the site.

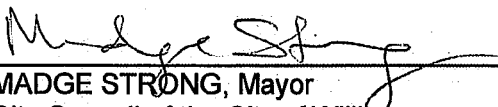
II. Provide to the City the following records:

Copies of any existing written agreements, proposals, letters of intent or other records by or between the County of Mendocino, its employees or elected official and the Howard Hospital Foundation concerning the proposed use of the former hospital site for operation of a psychiatric facility, including the use of Measure B funds for such purpose, and

including any descriptions of the size, scope and operation of the proposed facility. Please consider this request as a request made pursuant to the CA Public Records Act under Government Code section 6250, et seq.

The above and foregoing Resolution was introduced by Councilmember Rodriguez seconded by Councilmember Gonzalez, and passed and adopted at a regular meeting of the City Council of the City of Willits, held on the 23rd day of May, 2018, by the following vote:

AYES:	Gonzalez, Stranske, Rodriguez, and Strong
NOES:	None.
ABSENT:	Orenstein.


MADGE STRONG, Mayor
City Council of the City of Willits

ATTEST:


CATHY MOORHEAD, City Clerk

The foregoing instruction is a
correct copy of the original on file
at City Hall, Willits, California

ATTEST:


CATHY MOORHEAD, City Clerk