

CITY OF ALBUQUERQUE

PLANNING DEPARTMENT
ADMINISTRATION
600 2nd Street NW, 3rd Floor
Albuquerque, NM 87102
Tel: (505) 924-3339



DECLARATORY RULING

FROM: James M. Aranda, Deputy Director and Zoning Enforcement Officer (ZEO)

DATE: June 15, 2022

SUBJECT: Declaratory Ruling regarding Overnight Shelters

The Land Use Hearing Officer (LUHO) has made a request for a Declaratory Ruling regarding whether (despite the limiting “less than 24 hours” language in the definition of an overnight shelter use) the land use of the City’s proposed Gateway Center Facility conforms to the description of an “overnight shelter” pursuant to the City of Albuquerque’s Integrated Development Ordinance (IDO). The LUHO has also requested a determination of whether or not the literal limiting language for sleeping accommodations in the definition of “overnight shelters” is internally inconsistent with current and past constructions of what a “shelter” use has been interpreted to mean in its real-world application.

BACKGROUND

The City has proposed to renovate a portion of the existing Gibson Health Hub to house the proposed Gateway Center, which will be comprised of an Engagement Center (an access point to services) and an Overnight Shelter (low barrier, trauma-informed transitional shelter) for families, women, and men experiencing homelessness. The proposed facility is one part of the Gibson Health Hub for people who are unhoused and need wraparound services to have a planned exit to services and stable housing. The overall project vision is to provide health services to the surrounding community that promote healing and recovery, including but not limited to primary care services, inpatient treatment, behavioral health services, and shelter and services for people without homes. The subject property for the Gibson Health Hub is comprised of two parcels totaling 20.84 acres and located at 5400 and 5600 Gibson Avenue SE. The existing zoning is MX-H, which allows an overnight shelter as a conditional primary use.

DEFINITIONS

IDO Section 14-16-7-1, Definitions, Community Residential Facility: Any building, structure, home, or facility in which persons reside for a period of more than 24 hours and that is designed to help the residents adjust to the community and society and is used or intended to be used for the purposes of letting rooms, providing meals, and/or providing personal assistance, personal services, personal care, and protective care, but not skilled nursing care. This use specifically includes, but is not limited to, facilities for persons meeting the definition of a handicapped person or for other persons protected against housing discrimination under the federal Fair Housing Act Amendments of 1998 (or as amended) and court decisions interpreting that Act. For purposes of this definition, the term handicapped does not include persons currently using or addicted to alcohol or controlled substances who are not in a recognized recovery program. This use shall not include half-way houses for individuals in the criminal justice system or residential facilities to divert persons from the criminal justice system. See also *Family and Group Home*.

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Community Residential Facility is divided into two (2) categories based on the number of individuals residing

in the facility (not the size of the structure).

1. **Community Residential Facility, Small:** A facility housing between 6 and 8 individuals that do not meet the definition of a family in which personal service, personal assistance, personal care, and/or protective care are provided.
2. **Community Residential Facility, Large:** A facility housing between 9 and 18 individuals that do not meet the definition of family in which personal service, personal assistance, personal care, and/or protective care are provided.

IDO Section 14-16-7-1, Definitions, Overnight Shelter: A facility that provides sleeping accommodations for 6 or more persons for a period of less than 24 hours with no charge or a charge substantially less than market value; it may provide meals and social services. Any such facility open to clients between 10:00 P.M. and 7:00 A.M. is considered an overnight shelter. See also *Community Residential Facility* and *Group Home*.

IDO Section 14-16-7-1, Definitions, Group Home: Any building, structure, home, facility, or place in which persons reside for a period of more than 24 hours designed to help the residents adjust to the community and society and that is intended to be used for the purposes of letting rooms, providing meals, and/or providing personal assistance, personal services, personal care, and protective care to persons that do not meet the definition of a handicapped person or another person protected against housing discrimination under the federal Fair Housing Act Amendments of 1988 (as amended) and court decisions interpreting that Act, but not skilled nursing care. This use shall include halfway houses for individuals in the criminal justice system or residential facilities to divert persons from the criminal justice system.

Group Home is divided into three (3) categories based on the number of individuals residing in the facility (not the size of the structure).

1. **Group Home, Small:** A facility housing no more than 8 unrelated individuals receiving services, plus those providing services.
2. **Group Home, Medium:** A facility housing between 9 and 18 unrelated individuals receiving services, plus those providing services.
3. **Group Home, Large:** A facility housing 19 or more unrelated individuals receiving services, plus those providing services.

ANALYSIS

Within the Integrated Development Ordinance (IDO), "Overnight Shelter" is a listed land use that is categorized as a Civic and Institutional Use in IDO Table 4-2-1. "Community Residential Facility; small and large" and "Group Home; small, medium and large" are also listed land uses in IDO Table 4-2-1. Community Residential Facilities and Group Homes are categorized as Group Living within the Residential Use category of Table 4-2-1. The common English language definition of "overnight shelter" is: *a public or private shelter, with available overnight space, that is open to an individual or family unit experiencing homelessness, at no charge*. The common language definition is consistent with the IDO definition for "overnight shelter".

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In reviewing the public record for Family and Community Services' June 30, 2021, application submission for a Conditional Use to operate an overnight shelter on the subject property, the proposed use as described is consistently defined throughout the public record as a low barrier, trauma-informed shelter for families, women, and men experiencing homelessness. Testimony provided by managers and directors of Barrett Foundation, Heading Home, S.A.F.E. House, and the Good Shepard Center—all facilities with similar characteristics to the proposed Gateway Center—was also included in the public record. According to the testimony, the aforementioned facilities all provide shelter beyond 24 hours and for multiple consecutive nights per stay. All four (4) facilities have operated continuously within City limits for up to 71 years and are each characterized as “overnight shelters” by Family and Community Services, as well as within zoning records maintained by Code Enforcement. Despite the arbitrary limiting language in the IDO definition that limits the time period for sleeping accommodations to 24 hours or less, the proposed land use associated with the Gateway Center is consistent with existing “overnight shelters” that have operated continuously within the City for over 50 years.

Therefore, in conducting a thorough review of the provisions, defined land uses, and definitions contained in the Integrated Development Ordinance, as well as common language definitions and descriptions of “overnight shelters”, descriptions of proposed Gateway Facility in the public record, testimony, and City records, I hereby determine the land use of the proposed Gateway Center does conform to the description of “overnight shelter” and that the land use proposed for the Gateway Center is consistent with “overnight shelters” in terms of scale, function, operating characteristics, and impacts on surrounding property. In making this determination, I acknowledge that the language in the IDO definition for “overnight shelter” (IDO Section 14-16-7-1) that limits the time period for sleeping accommodations to 24 hours or less is inconsistent with previous and current constructions of what an “overnight shelter” has been interpreted to mean in real-world application and practice.

CONCLUSION

It is my official determination as ZEO that the proposed Gateway facility is considered an Overnight Shelter under the IDO. In light of this determination, the proposed Gateway facility is subject to all Use-Specific Standards for Overnight Shelters in IDO Subsection 14-16-4-3(C)(6), as well as all applicable Development Standards in Part 5 of the IDO – including all edge buffer landscaping requirements included in IDO Section 14-16-5-6(E).

Respectfully,

A handwritten signature in black ink, appearing to read 'J.M. Aranda', is written over a light blue horizontal line.

James M. Aranda, MCRP
Deputy Director and Zoning Enforcement Officer
Albuquerque Planning Department